February 13, 2017

Jeff Sessions, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: The Proposed Dow-DuPont, Monsanto-Bayer and Syngenta-ChemChina Mergers

Dear Mr. Sessions,

On behalf of our millions of members and supporters around the country, the undersigned organizations oppose the impending mergers of the world's largest agrochemical and seed companies. The proposed mergers—of Dow Chemical with DuPont, Monsanto with Bayer AG, and Syngenta with ChemChina—are each problematic on their own, with many likely negative impacts on farmers, businesses, workers, and consumers. When taken together, they pose the threat of major oligopolistic outcomes in the industries of farming inputs, research, development, and technology.

We urge the United States Department of Justice to conduct a thorough investigation to determine the impacts of these takeovers (alone and most importantly in combination) and to enjoin the mergers when it becomes clear that these impacts will prove detrimental to farmers, businesses, workers, consumers, the environment and our American food system.

In December 2015, U.S. chemical giants Dow Chemical and DuPont agreed to a $130 billion merger.\(^1\) They plan to streamline agricultural operations, creating a company that unites DuPont’s and Dow’s seed and crop protection businesses. The resulting company would be one of the world’s largest seed and pesticide conglomerates, controlling 17 percent of global pesticide sales and approximately 40 percent of America’s corn-seed and soybean markets.\(^2\) This year, multi-billion dollar German pharmaceutical and chemical giant, Bayer AG, made an offer of $66 billion to acquire Monsanto, Co., which Monsanto accepted.\(^3\) The resulting company would be the largest agribusiness in the world, selling 29 percent of the world’s seeds and 24 percent of pesticides.\(^4\) Even before the mergers began, these seed and agrochemical companies held inordinate market power, with Monsanto, Dow and Syngenta collectively controlling more than half of the global seed market.\(^5\)

It is predicted that if all three deals were to close, the three resulting companies would control nearly 70 percent of the world’s pesticide market, more than 61 percent of commercial seed sales and 80 percent of the U.S. corn-seed market.\(^6,7\) Such a heavily consolidated seed and agricultural input industry makes it easier for cartel-like tacit collusion that raises prices for farmers and other buyers and ultimately consumers while stifling innovation that is propelled by healthy competition in the marketplace. Predictably, more concentration of power and less competition will lead to reduced responsiveness to documented farmer and consumer desire for ecologically sound technologies that are cost-effective and sustainable, meaning less choice in the marketplaces for seeds, inputs and foods.
Taken together, these mergers pose significant potential threats to U.S. security interests. If allowed to pass, they could undermine food security in the United States and worldwide; disrupt trade flows; and accelerate the international consolidation of the food and agribusiness industries to the detriment of American farmers, rural communities and consumers. Further, the mergers would eliminate head-to-head competition in agricultural biotechnology innovation, crop seed and chemical markets and reduce opportunities for pro-competitive research and development (R&D) collaborations.

The mergers will eliminate competition, hurt our economy and hamper U.S. investments and innovation

There is a strong antitrust case against these mergers, as has been outlined in investigations by the Konkurrenz Group, the American Antitrust Institute and the Agricultural and Food Policy Center of Texas A&M University, among others. These studies detail market trends that demonstrate that the merging parties “have been the dominant players in the relevant markets and do not indicate any trend of reduced concentration,” and as a result, the merger should be enjoined. In the case of the Bayer AG and Monsanto merger, Monsanto has already been investigated for antitrust violations in Texas, Iowa, Illinois, Ohio and Virginia.

These mergers will exacerbate and worsen consolidation that the industry has been experiencing for many years. In 1996 there were 600 independent seed companies; this number dropped to 100 by 2009. This concentration resulted in crop seed prices more than doubling relative to the prices farmers received for commodity crops between 1994 to 2010.

The “Big Six” firms—Monsanto, Bayer, BASF, Syngenta, Dow and DuPont—held more than 95 percent of trait acres for corn, soybeans and cotton in the U.S. by 2009, with seed containing Monsanto traits accounting for 90 percent of those acres. Bayer-Monsanto and Dow-DuPont corporations would intensify their dominance among a shrinking pool of similarly situated firms. These mergers would likely create substantial vertical integration between traits, seeds and chemicals currently produced independently by Dow, DuPont, Bayer and Monsanto. The result would be a more tightly integrated platform of components that are bound together both economically and technologically for the purpose of creating exclusive packages of traits, seeds and chemicals that do not “interoperate” with rival products.

The mergers would likely further limit farmers’ choices of the best seeds to suit their needs and would force independent seed producers and customers to rely primarily on Bayer-Monsanto and Dow-DuPont traits. This will likely raise entry barriers for smaller rivals and increase the risk that they are foreclosed from access to technology and other resources needed to compete effectively. Monsanto already possesses a 97 percent share for soybean traits, a 75 percent share for corn traits and a 95 percent share for cotton traits. A combined Bayer-Monsanto would have a greater (and for cotton, a dominant) share of the seed market where its traits are promoted. These market shares—by any antitrust metric—would be considered monopolistic. Monsanto, as the dominant owner and developer of patented seed traits, can already exert considerable market power through its cross-licensing agreements. Many independent seed companies do not hold desired patented traits. They must enter into licensing agreements with the patent owner to include the
patented technology in their seeds. Further, due to seed patents and licensing, farmers are only allowed to plant seeds for one crop season. This places an unfair burden and increased cost on farmers, as they have to pay for seeds each year. As a result of these mergers, farmers will likely have to pay more for seeds as market competition diminishes.

Merged Bayer AG/Monsanto and Dow/DuPont companies would be monoliths that hold significant control over farmers’ choices and the development of new technologies. The market dominance of these companies and costs associated with changing investments will make it even harder for small, upcoming companies to enter the market. The mergers will further reinforce this dynamic through a lock-in effect on investment as wealthy investors that hold stocks in the merged companies will have little to no incentive to reinvest in innovative start-ups.

The mergers additionally threaten competition-driven innovation in the merged companies themselves, because a concentrated market in seed traits discourages aggressive competition-based innovation to capture new customers, instead encouraging profit making from monopoly rents that are easier to maintain. Increased concentration in the traits, seed and herbicide markets will mean fewer firms are responsible for many of the new innovations that drive growth in agricultural productivity. Innovation will likely continue on the path of chemical dependence instead of exploring more sustainable, lower cost forms of technology that could wean our dependence on chemical intensive forms of agriculture.

We are already experiencing elimination of funding for research and development (R&D) as a result of these mergers. These reductions in R&D would also lead to a significant loss in jobs in R&D sectors and are already hurting U.S. workers. In the months since DuPont agreed to buy long-time U.S. rival Dow, executives have cut at least $300 million from its research budget and laid off as many as 700 employees in R&D. Further, DuPont planned to cut a total of 10 percent of its research budget for 2016 and reduce spending on new plants and equipment by 20 percent in 2016.

**Opposing these mergers will protect U.S. farmers and consumers**

Farmers are themselves very concerned about the mergers. The majority of the national farming associations in the U.S. have expressed concern that the mergers will negatively impact American farmers’ livelihoods by increasing input costs, reducing competition and decreasing research and development. National farming associations concerned with the mergers include: The American Farm Bureau, the American Soybean Association, the National Farmers Union, the National Family Farm Coalition and the National Corn Growers Association.

Because the outsized market power of the companies involved would grow as a result of the mergers, these companies would be able to unilaterally raise input prices for farmers, hurting rural economies across the United States and leading to increased prices for consumers as well. As an example, a combined Bayer AG-Monsanto company would control 70 percent of the southeast cottonseed market. The price of cotton could rise over 18 percent as a result of the mergers, according to a study from Texas A&M University.
In addition, there is a growing interest and investment in farming by small businesses, minority farmers and farmer families that are growing and bringing to market a variety of specialty and ethnic crops, hoping to create niche markets in the wholesale and retail sectors. Using a variety of growing methods, they are carving out a place in rural communities that are helping to build and develop these rural areas. Such farmers need a fair playing field, which would be precluded by consolidated market power in the farm input sectors.

Furthermore, the companies in question impose “technology fees,” which make up a significant portion of seed costs. These fees, that were once a line item in farmers’ budgets, are now combined into the total costs of seeds, making it difficult for farmers to compare competitors’ prices and costs over time. Seed prices have generally continued to rise faster than commodity prices over the past 20 years and have outpaced growth in yields as well.30

These mergers will likely impact the food chain from farm to table. Farmers will continue to cultivate food for consumers and for their livestock, even if their costs increase. This means that the increase in cost may be passed along to the consumers to enable farmers to maintain competitive profit margins. As Senator Blumenthal (D-CT) said at the Senate Judiciary Committee meeting on Consolidation and Competition in the U.S. Seed and Agrochemical Industry, “[The] troubling, in fact alarming, potential consequences of these mergers...include less innovation, higher agricultural input prices, less choice for farmers and high food prices for consumers.”31

These mergers should also be examined in the context of exacerbating income inequality. Although there are many views, some conflicting, on income inequality itself, no developed nation can escape its responsibility to maximize the opportunities for its poor to be able to afford a broad range of nutritional foods. Today, in most developed nations, the relatively low price of food products minimizes the adverse impact of often growing income inequality. Many consumer groups, as indicated by U.S. Senator Blumenthal, believe that these mergers have the potential to substantially alter the present relatively affordable basic food industry.

In addition to higher prices for consumers, the merger could result in harms to agricultural workers. Some farmers will likely offset declining profit margins by cutting back on labor costs. For example, they may hire fewer workers and make them work harder, offer lower wages and benefits, and some unscrupulous growers may even engage in wage theft.

**The mergers will increase overall pesticide use and harm the environment**

The proposed mergers will aggregate the power of companies that promote chemical intensive agricultural practices that are harmful to human health, pollinator populations and the environment.

Many agricultural pesticides pose threats to the health of farmers and farmworkers as well as rural agricultural communities32 and are associated with a range of negative health outcomes for consumers.33,34 The proposed mergers are likely to result in a more highly concentrated pesticide industry that will be in a greater position to influence regulators. The resulting conglomerates could exert their influence to lower use restrictions of pesticides currently on the market and to push for broader approval of new products—all with a lessened regard for human safety.
The mergers could reinforce unsustainable dependence on genetically engineered (GE) crops that are developed to be used in combination with herbicides. Over 70 percent of all GE crops are engineered to be herbicide-resistant.\textsuperscript{35} The most commonly engineered of these traits is “Roundup” tolerance. The active ingredient in Roundup, glyphosate, was designated a probable human carcinogen by the World Health Organization.\textsuperscript{36} Reliance on these systems leads to more overall chemical use.\textsuperscript{37}

Increased planting of herbicide-resistant GE crops in recent decades has led to the development of “superweeds” and “super bugs” as plants and insects evolve to resist the chemicals used against them.\textsuperscript{38} For example, in 2012, glyphosate-resistant weeds covered 61 million acres; this number rose to 84 million acres in 2014.\textsuperscript{39} In response to the decreased efficacy of glyphosate, Bayer developed Liberty Link crops engineered to be tolerant to Liberty, a combination of ten different herbicides. Companies are also turning to older herbicides with known toxicity to humans, such as dicamba and 2,4-D as they develop herbicide-tolerant traits to combat superweeds.\textsuperscript{40}

The use of herbicide-tolerant crops is a key factor in the destruction of pollinator habitat, which has contributed to the overall decline in pollinator species. Monarch population numbers have fallen by 90 percent in less than 20 years.\textsuperscript{41} Monarch decline is associated with the pervasive use of glyphosate and other herbicides that kill off milkweed plants, which monarchs need to survive and reproduce.\textsuperscript{42}

Another threat to pollinators is the widespread use of neonicotinoids (neonics), a class of insecticides developed by Bayer. A growing body of scientific data implicates neonics in the decline of bee species.\textsuperscript{43,44,45} Dow, Dupont and Monsanto all manufacture and sell neonic-coated seeds, which have been demonstrated to impact bees and birds.\textsuperscript{46,47,48} The consolidation of the companies in question will likely lead to greater control of the seed market, further entrenching the use of neonic-coated seeds and limiting farmers’ choice to access uncoated alternatives.

**Conclusion**

Conglomerates of such massive scale, breadth and reach, such as those proposed by these mergers, pose a real risk to our economy, to our agricultural sector, to public health, to food security, to the environment and to the general health of the agricultural and food business climate. Dominance of this magnitude can pose both domestic and international consequences that would be irreversible, once set in motion.

For all the above reasons, we encourage the Department of Justice to thoroughly investigate and enjoin the mergers. The Department must act quickly to protect American investments, American farmers, American workers and American consumers from the harmful effects resulting from increased consolidation in the agrochemical industry.

Sincerely,

1,000 New Gardens
100grannies.org
21 Acres
Acta Non Verba: Youth Urban Farm Project
ActionAid USA
Agricultural Justice Project
Alianza Nacional de Campesinas, Inc.
All-Creatures.org
Alliance for Democracy
Alliance for Global Justice
Aliance for the Wild Rockies
American Bird Conservancy
Animals Are Sentient Beings, Inc.
Appalachian Sustainable Development
Appetite For Change
Arabber Preservation Society
AXE, LLC
Backyard Growers
Baltimore Lutheran Campus Ministry, University of Maryland, Baltimore County
Bereks Gas Truth
Beyond Pesticides
Beyond Toxics
Biodynamic Association
Biofuelwatch
Biosafety Alliance
Bio-Way Farm, Ware shoals, SC
Black Warrior Riverkeeper
Bold Visions Conservation
California Farmers Guild
Californians for Alternatives to Toxics
Californians for Pesticide Reform
Camp Grier, Old Fort, NC
Carolyn Haines Inc.
CATA - El Comite de Apoyo a los Trabajadores Agricolas
California Certified Organic Farmers
Center for Environmental Health
Center for Food Safety
Center for International Environmental Law (CIEL)
Central Jersey Coalition Against Endless War
Central Maryland Beekeepers Association
Chicken Scratch Farms
Chris Maykut, President, Friends of Bumping Lake
Citizens for GMO Labeling
City Roots, LLC
Clean Air Watch
Coalition of Immokalee Workers
Coastal Monmouth Democratic Club
Cobblestone Valley Farm
Colorado College Real Food Challenge
Committee for a Sustainable Waterfront
Community Agroecology Network
Community Alliance for Global Justice
Connecticut Families Against Chemical Trespass
Conservation Law Foundation
Corporate Accountability International
Cottonwood Environmental Law Center
Cow Cow Ranch
Crawford Stewardship Project
Creation Plantation, Louisburg, NC
Dakota Rural Action
DC Environmental Network
Dinner Bell Farm, Snow Camp, NC
Dogwood Alliance
Domestic Fair Trade Association
Donna Smith, Farmer
Dr. Bronner's
Earthjustice
Earth's Echo Farm
Ecohermanas
Eco-Justice Ministries
Ecology Center
Elder-Activists
Endangered Habitats League
Endangered Species Coalition
Environment America
Environment Arizona
Environment California
Environment Colorado
Environment Connecticut
Environment Florida
Environment Georgia
Environment Illinois
Environment Iowa
Environment Maine
Environment Maryland
Environment Massachusetts
Environment Michigan
Environment Minnesota
Environment Missouri
Environment Montana
Environment Nevada
Environment New Hampshire
Environment New Jersey
Environment New Mexico
Environment New York
Environment North Carolina
Environment Ohio
Environment Oregon
Environment Rhode Island
Environment Texas
Environment Virginia
Environment Washington
Environmental Defenders of McHenry County
Environmental Protection Information Center
Environmental Task Force, University of Maryland, Baltimore County
Experimental Farm Network
Factory Farming Awareness Coalition
Fairtrade America
Fair World Project
Family Farm Defenders
Farmworker Association of Florida
Farmworker Justice
Florida Certified Organic Growers and Consumers Inc.
Food Chain Workers Alliance
Food Craft Institute
Food Democracy Now!
Food Fight
Food First/Institute for Food and Development Policy
Food Forward
Food for Maine's Future
Food and Water Watch
Food Well Alliance
Food, Equity, Entrepreneurship, & Development (FEED)
Food Integrity Campaign
Food Truth, Students of Clark University
Fox Haven Organic Farm
Friends of the Earth U.S.
Friends of the Earth Australia
Gap Mountain Goats
Get Down Farm
Georgia ForestWatch
Glencora LLC, Grover, NC
Global Brigades Environmental, University of Maryland, Baltimore County
Global Justice Ecology Project
Michigan Farmers Union
Midwest Pesticide Action Center
Migrant Justice
Missouri Farmers Union
MOM's Organic Market
Moms Across America
Montana Organic Association
Montgomery Countryside Alliance
Multinational Exchange in Sustainable Agriculture (MESA)
Namu Farm
Nancy's Garden
National Asian American Coalition
National Diversity Coalition
National Family Farm Coalition
National Organic Coalition
New England Farmers Union
North Beach Films
North Carolina A&T State University
North County Watch
Northeast Organic Dairy Producers Alliance
Northeast Organic Farming Association-Connecticut
Northeast Organic Farming Association - Interstate Council
Northeast Organic Farming Association-Massachusetts
Northeast Organic Farming Association of New Jersey
Northeast Organic Farming Association of New York (NOFA-NY)
Northeast Organic Farming Association of Vermont
Northeastern University Real Food Challenge
Northern California Community Loan Fund
Northern NJ Chapter of National Organization for Women
Northwest Arkansas Workers’ Justice Center
Northwest Atlantic Marine Alliance
Northwest Center for Alternatives to Pesticides
OASIS Center International
Occidental Arts and Ecology Center
Ohio Ecological Food and Farm Association
Ohio Environmental Council
Old McCaskill’s Farm, Rembert, SC
Olympia Beekeepers Association
Oregonians for Safe Farms and Families
Organic Consumers Association
Organic Seed Alliance
Organic Seed Growers and Trade Association
Organic Vision LLC
Organization for Competitive Markets
Origin Farms, Yemassee, SC
Our Family Farms
PastureMap Inc
PCC Natural Markets
PennEnvironment
Perennial Roots Farm
Personal Family Farm
Pesticide Action Network North America
Philly Permaculture
Planting Justice
Pollinate Minnesota
Pollinator Friendly Alliance
Pollinator Stewardship Council
Public Citizen
Rural Advancement Foundation International
Raft Swamp Farms, Red Springs, NC
Raptors Are The Solution
Real Food Challenge at Northwestern University
Real Food Challenge
Real Food Challenge at San Francisco State University
Real Food Challenge Towson University
Real Food Hopkins
Real Food University of Georgia
Real Food Utah
Reverence Farms, Graham, NC
RootsAction.org
Roots of Change
Rural Advancement Foundation International
Rural Coalition
Rural Vermont
Russian Riverkeeper
Santa Cruz Permaculture
Save Our Sky Blue Waters
SAVE THE FROGS!
Sea Cliff Farmers Market
Seed the Commons
Sequoia ForestKeeper
Sierra Club
Sierra Club Massachusetts
Sierra Harvest
Sierra Nevada Memorial Hospital
Slow Food California
Slow Food North Shore
Slow Food USA
Washington County Beekeepers Association
Washington Sustainable Food and Farming Network
Waterkeepers Chesapeake
Wesleyan Local Co-op
Western Colorado Congress
White Swan Farm & Forge, Cedar Grove NC
WhyHunger
Wild Hill Farm
Wisconsin Environment
Women, Food and Agriculture Network (WFAN)
Women's International League of Peace & Freedom US
Woodleaf Farm
Worker Justice Center of NY
Writerspace LLC

Cc:
Brent C. Snyder, Acting Assistant Attorney General, Antitrust Division, Department of Justice
Mark B. Tobey, Special Counsel for State Relations and Agriculture, Antitrust Division, Department of Justice
Members of Congress
State Attorneys General
