DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Monsanto Co.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Monsanto Co.*, Civ. Action No. 1:07CV00992. On May 31, 2007, the United States filed a Complaint alleging that the proposed acquisition by Monsanto Company (''Monsanto'') of Delta and Pine Land Company (''DPL'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition for the development, breeding, and sale of traited cottonseed in the MidSouth (Mississippi, Arkansas, Louisiana, Missouri, and Tennessee) and Southeast (Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia) United States. Specifically, the Complaint alleges that Monsanto's acquisition of Delta and Pine Land would enhance Monsanto's ability and incentive to raise traited cottonseed prices and eliminate Delta and Pine Land as a partner independent of Monsanto for competing trait developers. The proposed Final Judgment, lodged at the same time as the Complaint, requires the parties to divest (1) Monsanto's Stoneville Pedigreed Seed Company; (2) other Monsanto cotton breeding assets; (3) specified lines of Delta and Pine Land cottonseed to the acquirer of the Stoneville assets; (4) and specified lines of Delta and Pine Land cottonseed containing the VipCot transgenic trait to Syngenta AG. It also requires Monsanto to modify certain licenses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 215, Washington, DC 20530 (202–514–2481), on the Internet at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (202–307–6349).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington, DC 20530, Plaintiff, v. Monsanto Company, 800 North Lindbergh Boulevard, St. Louis, MO 63167, and Delta and Pine Land Company, 1 Cotton Row, Scott, MS 38772, Defendants

Civil Case No.:
Case: 1:07–cv–00992.
Assigned To: Urbina, Ricardo M.
Assign. Date: 5/31/2007.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of defendants Monsanto Company (''Monsanto'') and Delta and Pine Land Company (''DPL'') and allege as follows:

1. In 2006, cottonseed was planted on more than 15 million acres in the United States and generated more than $5 billion in annual revenues for United States farmers. Cotton is grown across the Southern United States from Virginia, the Carolinas, Georgia, and Florida on the East Coast to California on the West Coast.

2. Farmers grow substantially all of this important crop from cottonseed that has been enhanced through the introduction of biotechnology traits (''traited cottonseed''). Traited cottonseed results from combining cottonseed stock that has attractive growing characteristics (such as producing a high yield of cotton per acre) with performance traits foreign to cotton that are inserted through genetic engineering.

3. Monsanto is the largest producer and supplier of biotechnology traits sold in cottonseed in the United States, with over 96% of United States traited cottonseed containing Monsanto traits. Monsanto is also one of the largest sellers of traited cottonseed in the United States, primarily through its Stoneville Pedigreed Seed Company (''Stoneville'').

4. DPL is the largest producer of cottonseed in the United States. DPL is the leading seller in the MidSouth (Mississippi, Arkansas, Louisiana, Missouri, and Tennessee), where DPL sells 79% of all traited cottonseed, and the Southeast (Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia), where DPL sells 87% of all traited cottonseed.

5. In the 1980s, Monsanto partnered with DPL to introduce cottonseed containing Monsanto traits. DPL's experienced and knowledgeable cotton breeders and large collection of high-quality germplasm (the genetic material of a cottonseed that gives the plant its characteristics) provided Monsanto with an unparalleled avenue through which to commercialize and market its traits. The combination of Monsanto traits and DPL cottonseed has been highly successful, particularly in the MidSouth and Southeast, due to the performance of DPL's cottonseed and the value of Monsanto's biotechnology traits in those regions.

6. Monsanto's position as the dominant supplier of traits used in cottonseed was jeopardized in the early 2000s when DPL began to partner with other biotechnology companies. Through these partnerships, DPL's germplasm library and breeding capabilities were available to alternative trait developers, allowing them to work toward introducing new traits in DPL cottonseed that would compete with Monsanto's traits. DPL publicly stated its intent to replace Monsanto traits in its products and planned to launch products with non-Monsanto traits as early as the 2009 growing season, with additional products to follow.

7. Spurred by this competitive threat and recognizing the potential for a successful pairing of DPL's cottonseed with competing traits, Monsanto purchased Stoneville to position Monsanto to compete vigorously with DPL. Monsanto aggressively worked to develop Stoneville's germplasm and its traited cottonseed sales and also continued its efforts to develop germplasm and expand traited cottonseed sales through its Cotton States business unit.

8. The proposed merger will consolidate Monsanto's and DPL's traited cottonseed sales, eliminating competition between these firms in the sale of cottonseed. DPL and Monsanto

together would control over 95% of sales in the important MidSouth and Southeast regions, where harvested cotton garners higher prices per bale, and where cottonseed traits are most valued by farmers. The proposed merger will also eliminate DPL as a partner independent of Monsanto for competing trait developers, substantially delaying or preventing the development and introduction of cottonseed containing non-Monsanto traits. Accordingly, Monsanto's merger with DPL would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Jurisdiction and Venue

9. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. Monsanto and DPL are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and the parties pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26; and 28 U.S.C. 1331, 1337.

11. The Defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants

12. Defendant Monsanto is a Delaware corporation, with its headquarters located in St. Louis, Missouri. Monsanto is a leading global provider of agricultural products for farmers, including seeds for cotton, soybeans, and corn; traits that help farmers control insects and weeds; and crop protection chemicals such as the herbicide Roundup, a branded version of the chemical glyphosate. Monsanto had total company revenues of more than $7.3 billion in 2006.

13. Defendant DPL is a Delaware corporation, with its headquarters located in Scott, Mississippi. DPL is the largest cottonseed producer in the world. DPL's sales in the United States in 2006 exceeded $400 million.

III. Trade and Commerce

A. Affected Commerce

Cottonseed Varieties

14. Cottonseed varieties differ in their performance, including the yield, the strength and the length of the cotton fibers, and the adaptability of the cottonseed to specific weather conditions and soil types. Varieties that perform best in certain regions of the country, such as the drier areas of the Southwest (including West Texas, Kansas, and Oklahoma) do not typically perform well in other regions, such as the MidSouth and the Southeast. Farmers select cottonseed varieties that have the best performance characteristics for the area in which the cottonseed will be planted, with the primary focus on yield.

15. To be competitive, cottonseed companies must continually work on developing new and improved cottonseed varieties through their breeding programs. Cotton breeding is a costly and time-consuming process in which the cottonseed company selects lines to breed together (or ''cross''), plants the cottonseed produced from that initial cross, and then selects the best plants for further crossing to create a variety with the desired characteristics. In most cases, it takes eight to ten years from the initial cross until a new cottonseed variety is ready for market.

16. The success of a cottonseed company's breeding program is dependent on many factors, the most important of which is the quantity and quality of available breeding materials, i.e. germplasm. A company with a large collection of high quality, or elite, germplasm has a competitive advantage because the company has the ability to identify the best genetic material and use it in a wide variety of possible crossing combinations, resulting in a greater likelihood of developing a successful variety.

17. DPL has the largest cotton germplasm collection, with by far the greatest track record of success in the important MidSouth and Southeast regions, and an extensive breeding program for cottonseed. It has eight research or breeding facilities in the United States and five located elsewhere in the world. It has more breeding capabilities than any competitor and over ninety years of germplasm development.

Traits for Cottonseed

18. Historically, farmers grew cotton from conventional cottonseed that contained naturally occurring characteristics. Cotton farming with conventional cottonseed involved labor intensive and costly herbicide and insecticide spraying programs that required multiple applications at very specific times in the growing season. Failure to spray or to correctly time the applications could result in substantial crop damage.

19. In the 1980s, Monsanto developed a trait that could be inserted into cotton plants to make plants resistant to certain insects. It also developed an herbicide-tolerant trait that would make cotton plants grown from cottonseed with the trait resistant to certain herbicides sprayed to kill weeds, allowing farmers to spray herbicides less precisely without killing the young plants.

20. To gain acceptance by farmers, the traits had to be delivered in cottonseed lines that performed well in the growing area where the farmer was located. In 1988, Monsanto approached DPL to develop and commercialize cottonseed with the Monsanto insect-resistant and herbicide-tolerant traits. DPL was then, and still is, the market leader in cottonseed, with what was considered the best germplasm and the most sought-after varieties.

21. The companies proceeded with the development and commercialization process, which involved inserting the Monsanto trait into DPL germplasm, evaluating plant lines grown from that germplasm, and breeding promising candidate plants to produce varieties with desired characteristics. In 1996, DPL began to sell the first cottonseed with Monsanto's initial insect-resistant trait (marketed under the name ''Bollgard''), and, the following year, it introduced a variety with Monsanto's initial herbicide-tolerant trait (marketed under the name ''Roundup Ready'').

22. Farmers, particularly those in the MidSouth and Southeast, quickly adopted traited cottonseed because its use significantly lowered overall farming costs, increased yields, and reduced the risk of crop loss. Today, almost all cottonseed varieties planted in the United States are traited, and, in 2006, over 96% of the traited cottonseed sold in the United States contained traits developed by Monsanto.

23. When farmers acquire traited cottonseed, they pay a price per bag to the seed distributor, who pays the seed manufacturer for the seed, and a separate license fee (commonly referred to as the ''technology fee'') to the developer of the trait. Typically, the trait developer shares a portion of the technology fee with the seed manufacturer. The technology fee can constitute as much as 80% of farmers' total costs for a bag of traited cottonseed.

DPL's Trait Development With Monsanto's Competitors

24. Following Monsanto's and DPL's successful introduction oftraited cottonseed, they agreed in 1998 that Monsanto would acquire DPL. The Antitrust Division of the United States Department of Justice investigated the proposed transaction. In late 1999, while the transaction was still under review, Monsanto decided to abandon

the transaction. DPL thus remained an independent company.

25. Despite ensuing litigation from the companies' failed attempt to merge, DPL continued to develop and market cottonseed varieties with Monsanto's traits. DPL also commenced a strategy to replace (or ''trade-out'') the Monsanto traits in DPL cottonseed with traits of other companies. DPL believed that this strategy would be profitable for DPL because competing trait developers would offer DPL a higher percentage of the technology fee for traits than would Monsanto. In DPL's suit against Monsanto for breach of the merger agreement, DPL alleged significant financial losses resulting from the delay that the failed merger caused to DPL's efforts to develop traits with companies other than Monsanto.

26. Pursuant to the trade-out strategy, DPL has worked with several other biotechnology companies, including Dow AgroSciences, DuPont, Syngenta Crop Protection AG and Bayer CropScience, to develop and commercialize cottonseed containing the traits developed by these companies that would compete with cottonseed containing Monsanto's traits. DPL is an attractive partner that is well suited to quickly introduce new trait technologies due to the strength and breadth of its germplasm base and breeding programs as well as its technical service capabilities, know-how, brand recognition and market position.

27. DPL's trait license with Monsanto also makes DPL an attractive partner for competing trait developers. Most farmers in the United States buy cottonseed containing traits that provide both herbicide tolerance and insect resistance. In the MidSouth and Southeast United States, the vast majority of farmers use both traits. DPL's trait licenses with Monsanto allow DPL to offer competing trait developers the ability to combine or ''stack'' their traits in DPL cottonseed along with Monsanto traits. This stacking right would allow, for example, the developer of an insect-resistant trait to bring that trait to market in cottonseed that also contains a Monsanto herbicide-tolerant trait (*i.e.*, Roundup Ready or the more-recent version, Roundup Ready Flex). Monsanto's trait licenses with most other cottonseed companies, by contrast, severely restrict the ability of these companies to work with other trait developers, with some of these licenses prohibiting the stacking of cottonseed containing Monsanto traits with another company's traits and others subjecting the licensees to severe penalties if they stack non-Monsanto traits with Monsanto traits.

28. Even with the advantages that partnering with DPL offers Monsanto's competing trait developers, the process to develop, breed and commercialize cotton varieties with traits typically takes eight to twelve years and costs over $40 million. The process often requires thousands of attempts before developing a traited cottonseed that then can be used to breed commercial varieties. In addition, extensive regulatory approvals, both in the United States and abroad, are required.

29. DPL's trait-development work with Monsanto's competitors has recently begun to show results. DPL's developmental work with Syngenta resulted in a 2004 agreement to commercialize cottonseed with Syngenta's VipCot insect-resistant traits. DPL expects to begin marketing such cottonseed as early as 2009. The DPL/Syngenta agreement provides that DPL will receive 70% of the net trait technology fees earned through sales of this product, compared with the 30% that DPL earns pursuant to its Monsanto agreement.

Monsanto's Competitive Reaction to DPL's ''Trade-Out'' Plan

30. Monsanto recognized that its and DPL's ''paths will continue to diverge'' as DPL continues its strategy to replace Monsanto traits in DPL cottonseed with traits developed by Monsanto's competitors. Driven by the competitive threat posed by DPL's work with these other companies, Monsanto set about building its own cottonseed business.

31. In 2002, Monsanto began Cotton States, through which Monsanto obtains licenses on germplasm developed by private breeders and universities, breeds its traits into the germplasm, and out-licenses the resulting traited varieties to sellers of cottonseed for sale under their private labels.

32. In 2005, Monsanto repurchased Stoneville, the second-largest traited cottonseed company in the MidSouth and Southeast United States. Monsanto had previously owned Stoneville but sold it in 1999 before abandoning its attempt to acquire DPL. Upon reacquiring Stoneville, Monsanto immediately invested capital to improve Stoneville's competitive position.

33. Monsanto aggressively worked to strengthen its cottonseed business by, among other things, focusing on advanced breeding techniques and germplasm development and investing in breeding facilities. Monsanto predicted internally that these investments would enable Monsanto to increase its share of the cottonseed business at the expense of DPL and other companies.

B. Relevant Markets

34. Across regions such as the MidSouth and Southeast, growing conditions for cotton differ due to weather conditions, soil type, and varied demands for weed and insect control. Fanners demand cottonseed varieties that produce high yield for their particular growing conditions. Monsanto and DPL recognize this demand and market cottonseed varieties by region.

35. In many regions of the country, including the MidSouth and Southeast, farmers demand that cottonseed have traits to provide insect resistance and herbicide tolerance. Monsanto prices traits by region.

36. Cotton fanners consider cotton the most valuable crop for their land, and the cost of the traited cottonseed amounts to only a fraction of the total cost of growing cotton. If there were a small but significant increase in price of traited cottonseed within regions such as the MidSouth and Southeast, it is not likely that farmers would switch to other crops or switch purchases to conventional (non-traited) cottonseed or cottonseed varieties not well suited for their regions in sufficient volumes to make the price increase unprofitable. The development, commercialization, and sale of traited cottonseed constitutes a line of commerce or product market, and the MidSouth and Southeast United States are sections of the country or geographic markets, within the meaning of Section 7 of the Clayton Act.

IV. Anticompetitive Effects

A. Concentration

37. DPL is the largest firm in the traited cottonseed market in the United States. It is even more dominant in the MidSouth United States market, with 79% of the traited cottonseed sales, and the Southeast United States market, with over 87% of the traited cottonseed sales.

38. Monsanto is the second-largest traited cottonseed company in the MidSouth and Southeast United States markets, with 17% of sales in the MidSouth United States market and 8% of sales in the Southeast United States market.

39. After the merger, Monsanto would account for more than 95% of sales of traited cottonseed in the MidSouth United States market and 95% of sales in the Southeast United States market.

40. Using a measure of market concentration called the Herfindahl-

Hirschman Index (''HHI''), explained in Appendix A, Monsanto's merger with DPL would result in a post-merger HHI of 9110 in the MidSouth United States market, with an increase of 331O, and a post-merger HHI of 9184 in the Southeast United States, with an increase of 1489.

B. Effect of Transaction

41. The merger will eliminate competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed. As a result, farmers likely will have fewer choices of, and face higher prices for, traited cottonseed.

42. The merger will also eliminate DPL as a partner independent of Monsanto for developers of traits that would compete against Monsanto. DPL's current efforts to develop and commercialize cottonseed with Syngenta's VipCot insect-resistant technology, which would be competitive with Monsanto's Bollgard and more-recent Bongard II traits, will be substantially delayed or prevented. Further, the merger will likely delay if not deter efforts to develop other traits that would compete with Monsanto traits and that would provide benefits to United States cotton farmers, including other insect-resistant traits, herbicide-tolerant traits, and potentially other cottonseed traits. As a result, farmers likely will have fewer choices of, and face higher prices for, traited cottonseed.

V. Entry

43. Entry into the traited cottonseed business requires the assets and expertise both to breed high-performing varieties of cottonseed and to develop or access herbicide-tolerant and insect-resistant traits to breed into the cottonseed. Each of those steps requires many years and the investment of tens of millions of dollars.

44. Entry into the traited cottonseed business would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract an anticompetitive increase in the price of traited cottonseed by the merged Monsanto or DPL.

VI. Violation Alleged

45. The effect of Monsanto's merger with DPL may be substantially to lessen competition in the market for the development, production, and sale of traited cottonseed in violation of Section 7 of the Clayton Act. Unless restrained, the transaction would likely have the following effects, among others:

a. Competition in the market for the development, production, and sale of traited cottonseed in the MidSouth and Southeast United States would be substantially lessened; and

b. Cotton farmers will suffer harm as a result of fewer choices and higher prices for traited cottonseed.

VII. Request for Relief

Plaintiff requests that this Court adjudicate and decree as follows:

1. That Monsanto's proposed merger with DPL would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

2. That Monsanto and DPL be permanently enjoined from carrying out their proposed merger, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Monsanto and DPL;

3. That Plaintiff be awarded the costs of this action; and

4. Such other relief as the Court may deem just and proper.

Dated: May 31, 2007.

Respectfully submitted,

For Plaintiff United States

Thomas O. Barnett,

Assistant Attorney General.

David L. Meyer,

Deputy Assistant Attorney General.

J. Robert Kramer II,

Director of Operations.

Donna N. Kooperstein,
Chief, Transportation, Energy & Agriculture Section.

William H. Stallings,

Assistant Chief, Transportation, Energy & Agriculture Section.

Jill A. Ptacek (WA Bar #18756)
Angela L. Hughes (DC Bar #303420)
J. Richard Doidge (MA Bar #600158)
Michael D. Billiel (DC Bar #394377)
David A. Blotner (WI Bar #1008674)
Ian R. Conner (V A Bar #65349)
John W. Elias (CA Bar #244620)
Tracy L. Fisher (MN Bar #315837)
Mark J. Niefer (DC Bar #470370)
Sarah L. Wagner (TX Bar #24013700)

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 7th Street, NW., Suite 500, Washington, DC 20004 Telephone: (202) 307–6607, Facsimile: (202) 307–2784.

Appendix A—Definition of HHI

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). (Note: Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, Monsanto Company and Delta and Pine Land Company, Defendants.

Case: 1:07–cv–00992 *Assigned To:* Urbina, Ricardo M. *Assign Date:* 5/31/2007 *Description:* Antitrust.

Proposed Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on May 31, 2007, Plaintiff and Defendants, Monsanto Company (''Monsanto'') and Delta and Pine Land Company (''DPL''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets and alterations of certain existing license terms by Defendants to assure that competition is not substantially lessened;

And whereas, Plaintiff requires Defendants to make certain divestitures and alter certain existing license terms for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to Plaintiff that the divestitures and license term alterations required below can and shall be made and that Defendants shall later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or license alteration provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer of the Enhanced Stoneville Assets'' means the entity or entities to whom Defendant Monsanto divests the Enhanced Stoneville Assets.

B. ''Cotton States'' means Defendant Monsanto's cotton variety licensing business pursuant to which Defendant Monsanto licenses other cottonseed companies to produce or sell Defendant Monsanto's own cotton varieties, cotton varieties Defendant Monsanto in-licenses from other breeders, or cotton varieties Defendant Monsanto produces from such varieties.

C. ''DPL'' means Defendant Delta and Pine Land Company, a Delaware corporation with its headquarters in Scott, Mississippi, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, interests in partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''DPL Acquirer'' means the entity to whom Defendant Monsanto divests Defendant DPL.

E. ''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.

F. ''Stoneville'' means all assets used exclusively or primarily in, or to support, the U.S. business of Stoneville Pedigreed Seed Company, including, but not limited to the assets described in Schedule A.

G. ''Enhanced Stoneville Assets'' means Stoneville and the additional assets, properties, and rights listed in Schedule B.

H. ''Syngenta'' means Syngenta Crop Protection AG, a Swiss corporation with its headquarters in Basel, Switzerland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Vip Cot Assets'' means the assets, properties, and rights listed in Schedule C.

III. Applicability

A. This Final Judgment applies to Defendants Monsanto and DPL, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets that include the Enhanced Stoneville Assets or the VipCot Assets, they shall require, as a condition of the sale or other disposition, that the purchaser(s) agree to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture of Enhanced Stoneville Assets

A. Defendants are ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the Complaint in this matter, to divest the Enhanced Stoneville Assets to an acquirer acceptable to Plaintiff in Plaintiff's sole discretion. Defendants shall use their best efforts to accomplish the divestiture of the Enhanced Stoneville Assets as expeditiously as possible. Plaintiff, in its sole discretion, may grant one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in each such circumstance.

B. Within two (2) business days following execution of a definitive agreement or agreements for the divestiture of the Enhanced Stoneville Assets, or the filing of this Final Judgment, whichever is later, Defendants shall notify Plaintiff in writing of the proposed divestiture. The notice shall set forth the details of the proposed divestiture, including a list of the name, address, and telephone number of each person who offered, or expressed an interest in or desire, to acquire any ownership interest in the Enhanced Stoneville Assets, together with full details of the same. Defendants need not include in this notice information about any persons previously identified in an affidavit filed in compliance with this Final Judgment as offering, or expressing an interest in or desiring, to acquire any ownership interest in the Enhanced Stoneville Assets. Defendants shall include with the notice a copy of the divestiture agreement or agreements and copies of any other agreements entered into by either or both of the Defendants and the proposed Acquirer of the Enhanced Stoneville Assets since the Complaint in this matter was filed, or up to three (3) months before the filing of the Complaint in this matter. Defendants may incorporate by reference in this notice any responsive information or documents previously provided to Plaintiff, provided that Defendants identify with specificity when the information or documents were previously provided and, if the information or documents were part of a larger submission, where in the submission the information or documents may be located.

C. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendants, the proposed Acquirer of the Enhanced Stoneville Assets, or any other third party, additional information concerning the proposed divestiture, the proposed Acquirer of the Enhanced Stoneville Assets, and any other potential acquirer. Defendants shall furnish any additional information requested of Defendants within fifteen (15) calendar days of the receipt of the request, unless Defendants and Plaintiff shall otherwise agree.

D. Within fifteen (15) calendar days after receipt of the notice or within ten (10) calendar days after Plaintiff has been provided the additional information requested from Defendants, the proposed Acquirer of the Enhanced Stoneville Assets, and any third party, whichever is later, Plaintiff shall provide written notice to Defendants stating whether or not it objects to the proposed divestiture. If Plaintiff provides written notice that it does not object, the divestiture may be consummated. Absent written notice that Plaintiff does not object to the proposed Acquirer of the Enhanced Stoneville Assets or upon objection by Plaintiff, the divestiture of the Enhanced Stoneville Assets to that proposed Acquirer shall not be consummated.

E. The divestiture of the Enhanced Stoneville Assets shall be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that the Enhanced Stoneville Assets can and shall be used by the Acquirer of the Enhanced Stoneville Assets to operate a viable, ongoing business engaged in the development, production and sale of traited cottonseed. The divestiture of the Enhanced Stoneville Assets:

(1) Shall be made to an Acquirer of the Enhanced Stoneville Assets that, in Plaintiff's sole judgment, has the intent and capability (including the necessary

managerial, operational, technical, and financial capability and intellectual property rights) of competing effectively in the business of developing, producing and selling traited cottonseed in the United States, including a credible commitment to the traited cottonseed market;

(2) Shall be accomplished so as to satisfy Plaintiff, in its sole discretion, that the divestiture shall not result in the substantial lessening of competition for the development, production, and sale of traited cottonseed in any geographic area; and

(3) Shall be accomplished so as to satisfy Plaintiff, in its sole discretion, that none of the terms of any agreement between an Acquirer of the Enhanced Stoneville Assets and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

F. Defendants shall provide to the Acquirer of the Enhanced Stoneville Assets and Plaintiff information relating to the personnel primarily involved in the operation of Stoneville to enable the Acquirer of the Enhanced Stoneville Assets to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer of the Enhanced Stoneville Assets to employ any such personnel.

G. For a period of two (2) years from the filing of the Complaint in this matter, Defendants shall not solicit to hire, or hire, any individual primarily involved in the operation of Stoneville on the date of the filing of the Complaint in this matter who receives a substantially equivalent offer of employment from the Acquirer, unless such individual is terminated or laid off by the Acquirer, or the Acquirer agrees that Defendants may solicit and employ that individual.

H. Defendants shall not take any action that shall impede in any way the operation, use or divestiture of the Enhanced Stoneville Assets.

I. Defendants shall warrant to the Acquirer of the Enhanced Stoneville Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset that shall have a material adverse effect on the operation of the Enhanced Stoneville Assets, and that following the sale of the Enhanced Stoneville Assets, Defendants shall not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the use or operation of the Enhanced Stoneville Assets based on actions or inactions that existed prior to the date of divestiture.

V. Divestiture of VipCot Assets

A. Defendants are ordered and directed, in accordance with the terms of this Final Judgment, to offer Syngenta the VipCot Assets listed in the attached Schedule C within thirty (30) calendar days of the filing of the Complaint in this matter. The offer shall remain open for at least six (6) months. Defendants shall use their best efforts to accomplish the divestiture of the VipCot Assets as expeditiously as possible, but in any event no later than ninety (90) calendar days after the divestiture of the Enhanced Stoneville Assets or thirty (30) calendar days after Syngenta accepts the offer, whichever is latest. Plaintiff, in its sole discretion, may extend the time period for Defendants to divest the VipCot Assets to Syngenta by granting one or more extensions, not to exceed ninety (90) calendar days in total, and shall notify the Court in each such circumstance.

B. Prior to transmitting to Syngenta the offer for the assets described in the attached Schedule C, Defendants shall provide Plaintiff with copies of the offer for the approval of the Plaintiff in its sole discretion. Along with the offer, Defendants shall provide Plaintiff copies of any other agreements not previously provided to Plaintiff entered into by either or both of the Defendants and Syngenta since the Complaint in this matter was filed, or up to three (3) months before the filing of the Complaint in this matter. Within five (5) business days following receipt of the offer, Plaintiff shall provide written notice to Defendants stating whether the offer must be amended to meet the objectives of the divestiture of the VipCot Assets. Absent written notice that Plaintiff does not object to the offer, the divestiture of the VipCot Assets to Syngenta pursuant to the offer shall not proceed. Upon objection by Plaintiff, Defendants shall alter the terms of the offer to satisfy Plaintiff in its sole discretion.

C. Defendants shall permit Syngenta to have reasonable access to personnel and to any and all financial, operational, or other documents and information relating to the VipCot Assets customarily provided as part of a due diligence process.

D. Defendants shall not take any action that shall harm the VipCot Assets or impede in any way the divestiture of the VipCot Assets.

VI. Changes in Third Party Licenses

A. Defendant Monsanto agrees to offer to its licensees, within thirty (30) calendar days of the date of the sale of the Enhanced Stoneville Assets, to make the following changes to its third-party cottonseed trait and Cotton States licenses, subject to the approval of Plaintiff in its sole discretion:

1. Current Cotton Insect Resistance and Herbicide Tolerance Trait Licensing—Agreements: Defendant Monsanto shall modify its current cottonseed trait licenses to provide the licensees with the flexibility Defendant DPL currently has to develop, market or sell cottonseed containing non-Monsanto traits by removing any provisions that require or incentivize the licensee to develop, market or sell cottonseed containing only traits from Defendant Monsanto.

2. Cotton States Licenses: Defendant Monsanto shall modify its Cotton—States licenses to eliminate any provision that allows Defendant Monsanto to terminate the license if the licensee sells cottonseed containing non-Monsanto traits in brands not licensed under the Cotton States license.

B. Prior to making the offers, and no later than five (5) days after the date of sale of the Enhanced Stoneville Assets, Defendant Monsanto shall provide Plaintiff with copies of the offers for the approval of Plaintiff in its sole discretion. Within five (5) days of receipt of the offers to modify the license agreements, Plaintiff shall provide written notice to Defendant Monsanto stating whether the offers must be amended. Absent written notice that Plaintiff does not object to the offers, Defendant Monsanto may not proceed with offering the modifications to the licensees. Upon objection by Plaintiff, Defendant Monsanto shall alter the terms of the offers to satisfy Plaintiff in its sole discretion. In the event any of the licensees do not accept the offer containing the modifications described in Section VI.A. as approved by Plaintiff in its sole discretion, Defendant Monsanto shall act as though such modification has been made and shall not enforce any license provision that is the subject of any such modification.

VII. Divestiture of Defendant DPL

A. If Defendants have not divested the Enhanced Stoneville Assets by the end of the time period permitted by this Final Judgment, Defendants shall notify Plaintiff of that fact in writing. Defendant Monsanto shall then divest DPL within sixty (60) days. If Defendant Monsanto has not divested Defendant DPL by the end of the sixty-day period, Defendant Monsanto shall notify Plaintiff of that fact in writing. Upon application of Plaintiff, the Court shall appoint a trustee selected by Plaintiff and approved by the Court to effect the divestiture of Defendant DPL.

B. Defendant Monsanto shall use its best efforts to assist the trustee in accomplishing the required divestiture of Defendant DPL, including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and assets at the facilities to be divested, and Defendant Monsanto shall develop financial or other information relevant to the assets to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for confidential commercial information. In addition, Defendant Monsanto shall:

(1) Permit prospective acquirers of Defendant DPL who have been invited to submit binding bids for Defendant DPL to have reasonable access to Defendant DPL's personnel and to make such inspection of Defendant DPL and any and all financial, operational, or other documents and other information as may be relevant to the divestiture of Defendant DPL, subject to reasonable protection for confidential commercial information;

(2) Provide the DPL Acquirer and Plaintiff information relating to the personnel of Defendant DPL to enable the DPL Acquirer to make offers of employment;

(3) Take no action to interfere with any negotiations by the DPL Acquirer to employ any Defendant DPL employee;

(4) Take no action to interfere with or to impede the trustee's accomplishment of the divestiture of Defendant DPL;

(5) Warrant to the DPL Acquirer that on the date of sale each asset shall be in the same condition as when Defendant Monsanto acquired Defendant DPL, except for the harvesting of cotton plants and selection lines in the ordinary course of business, and ordinary wear and tear of assets and facilities;

(6) Warrant to the DPL Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset that have arisen since Defendant Monsanto acquired Defendant DPL; and

(7) Shall not, following divestiture of Defendant DPL, undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Defendant DPL, or otherwise take any action that shall impede in any way the permitting, operation, or divestiture of Defendant DPL.

C. Unless Plaintiff otherwise consents in writing, the divestiture of Defendant DPL pursuant to this Section of the Final Judgment, whether accomplished by Defendant Monsanto or a trustee, shall include the entirety of Defendant DPL, and shall be accomplished in such a way as to satisfy Plaintiff, in its sole discretion, that (a) Defendant DPL shall remain no less viable than when Defendant Monsanto acquired it, (b) the divestiture of Defendant DPL shall remedy the competitive harm alleged in the Complaint, and (c) none of the terms of any agreement between a DPL Acquirer and Defendant Monsanto give Defendant Monsanto the ability unreasonably to raise that person's costs, to lower that person's efficiency, or otherwise to interfere in the ability of that person to compete effectively.

D. The trustee shall have the power and authority to accomplish the divestiture of Defendant DPL at the earliest possible time to an acquirer acceptable to Plaintiff, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, and shall have such other powers as the Court deems appropriate. Subject to Section VII.F of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendant Monsanto any investment bankers, attorneys, or other agents who are reasonably necessary in the judgment of the trustee to assist in the divestiture of Defendant DPL and who shall be solely accountable to the trustee.

E. Defendant Monsanto shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendant Monsanto must be conveyed in writing to Plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under this Section.

F. The trustee shall serve at the cost and expense of Defendant Monsanto, on such terms and conditions as Plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendant Monsanto, and the trust shall then be terminated. The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of Defendant DPL and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture of Defendant DPL and the speed with which it is accomplished, but timeliness is paramount.

G. After its appointment, the trustee shall file monthly reports with Plaintiff, Defendant Monsanto, and the Court setting forth the trustee's efforts to accomplish the divestiture of Defendant DPL, provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court and Defendant Monsanto's copy of the report shall have such confidential information redacted. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Defendant DPL, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest Defendant DPL.

H. If the trustee has not accomplished such divestiture of Defendant DPL within ninety (90) calendar days after its appointment, the trustee shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture of Defendant DPL; (2) the reasons, in the trustee's judgment, why the required divestiture of Defendant DPL has not been accomplished; and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to Plaintiff. Plaintiff shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment which may, if necessary, include extending this Final Judgment and the term of the trustee's appointment by a period requested by Plaintiff.

I. The trustee shall notify Plaintiff and Defendant Monsanto within two (2) business days following execution of a definitive agreement for the sale of Defendant DPL. The notice shall set forth the details of the proposed divestiture of Defendant DPL and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Defendant DPL, together with full details of the same.

J. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendants, the proposed DPL Acquirer, any other third party, or the trustee, additional information concerning the proposed divestiture of Defendant DPL, the proposed DPL Acquirer, and any other potential acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the Defendants and Plaintiff shall otherwise agree.

K. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after Plaintiff has been provided the additional information requested from Defendant Monsanto, the proposed DPL Acquirer, any third party, and the trustee, whichever is later, Plaintiff shall provide written notice to Defendant Monsanto and the trustee stating whether or not it objects to the proposed divestiture of Defendant DPL. If Plaintiff provides written notice that it does not object, the sale of Defendant DPL may be consummated, subject only to Defendant Monsanto's limited right to object to the sale under Section VII.E of this Final Judgment. Absent written notice that Plaintiff does not object to the proposed DPL Acquirer or upon objection by Plaintiff, the sale of Defendant DPL shall not be consummated. Upon objection by Defendant Monsanto under Section VII.E, a sale of Defendant DPL proposed under this Section shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section VII of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate and Preservation of Assets Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within ten (10) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Sections IV and V, Defendants shall deliver to Plaintiff an affidavit as to the fact and manner of its compliance with Sections IV, V, and VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Enhanced Stoneville Assets, and shall describe in detail each contact with any such person during that period, including a summary of all conversations (1) Between Defendants and any Acquirer of the Enhanced Stoneville Assets, and (2) between Defendants and Syngenta with respect to the VipCot Assets. Defendants may incorporate by reference in any such affidavit any responsive information or documents previously provided to Plaintiff, provided however, that Defendants identify with specificity when the information or documents were previously provided and, if the information or documents were part of a larger submission, where in the submission the information or documents may be located. Assuming the information set forth in the affidavit is true and complete, any objection by Plaintiff to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Defendants shall keep all records of all efforts made to preserve and divest the Enhanced Stoneville Assets and VipCot Assets until one year after each such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at Plaintiffs option, to require Defendants to provide copies of all books, ledgers, accounts, records and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then Plaintiff shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendant Monsanto, without providing advance notification to Plaintiff, shall not directly or indirectly acquire (1) Voting securities, (2) all or substantially all of the cotton germplasm, or (3) substantially all of the assets relating to cottonseeds or cottonseed traits, of any company that develops and sells cottonseed in the United States, or any company that has developed, or has under development traits for commercialization in cottonseed in the United States, where such acquisition would be reportable under the HSR Act but for a failure to satisfy the thresholds of 15 U.S.C. l8a(a)(2).

B. Such notification shall be provided to Plaintiff in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about cottonseeds or transgenic traits that shall be or could be used in cottonseeds. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the thirty (30) day period after notification, representatives of Plaintiff make a written request for additional information, Defendant Monsanto shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

If Defendant Monsanto divests the Enhanced Stoneville Assets and the VipCot Assets, Defendant Monsanto may not reacquire any part of the Enhanced Stoneville Assets or the VipCot Assets during the term of this Final Judgment. If Defendant Monsanto divests Defendant DPL, it may not reacquire any part of Defendant DPL during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Definitions for Schedules

1. ''Advanced Exotic Yield Lines'' means the Breeding populations and proprietary Lines created by Defendant Monsanto from a cross between *Gossypium hirsutum* and *Gossypium barbadense* that are identified in Schedule D.

2. ''Backcross'' means to cross a hybrid with one of its parents and then to cross the resulting progeny with the same parent Line (perhaps multiple times) in order to develop progeny with a genetic makeup that approximates the genetic make up of that parent while retaining certain desirable characteristics of the genetic makeup of the other parent of the hybrid.

3. ''Breed'' means to purposefully modify the Germplasm of a plant so as to alter its genetic make up, and to develop the progeny from the altered Germplasm.

4. ''DPL Marker Data'' means Fingerprints that Defendant Monsanto shall create for the DPL Germplasm being divested pursuant to Schedule B.2.

5. ''Donor Lines'' means the cotton Lines used by Defendant Monsanto to create or transmit novel cotton traits or events, and identified in Schedule F.

6. ''Fingerprint'' means a record of the presence or absence of genetic markers for which a Line has been tested.

7. ''Germplasm'' means a collection of heterozygous and homozygous cotton plants or parts thereof. For purposes of Schedules B and C of this Final Judgment, when the Defendants are required to convey Germplasm to a party, the Defendant may satisfy that obligation by conveying that Germplasm in seed form, or if necessary, in potted plant form.

8. ''Introgress'' means to move a gene from one cotton plant into another.

9. ''Line'' means a set of cottonseed or plants that share a common reasonably homogenous genotype that originate from a cross between two cotton plants.

10. ''MAB Populations'' means the Germplasm populations for which Defendant Monsanto has conducted significant marker analyses that are identified in Schedule E.

11. ''Monsanto B.t. Gene'' means a DNA molecule, or a replicate thereof, developed and out-licensed by Defendant Monsanto for use in commercial cottonseed in the United States, and which encodes a B.t. toxin that when present in cotton plants results in those plants being toxic to lepidopteran insects.

12. ''Monsanto Cotton Traits'' means: (1) The transgenic event denominated ''Event 531'' currently sold under the ''Bollgard'' brand; (2) the transgenic event denominated ''Event 15985'' currently sold under the ''Bollgard II'' brand; (3) the transgenic event denominated ''Event 1445'' currently sold under the ''Roundup Ready'' brand; and (4) the transgenic event denominated ''Event 88913'' currently sold under the ''Roundup Ready Flex'' brand, or any combination thereof.

13. ''Monsanto Marker Library'' means (1) Two collections of genetic information concerning variations in the genetic makeup of *Gossypium*, specifically a set of SSRs and a set of SNPs, and (2) cotton mapping data owned by Defendant Monsanto prior to its acquisition of Defendant DPL pursuant to the Merger Agreement.

14. ''Monsanto Roundup Ready Gene'' means a DNA molecule, or a replicate thereof, developed and out-licensed by Defendant Monsanto for use in commercial cottonseed in the United States, and which when present in cotton plants results in those plants exhibiting commercial tolerance to glyphosate herbicides.

15. ''Null Line'' shall mean a reasonably genetically homogenous Line of cotton that is selected from a cross in which one of the parents was from the Advanced Exotic Yield Lines or MAB populations and that does not contain one or more of the Monsanto Cotton Traits that was contained in the parental Advanced Exotic Yield Line or MAB population. A grant of a right to create a Null Line to the Acquirer of the Enhanced Stoneville Assets includes an obligation by Defendant Monsanto to provide the Acquirer of the Enhanced Stoneville Assets with assays, materials, and information regarding the Monsanto Cotton Trait(s) formerly in the Null Line necessary to obtain requisite regulatory

approvals, provided the Acquirer of the Enhanced Stoneville Assets reimburses Defendant Monsanto its reasonable expenses in providing such assistance.

16. ''Publicly Available Cotton Germplasm'' means any non-Monsanto proprietary cotton Germplasm that has not been exclusively in-licensed by Defendant Monsanto.

17. ''Recurrent Parent'' means the parent to which successive Backcrosses are made in Backcross Breeding.

18. ''Roundup Ready Flex'' means the Monsanto Roundup Ready Gene denominated ''Event 88913.''

19. ''SNP'' (or Single Nucleotide Polymorphisms) means variations at a single position in a given DNA sequence, which occur within a population of cotton plants.

20. ''SSR'' (or Simple Sequence Repeat) means variations in the number of repetitions of a DNA sequence.

21. ''Transform'' means to alter the genetic makeup of a cotton plant variety through means other than Breeding, for example, by the introduction of foreign genetic material.

Schedule A—Stoneville

1. *Cotton Germplasm:* All U.S. Stoneville cotton Germplasm, including, for each variety, Line and population to be divested: all patents, patent applications and Plant Variety Protection Act certificates applied for or granted with respect to that Germplasm (and excluding any patents or patent applications on Monsanto cotton traits); and copies of all performance and other test results, phenotypic data, product descriptions, research data and any Fingerprint information.

2. *Physical Assets:*

a. Defendant Monsanto's interest in the real property at the following sites or locations:

(1) The manufacturing, storage and delinting facility at Stoneville, Mississippi;

(2) The research & development facility at Arcola, Mississippi;

(3) The research & development facility, including greenhouse and labs, at Memphis, Tennessee; and

(4) The manufacturing, storage and delinting and the Breeding and testing facilities at N. Powerline Road, Maricopa, Arizona.

b. Defendant Monsanto's interest in the leased real property at the following sites or locations:

(1) The land at Maricopa, Arizona;

(2) The AgriCenter international research facility at Memphis, Tennessee;

(3) The Memphis Redbirds Suite;

(4) The Columbus & Greenville Railway Lease;

(5) The delinting plant at Marble Hall, South Africa;

(6) The property described in the W.B. Sutton Farms Partnership Lease;

(7) The storage facility described in the Farmers Feed Storage Agreement;

(8) The storage facility described in the David Storage Company Industrial Space Lease; and

(9) The storage facility described in the Cascio Refrigerated Warehouse Agreement.

c. At the option of the Acquirer of the Enhanced Stoneville Assets, Defendant Monsanto's interest in the real property at the following sites or locations:

(1) The farm at Lubbock, Texas;

(2) The manufacturing, storage, and delinting facility at Big Spring, Texas;

(3) The research and development facility at Idalou, Texas;

(4) 7.2 acres in Idalou, Texas (leased); and

(5) 80 acres in Idalou, Texas (leased).

d. All tangible assets other than Germplasm located at each of the locations identified in a. and b. above that are exclusively or primarily used in connection with the Stoneville U.S. branded business, including:

(1) All manufacturing and agricultural equipment, tooling and fixed assets; personal property; materials; supplies; and other tangible property.

(2) All existing drawings; blueprints; designs; plans for improvements or expansion; design protocols; specifications for materials; and specifications for parts and devices.

(3) All safety procedures for the handling of materials and substances; and quality assurance and control procedures relating to the locations listed in a. and b. above or the tangible assets listed in this paragraph d.

(4) Business records relating to the Stoneville U.S. branded cottonseed business, including stock record books, minute books, direct customer or direct distributor lists; a list of names and addresses of U.S. cotton growers with Monsanto trait licenses; and other information to the extent related to the operation of the business during the past three years which is in the possession of or available to the Defendants.

e. At the option of the Acquirer of the Enhanced Stoneville Assets, all tangible assets other than Germplasm located at each of the locations identified in c. above that are exclusively or primarily used in connection with the Stoneville U.S. branded business, including:

(1) All manufacturing and agricultural equipment, tooling and fixed assets; personal property; materials; supplies; and other tangible property.

(2) All existing drawings; blueprints; designs; plans for improvements or expansion; design protocols; specifications for materials; and specifications for parts and devices.

(3) All safety procedures for the handling of materials and substances; and quality assurance and control procedures relating to the locations listed in c. above or the tangible assets listed in this paragraph e.

(4) Business records relating to the Stoneville U.S. branded cottonseed business, including stock record books, minute books, direct customer or direct distributor lists; a list of names and addresses of U.S. cotton growers with Monsanto trait licenses; and other information to the extent related to the operation of the business during the past three years which is in the possession of or available to the Defendants.

f. At the option of the Acquirer of the Enhanced Stoneville Assets, all equipment used exclusively or primarily in connection with the Stoneville branded cottonseed business stored at Monsanto sites at Leesburg, Georgia, Mt. Olive, North Carolina and Leland, Mississippi.

3. *Intangible Assets:*

a. *Brand Names, Goodwill and Trade Secrets*—The Stoneville brand names, goodwill, and trade secrets relating to Stoneville's U.S. branded cottonseed business. Defendant Monsanto may retain exclusive rights to the Stoneville brand in connection with the sale of Germplasm in Spain, Greece, and Turkey, such rights expire on a country-by-country basis with the term of the relevant current distributor agreements in Spain and Greece, and one (1) year from the date of divestiture of the Enhanced Stoneville Assets in Turkey, provided that in all cases the relevant distributors shall be allowed to sell any inventory of goods already packaged in containers bearing the Stoneville trademarks as of the relevant termination date.

b. *Intangible and Contractual Rights:*

(1) Exclusive rights to (a) Breeder records and/or notebooks, including pedigrees, relating to Stoneville U.S. cotton Germplasm, identities of non-public lines of Stoneville U.S. cotton Germplasm in breeding and trial results, including yield results (subject to the redaction of any data that may be included in such records relating to the identity of any non-public lines other than Stoneville U.S. cotton Germplasm), (b) existing fingerprints for Stoneville U.S. cotton Germplasm, and (c) quality control data relating to Stoneville U.S. cotton Germplasm (subject to Defendant Monsanto's right to keep under the control of its Law Department (i) one copy of such quality control data and (ii) access to the identities of any

Stoneville U.S. cotton Germplasm present in trial results that also include results relating to non-public lines of Germplasm other than Stoneville U.S. cotton Germplasm; Monsanto's Law Department may not disclose this information to any other component of Monsanto).

(2) Non-exclusive rights to, and the tangible embodiments of, (i) Non-proprietary procedures, methods, techniques, know-how, specifications, processes, analyses, and protocols used in Stoneville's U.S. branded cottonseed business (such as Monsanto's procedures for the inspection, sampling and delivery of cottonseed at production facilities, procedures for analyzing job safety and complying with environmental regulations, and specifications for production-related data entry), and (ii) Monsanto's low acid delinting process.

(3) All assignable licenses, permits, and authorizations issued by any governmental organization relating to the Stoneville U.S. branded cottonseed business.

(4) All contracts to which Stoneville Pedigreed Seed Company is a party, including supply and distribution agreements.

(5) All other intangible and contractual rights used exclusively or primarily in Stoneville's U.S. branded cottonseed business not otherwise specifically addressed in b.(1)–(4).

4. *Exclusions:*

Excluded from the assets to be divested that are listed in this Schedule A are: (1) Real property not specifically identified in Schedule A.2., and (2) software owned by or licensed to Defendant Monsanto (except that Stoneville will receive a non-exclusive license to TaqPro), and hardware used exclusively to access such software.

Schedule B—Enhanced Stoneville Assets

1. *Stoneville:* As defined in the Final Judgment.

2. *DPL Germplasm:* Defendants shall divest all interests in the DPL varieties listed in Table B, including, for each variety, any Plant Variety Protection Act certificates applied for or granted, patents applied for or granted, copies of all performance and other test results, phenotypic data, product descriptions, research data and DPL Marker Data.

a. With respect to this DPL Germplasm, Defendant Monsanto may:

(1) Continue to sell during 2007 any existing inventories of these DPL varieties that Defendant DPL currently offers for sale in the United States;

(2) Take back an exclusive license to commercialize varieties that (i) Contain only traits out-licensed by Defendant Monsanto, and (ii) are essentially derived from these DPL varieties, or are essentially derived from a cross between any of these DPL varieties, which license may require the Acquirer of the Enhanced Stoneville Assets to seek U.S. patents for the DPL varieties listed in Table B, and may provide for enforcement of Monsanto's exclusive rights with respect to these varieties;

(3) Retain exclusive rights (i) To continue to sell these DPL varieties in countries outside the United States in which Defendant DPL currently offers the varieties for sale, but such rights shall terminate with respect to a particular country and variety if Defendant Monsanto discontinues sales of that variety in that country, and (ii) to sell 05X460, 05Y063, and 05Z629 outside of the United States;

(4) Retain sufficient quantities of cottonseed to enable it to continue its current sales of seed relating to sales made pursuant to subparagraph 3 above (provided that any such retention by Defendant Monsanto shall only be permitted to the extent it does not adversely affect the Acquirer of the Enhanced Stoneville Assets);

(5) Retain sufficient quantities of cottonseed for Breeding purposes (provided that any such retention by Defendant Monsanto shall only be permitted to the extent it does not adversely affect the Acquirer of the Enhanced Stoneville Assets), and take back a non-exclusive license to use these DPL varieties in its Breeding program;

(6) Take back a license that grants Defendant Monsanto only those rights necessary to accomplish the divestiture of the VipCot Assets described in Schedule C; and

(7) Require the Acquirer of the Enhanced Stoneville Assets to agree that for seven (7) years after the divestiture of the Enhanced Stoneville Assets it shall not commercialize a variety that is essentially derived from one of the DPL varieties listed in Table B, if that variety contains a Monsanto glyphosate tolerance trait, a Monsanto insect resistance trait, and any non-glyphosate herbicide tolerance trait commercialized in cottonseed in the United States as of the date of the filing of this Final Judgment.

b. Defendants' divestiture of the DPL varieties 00W12, 02T15, 02Z55, 03Y047, 03Y056, 03Y062, 04T048, 04W019, 04Y341, 05X460, 05Y063, 05Z629, 25105N, and DP491 to the Acquirer of the Enhanced Stoneville Assets is subject to the license to Syngenta described in Schedule C.2.

3. *Syngenta Germplasm:* Defendants shall divest all interests in the conventional Germplasm originating from the United States cotton Breeding program purchased by Defendant DPL from Syngenta pursuant to an agreement dated May 15, 2006, along with any conventional progeny of that material.

4. *Advanced Exotic Yield Lines:* Defendants shall divest exclusive rights to commercialize, and non-exclusive rights to Breed with, the Advanced Exotic Yield Lines set forth in Schedule D, including the right, subject to reasonable indemnification requirements, to create Null Lines (other than a Null Line that contains only one of the B.t. Genes of Bollgard II). In connection with this divestiture:

a. Defendants shall divest copies of all performance and other test results, phenotypic data, product descriptions, research data and Fingerprint information for those populations and Lines, excluding data regarding the presence or function of any genetic material from *Gossypium barbadense* present in the Lines.

b. Defendants may not assert against the Acquirer of the Enhanced Stoneville Assets any rights Defendants may have or acquire with respect to (1) The Germplasm used in the Advanced Exotic Yield Lines, and (2) any non-transgenic yield trait contained in those Lines.

c. Defendants may retain research quantities of the Advanced Exotic Yield Lines to enable them to continue their trait development research (provided that any such retention by Defendant Monsanto shall only be permitted to the extent it does not adversely affect the Acquirer of the Enhanced Stoneville Assets); and

d. Defendants may (1) Prohibit the Acquirer of the Enhanced Stoneville Assets from conveying Lines from the Advanced Exotic Yield Lines or their progeny to third parties, other than for contract production work or for distribution to growers as commercial seed, and (2) require the Acquirer of the Enhanced Stoneville Assets to seek U.S. patents and enforce Breeding and resale restrictions on any varieties that are commercialized from the Advanced Exotic Yield Lines. Defendants shall lose the ability to require these terms (4.d.1 & 2) if Defendants have not licensed to a third party a non-transgenic cotton yield trait contained in one or more of the Advanced Exotic Yield Lines within five (5) years of the date of this Final Judgment.

5. *MAB Populations:* Defendants shall divest the MAB Populations set forth in Schedule E, including copies of all performance and other test results,

phenotypic data, product descriptions, research data and Fingerprint information, and the right, subject to reasonable indemnification requirements, to create Null Lines (other than a Null Line that contains only one of the B.t. genes of Bollgard II).

6. *Cotton States Germplasm:* Defendant Monsanto shall grant the Acquirer of the Enhanced Stoneville Assets a non-exclusive, royalty-free license to sell under the Stoneville and NexGen brand names and Breed with the four (4) Cotton States varieties currently being sold by Stoneville. Defendant Monsanto shall relinquish evaluation rights to the Acquirer of the Enhanced Stoneville Assets for material comprised of Germplasm from pre-existing Breeding crosses between Cotton States' in-licensed Lines and any Lines being transferred exclusively to Stoneville pursuant to this Final Judgment.

a. In connection with its divestiture of this Cotton States Germplasm, Defendant Monsanto may retain exclusive rights to Germplasm already in-licensed to or commercialized through Cotton States at the date of this Final Judgment, or Germplasm from pre-existing Breeding crosses between two Cotton States' in-licensed Lines or between one of those Lines and a public variety, except that Defendant Monsanto may only retain non-exclusive rights to the Stoneville variety designated STX0502 which has been commercialized solely through Cotton States. Defendant Monsanto may only commercialize the Stoneville variety designated STX0502 to licensees other than Defendant DPL.

7. *Other Monsanto Germplasm:* Defendants shall divest all cotton Germplasm in the United States held by Defendant Monsanto prior to its acquisition of Defendant DPL and not otherwise addressed in Schedules A and B, subject to the following exceptions:

a. Any Publicly Available Cotton Germplasm, provided that if the Acquirer of the Enhanced Stoneville Assets does not otherwise possess the Germplasm and cannot otherwise reasonably obtain it, Defendant Monsanto must, if the Acquirer of the Enhanced Stoneville Assets requests, provide the Acquirer of the Enhanced Stoneville Assets with sufficient quantities for use in a Breeding program;

b. Exclusive rights to (1) The Donor Lines for Defendant Monsanto's commercialized transgenic traits, (2) Germplasm Transformed or Introgressed with cotton transgenic traits other than Monsanto's Cotton Traits, (3) any Germplasm containing experimental transgenic events, and (4) Germplasm used in Monsanto's non-transgenic trait research and development program, with the exception of the Advanced Exotic Yield Lines, as addressed above; and

c. Rights to any third party Germplasm held in connection with the provision of trait Introgression services to third parties.

8. *Monsanto Marker Library:* Defendants shall provide access to the information in, and a non-exclusive, royalty-free license to use, Monsanto's Marker Library.

9. *Licenses:* Defendants shall grant licenses to the Acquirer of the Enhanced Stoneville Assets to develop, produce, have produced, and sell under the Stoneville and NexGen brands cottonseed containing Monsanto's Cotton Traits for use in the United States. Such licenses shall be based on commercially reasonable terms, and in particular shall provide that the licensee:

a. Shall be entitled to a proportion of the net license revenue for those traits at least as great as the net license revenue Defendant DPL is entitled to under its current licenses for those traits;

b. May, subject to reasonable regulatory and stewardship conditions, Breed into and sell cottonseed containing Monsanto Cotton Traits, non-Monsanto genes not naturally occurring in cotton;

c. Shall have an option to license future Monsanto B.t. Genes on the same terms as those used in the current DPL licenses. Defendants may terminate this option at such time as the Acquirer of the Enhanced Stoneville Assets' total annual sales of cottonseed containing a non-Monsanto B.t. Gene being marketed by the Acquirer of the Enhanced Stoneville Assets as conferring lepidopteran resistance under the Stoneville and NexGen brands, exceed 60% of the Acquirer of the Enhanced Stoneville Assets' annual sales of cottonseed that is marketed as lepidopteran resistant under the Stoneville and NexGen brands; and

d. Shall have an option to license future Monsanto Roundup Ready Genes on the same terms as those used in the current DPL licenses. Defendants may terminate this option at such time as the Acquirer of the Enhanced Stoneville Assets' total annual sales of cottonseed containing a non-Monsanto glyphosate tolerance gene being marketed by the Acquirer of the Enhanced Stoneville Assets as conferring glyphosate tolerance under the Stoneville and NexGen brands, exceed 60% of the Acquirer of the Enhanced Stoneville Assets' annual sales of cottonseed that is marketed as glyphosate tolerant under the Stoneville and NexGen brands. Defendants need not grant an option to any non-glyphosate herbicide tolerance trait stacked with any such glyphosate tolerance gene.

TABLE B.—DPL GERMPLASM

00W12 (DP393):
02T15
02Z55
03Y047
03Y056
03Y062
04T048
04W019
04Y341
05X460
05Y063
05Z629
Delta Pearl
DP 5690
DP 491
DP2156
DP565
DP5305
DP5415
AZ2099

Schedule C—The VipCot Assets

1. All DPL Germplasm identified in Table C containing only a Syngenta trait; and, provided that Syngenta has obtained a license (identified in Section C.4. below) to the Roundup Ready Flex trait, all DPL Germplasm Lines identified in Table C containing a Syngenta trait and the Roundup Ready Flex trait. The Germplasm Lines identified in Table C shall be conveyed along with:

a. Exclusive rights to commercialize varieties developed from the traited DPL Germplasm Lines identified in Table C, provided that any varieties commercialized from this Germplasm include, in addition to any other traits, the Cry67B event, Cry69D event, Cry02A event, or the Cot102 event;

b. Exclusive rights to Breed with the traited DPL Germplasm Lines identified in Table C, provided that any varieties commercialized from such Breeding include, in addition to any other traits, either the Cry67B event, Cry69D event, Cry02A event, or the Cot102 event;

c. Reports that provide all performance and other test results, phenotypic data, product descriptions, purity information, breeding histories, pedigrees and statuses for the Germplasm that is conveyed;

d. At Syngenta's request, Fingerprint information regarding the Recurrent Parents of each of the DPL Germplasm Lines listed in Table C sufficient to allow Syngenta to reasonably perform Backcrossing with this Germplasm

(subject to reasonable compensation from Syngenta for such services), if Syngenta does not possess, cannot reasonably develop itself or contract for, the capability to develop this Fingerprint information; and

e. An exclusive license to commercialize varieties that contain the Cry67B event, Cry69D event, Cry02A event, or Cot102 event that are essentially derived from the Recurrent Parent Lines identified in Table C that are not otherwise being divested pursuant to Schedule B, which license shall require Monsanto to seek U.S. patents for those Recurrent Parent Lines and provide for enforcement of Syngenta's exclusive rights with respect to those lines.

2. Breeding quantities of the Recurrent Parents of each of the DPL Germplasm Lines identified in Table C, subject to a license to Syngenta (a) Permitting use of the Recurrent Parents only for crossing or Backcrossing between a Line and its relevant Recurrent Parent; (b) requiring that the Recurrent Parent Germplasm be returned or destroyed no later than December 31, 2014; and (c) prohibiting transfer of the Recurrent Parent Germplasm to any third party other than with an exclusive license to the relevant Line derived from that Recurrent Parent, with the same limitations on use of the Recurrent Parent Germplasm.

3. A non-exclusive royalty-free license to a PCR assay and/or an ELISA assay to enable detection of Monsanto's Roundup Ready Flex trait.

4. A non-exclusive license to (a) Develop, produce, and sell cottonseed containing the Roundup Ready Flex trait under the standard commercial terms offered by Defendant Monsanto, including changes required by this Decree to the standard license, and (b) transfer such cottonseed to a third party with a commercial Roundup Ready Flex license.

5. Defendant DPL's interest in Germplasm populations Introgressed with the Cry67B event, Cry69D event, Cry02A event, and/or the Cot102 in the U.S. cotton Breeding program that Defendant DPL purchased from Syngenta pursuant to an agreement dated May 15, 2006, along with any progeny of that material.

6. Defendant Monsanto may condition the divestitures on Syngenta's acknowledgment that Defendant Monsanto is not conveying to Syngenta any rights not held by Defendant DPL prior to Defendant Monsanto's acquisition of Defendant DPL.

7. Defendants acknowledge that nothing in this Final Judgment relating to the divestiture of the VipCot Assets shall, in and of itself, modify, alter, terminate or otherwise affect any rights and obligations in any contract between Syngenta and either of the Defendants in effect as of the date of the filing of the Complaint in this matter.

TABLE C—VIPCOT GERMPLASM

[V1 = Cot102; C1 = Cry67B; C2 = Cry69D, C3 =Cry02A; RF = Roundup Ready Flex]

Recurrent parent	V1C1RF	V1C1	C1	V1	C1RF	V1RF	C2	C3	C2V1RF	C3V1RF	C2V1	C3V1
00H29	X		X				X	X	X	X		
00S07		X	X	X	X		X	X				
00W12	X	X	X	X		X	X	X	X	X	X	
01W34		X		X		X						
02T15		X	X	X			X	X			X	X
02Z55		X	X	X		X	X	X				
02Z89		X										
03H070		X	X	X			X	X				
03Q066		X	X	X			X	X				
03Y047		X	X	X			X	X				
03Y056		X	X	X	X		X	X				
03Y062		X	X	X			X	X				
04P011		X		X								
04P024		X		X								
04Q035		X		X								
04T042		X		X								
04T048		X	X	X			X	X				
04T056		X		X								
04T067		X		X								
04V073		X	X	X	X		X	X				
04W019		X	X	X			X	X			X	
04Y288		X		X							X	
04Y341		X	X	X	X		X	X				
04Z007		X										
04Z353		X		X								
05H210		X										
05H229		X		X								
05H270		X		X								
05H284		X	X	X			X	X				
05Q153		X	X				X	X				
05T103		X		X								
05V341		X		X								
05X460		X	X	X			X	X				
05Y063		X										
05Y067		X										
05Y070		X										
05Z629		X	X	X			X	X				
05Z855		X		X								
25105N		X	X									
DP491	X		X	X	X	X	X	X	X	X	X	X
DP6207		X	X				X	X				
SG747		X	X	X			X	X			X	X
UA–4		X										

SCHEDULE D.—ADVANCED EXOTIC YIELD LINES

[The Lines identified by the following serial numbers or variety name in Defendant Monsanto's Breeding database]

MCS0719B2RF	60066403610	60066410398
MSC0720B2RF	60066403634	60066410475
MCS0721B2RF	60066404080	60066410502
MCS0722B2RF	60066404181	60066410552
MCS0723B2RF	60066404294	60066410588
MCS0724B2RF	60066404395	60066411326
MCS0725B2RF	60066404434	60066411883
MCS0726B2RF	60066404446	60066412001
MCS0727B2RF	60066404559	60066412164
MCS0728B2RF	60066404840	60066412380
MCS0729RF	60066405082	60066414586
MCS0730RF	60066404207	60066414649
MCS0731RF	60066405676	60066406666
MCS0732RF	60066405703	60066406767
MCS0733RF	60066406399	60066407644
MCS0734RF	60066406515	60066416821
MCS0735RF	60066407442	60066409686
MCS0736RF	60066415021	60066409701
MCS0737RF	60066415122	60066410146
MCS0738RF	60066415285	60067807314
MCS0739RF	60066407846	60067807720
MCS0740RF	60066416124	60067808924
60066412443	60066408519	60067809433
60066412455	60066408608	60067809774
60066412532	60066408747	60067810082
60066412683	60066409129	60067810208
60066412859	60066409131	60067810347
60066403254	60066409220	60067810501
60066403367	60066409585	60067811325
60066403418	60066410350	60067811642
60067812303	1000000021895669432700000	1000000021896514847100000
60067812620	1000000021895702200700000	1000000021896521400700000
60067813494	1000000021895708754300000	1000000021896547615100000
60067813646	1000000021895734968700000	1000000021896580383100000
60067814903	1000000021895754629500000	1000000021896593490300000
60067815638	1000000021895761183100000	1000000021896613151100000
60067815791	1000000021895807058300000	1000000021896645919100000
60067816147	1000000021895813611900000	1000000021896652472700000
60067817050	1000000021895866040700000	1000000021896698347900000
60067818115	1000000021895872594300000	1000000021896783544700000
60067818571	1000000021895911915900000	1000000021896790098300000
60067819193	1000000021895931576700000	1000000021896809759100000
60067806259	1000000021895977451900000	1000000021896822866300000
60067806297	1000000021895984005500000	1000000021896822866300000
60067809534	1000000021896003666300000	1000000021896835973500000
60067809661	1000000021896016773500000	1000000021896849080700000
60067810676	1000000021896049541500000	1000000021896868741500000
60067810878	1000000021896082309500000	1000000021896967045500000
60067810979	1000000021896147845500000	1000000021896993259900000
60067810993	1000000021896154399100000	1000000021897006367100000
60067811185	1000000021896160952700000	1000000021897098117500000
60067813228	1000000021896187167100000	1000000021897124331900000
60067813444	1000000021896206827900000	1000000021897143992700000
60067814268	1000000021896213381500000	1000000021897170207100000
60067815296	1000000021896239595900000	1000000021897189867900000
60067815981	1000000021896246149500000	1000000021897196421500000
60067816058	1000000021896298578300000	1000000021897202975100000
60067816692	1000000021896311685500000	1000000021897222635900000
60067818711	1000000021896377221500000	1000000021897255403900000
60067819371	1000000021896383775100000	1000000021897261957500000
1000000021895623557500000	1000000021896423096700000	1000000021897307832700000
1000000021895643218300000	1000000021896495186300000	1000000021897314386300000
1000000021897347154300000	1000000021898199122300000	1000000021899149394300000
1000000021897366815100000	1000000021898251551100000	1000000021899169055100000
1000000021897386475900000	1000000021898290872700000	1000000021899175608700000
1000000021897399583100000	1000000021898343301500000	1000000021899234591100000
1000000021897484779900000	1000000021898369515900000	1000000021899264800550000
1000000021897510994300000	1000000021898376069500000	1000000021899300127100000
1000000021897537208700000	1000000021898395730300000	1000000021899325327900000
1000000021897576530300000	1000000021898435051900000	1000000021899335910950000
1000000021897589631500000	1000000021898448159100000	1000000021899365663100000
1000000021897661722710000	1000000021898474373500000	1000000021899385323900000

SCHEDULE D.—ADVANCED EXOTIC YIELD LINES—Continued

[The Lines identified by the following serial numbers or variety name in Defendant Monsanto's Breeding database]

100000002189769449510000
100000002189772070950000
100000002189773381670000
100000002189776003110000
100000002189778624550000
100000002189781901350000
100000002189784522790000
100000002189787144230000
100000002189790421030000
100000002189792387110000
100000002189794353190000
100000002189798285350000
100000002189798940710000
100000002189800251430000
100000002189801562150000
100000002189803528230000
100000002189805494310000
100000002189806149670000
100000002189808771110000
100000002189812047910000
100000002189815980070000
100000002189816635430000
100000002190036683630000
100000002190038147110000
100000002190038802470000
100000002190040113190000
100000002190048632870000
100000002190054531110000
100000002190055841830000
100000002190059773990000
100000002190061084710000
100000002190065672230000
100000002190066327590000
100000002190075502630000
100000002190076157990000
100000002190082056230000
100000002190086643750000
100000002190089920550000
100000002190091886630000
100000002190097129510000
100000002190099750950000
100000002190101717030000
100000002190104993830000
100000002190110236710000
100000002190110892070000
100000002190113513510000
100000002190115479590000
100000002190118101030000
100000002190123343910000
100000002190123999270000
100000002190127276070000
100000002190127931430000
100000002190133174310000
100000002190137106470000
100000002190371069990000
100000002190377623590000
100000002190378278950000
100000002190380900390000
100000002190384832550000
100000002190385487910000
100000002190387453990000
100000002190388109350000
100000002190393352230000
100000002190394007590000
100000002190396629030000
100000002190398595110000
100000002190399905830000
100000002190401871910000
100000002190403182630000
100000002190406459430000
100000002190407114790000
100000002190409080870000
100000002190411702310000
100000002189853335590000
100000002189853990950000
100000002189855957030000
100000002189857267750000
100000002189862510630000
100000002189865132070000
100000002189867098150000
100000002189870374950000
100000002189876273190000
100000002189876928550000
100000002189880860710000
100000002189885448230000
100000002189887414310000
100000002189888725030000
100000002189891346470000
100000002189894623270000
100000002189897244710000
100000002189897900070000
100000002189899210790000
100000002189901176870000
100000002189912973350000
100000002189914284070000
100000002190144970790000
100000002190150213670000
100000002190150869030000
100000002190152835110000
100000002190161354790000
100000002190162010150000
100000002190167908390000
100000002190171840550000
100000002190175117350000
100000002190177738790000
100000002190181670950000
100000002190187569190000
100000002190190190630000
100000002190192156710000
100000002190192812070000
100000002190193467430000
100000002190196088870000
100000002190196744230000
100000002190212472870000
100000002190213128230000
100000002190215749670000
100000002190220337190000
100000002190223613990000
100000002190225580070000
100000002190232789030000
100000002190234099750000
100000002190238687270000
100000002190239979990000
100000002190245896230000
100000002190247206950000
100000002190256381990000
100000002190257692710000
100000002190460198950000
100000002190463475750000
100000002190470029350000
100000002190471340070000
100000002190471995430000
100000002190474616870000
100000002190478549030000
100000002190481825830000
100000002190482481190000
100000002190486413350000
100000002190489690150000
100000002190491656230000
100000002190493622310000
100000002190494933030000
100000002190500175910000
100000002190501486630000
100000002190503452710000
100000002190508040230000
100000002190511317030000
100000002189943119910000
100000002189945085990000
100000002189947707430000
100000002189949018150000
100000002189952294950000
100000002189954261030000
100000002189958848550000
100000002189960159270000
100000002189962780710000
100000002189970645030000
100000002189976543270000
100000002189979820070000
100000002189983752230000
100000002190001446950000
100000002190005379110000
100000002190009311270000
100000002190015209510000
100000002190019141670000
100000002190020452390000
100000002190021763110000
100000002190027661350000
100000002190029627430000
100000002190264246310000
100000002190268178470000
100000002190268833830000
100000002190270144550000
100000002190275387430000
100000002190276042790000
100000002190277353510000
100000002190279974950000
100000002190281285670000
100000002190286528550000
100000002190293082150000
100000002190298325030000
100000002190298980390000
100000002190302912550000
100000002190304223270000
100000002190308155430000
100000002190312087590000
100000002190316675110000
100000002190319296550000
100000002190320607270000
100000002190325194790000
100000002190327816230000
100000002190328471590000
100000002190330437670000
100000002190331093030000
100000002190336991270000
100000002190338301990000
100000002190339612710000
100000002190340268070000
100000002190345793190000
100000002190366482470000
100000002190367779310000
100000002190547361830000
100000002190548017190000
100000002190553915430000
100000002190557847590000
100000002190561779750000
100000002190563090470000
100000002190565711910000
100000002190567022630000
100000002190570954790000
100000002190571610150000
100000002190576853030000
100000002190582095910000
100000002190582751270000
100000002190583406630000
100000002190584061990000
100000002190584717350000
100000002190592581670000
100000002190593892390000
100000002190597824550000

SCHEDULE D.—ADVANCED EXOTIC YIELD LINES—Continued

[The Lines identified by the following serial numbers or variety name in Defendant Monsanto's Breeding database]

100000002190414979110000	100000002190513283110000	100000002190598479910000
100000002190415634470000	100000002190514593830000	100000002190602412070000
100000002190422188070000	100000002190520492070000	100000002190603067430000
100000002190431363110000	100000002190522458150000	100000002190603722790000
100000002190432673830000	100000002190523768870000	100000002190612242470000
100000002190433329190000	100000002190524424230000	100000002190620106790000
100000002190433984550000	100000002190525079590000	100000002190620762150000
100000002190435950630000	100000002190527045670000	100000002190622072870000
100000002190439882790000	100000002190533599270000	100000002190623383590000
100000002190449713190000	100000002190536220710000	100000002190627315750000
100000002190451023910000	100000002190538186790000	100000002190627971110000
100000002190454300710000	100000002190540152870000	100000002190629281830000
100000002190455611430000	100000002190545395750000	100000002190631903270000
100000002190633213990000	100000002190717755430000	100000002190801641510000
100000002190637146150000	100000002190719721510000	100000002190802952230000
100000002190638456870000	100000002190725619750000	100000002190804262950000
100000002190643044390000	100000002190726275110000	100000002190805573670000
100000002190646976550000	100000002190728241190000	100000002190812782630000
100000002190649597990000	100000002190729551910000	100000002190818680870000
100000002190650253350000	100000002190730862630000	100000002190821957670000
100000002190653530150000	100000002190734139430000	100000002190823268390000
100000002190654185510000	100000002190734794790000	100000002190823923750000
100000002190654840870000	100000002190740037670000	100000002190824579110000
100000002190655496230000	100000002190744625190000	100000002190825234470000
100000002190656151590000	100000002190745935910000	100000002190826545190000
100000002190656806950000	100000002190747901990000	100000002190829821990000
100000002190658773030000	100000002190749868070000	100000002190833098790000
100000002190659428390000	100000002190751178790000	100000002190837686310000
100000002190664015910000	100000002190752489510000	100000002190840963110000
100000002190665326630000	100000002190757077030000	100000002190841618470000
100000002190670569510000	100000002190759043110000	100000002190847516710000
100000002190675157030000	100000002190761009190000	100000002190848172070000
100000002190676467750000	100000002190762319910000	100000002190849482790000
100000002190677778470000	100000002190763630630000	100000002190854070310000
100000002190678433830000	100000002190764285990000	100000002190854725670000
100000002190679089190000	100000002190764941350000	100000002190856036390000
100000002190681055270000	100000002190769528870000	100000002190856691750000
100000002190682365990000	100000002190774116390000	100000002190858002470000
100000002190688264230000	100000002190780669990000	100000002190859313190000
100000002190689574950000	100000002190782636070000	100000002190859968550000
100000002190696128550000	100000002190785257510000	100000002190861279270000
100000002190700716070000	100000002190789189670000	100000002190861934630000
100000002190703992870000	100000002190789845030000	100000002190865866790000
100000002190706614310000	100000002190793777190000	100000002190866522150000
100000002190712512550000	100000002190798364710000	100000002190867177510000
100000002190871109670000	100000002190909775910000	100000002190954340390000
100000002190871765030000	100000002190913052710000	100000002190959583270000
100000002190873075750000	100000002190914363430000	100000002190963515430000
100000002190873731110000	100000002190915674150000	100000002190966136870000
100000002190876352550000	100000002190917640230000	100000002190966792230000
100000002190877007910000	100000002190920917030000	100000002190973345830000
100000002190878318630000	100000002190922883110000	100000002190975967270000
100000002190878973990000	100000002190923538470000	100000002190978588710000
100000002190880284710000	100000002190926815270000	100000002190981865510000
100000002190884216870000	100000002190929436710000	100000002190982520870000
100000002190884872230000	100000002190932713510000	100000002190985142310000
100000002190887493670000	100000002190933368770000	ICA000000003347367788989
100000002190888804390000	100000002190934679590000	ICA000000003347473105341
100000002190903877670000	100000002190937301030000	ICA000000003347683279293
100000002190905843750000	100000002190945165350000	ICA000000003348103168445
100000002190909120550000	100000002190953029670000	P0000000000123710341565
P0000000000123713880509	P0000000000123714666941	P0000000000123714994621
P0000000000123717091773	P0000000000123717419453	P0000000000123717943741
P0000000000123718795709	P0000000000123720630717	P0000000000123722662333
P0000000000123724497341	P0000000000123726856637	P0000000000123727184317
60044433150	60035225831	60035225879
60035225881	60035225906	60035225920
60043573686		

SCHEDULE E.—MAB POPULATIONS

[The Lines identified by the following code numbers in Defendant Monsanto's Breeding database]

L0001	L0025	L0049	L0235	L0271	L0310	L0334	L0357	L0380	L0404
L0002	L0027	L0050	L0236	L0282	L0311	L0335	L0358	L0381	L0406
L0003	L0028	L0051	L0237	L0283	L0312	L0336	L0359	L0382	L0407
L0004	L0029	L0052	L0238	L0284	L0313	L0337	L0360	L0383	L0408
L0005	L0030	L0053	L0239	L0290	L0314	L0338	L0361	L0384	L0409
L0006	L0031	L0054	L0240	L0291	L0315	L0339	L0362	L0385	L0410
L0007	L0032	L0055	L0241	L0292	L0317	L0340	L0363	L0386	L0411
L0008	L0033	L0056	L0242	L0293	L0318	L0341	L0364	L0387	L1002
L0009	L0034	L0057	L0243	L0294	L0319	L0342	L0365	L0388	L1003
L0010	L0035	L0059	L0244	L0295	L0320	L0343	L0366	L0390	L1004
L0012	L0036	L0100	L0245	L0296	L0321	L0344	L0367	L0391	L1005
L0013	L0037	L0175	L0246	L0297	L0322	L0345	L0368	L0392	L1008
L0014	L0038	L0224	L0247	L0298	L0323	L0346	L0369	L0393	L1009
L0015	L0039	L0225	L0248	L0299	L0324	L0347	L0370	L0394	
L0016	L0040	L0226	L0249	L0301	L0325	L0348	L0371	L0395	
L0017	L0041	L0227	L0250	L0302	L0326	L0349	L0372	L0396	
L0018	L0042	L0228	L0251	L0303	L0327	L0350	L0373	L0397	
L0019	L0043	L0229	L0252	L0304	L0328	L0351	L0374	L0398	
L0020	L0044	L0230	L0253	L0305	L0329	L0352	L0375	L0399	
L0021	L0045	L0231	L0254	L0306	L0330	L0353	L0376	L0400	
L0022	L0046	L0232	L0255	L0307	L0331	L0354	L0377	L0401	
L0023	L0047	L0233	L0256	L0308	L0332	L0355	L0378	L0402	
L0024	L0048	L0234	L0257	L0309	L0333	L0356	L0379	L0403	

Schedule F—Donor Lines

MON 531 in Coker 312
MON 757 in any variety
MON 1445 in Coker 312
MON 1698 in any variety
MON 15985 in DP50B or PS7
MON 88913 in Coker 130, PS7 or Suregro 125
MON 15985 x MON 88913 in PS7 or Suregro 125
MON 1076 in any variety
MON 15947 in any variety

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Monsanto Company and Delta and Pine Land Company, Defendants.

Case: 1:07–cv–00992.

Assigned To: Urbina, Ricardo M.

Assign Date: 5/31/2007.

Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated August 14, 2006, pursuant to which Monsanto Company (''Monsanto'') will acquire Delta and Pine Land Company (''DPL''). The United States filed a civil antitrust Complaint on May 31, 2007, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for the development, production, and sale of traited cottonseed—cottonseed genetically modified to contain desirable characteristics from non-cottonseed sources—in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would likely result in higher prices and fewer choices for cotton farmers in the MidSouth (Mississippi, Arkansas, Louisiana, Missouri, and Tennessee) and Southeast (Alabama, Georgia, Florida, North Carolina, South Carolina, and Virginia).

At the same time the Complaint was filed, the United States also filed a Hold Separate and Preservation of Assets Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anti competitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, (1) Defendants must divest Stoneville Pedigreed Seed Company (''Stoneville''), certain cottonseed lines developed by DPL for the MidSouth and Southeast, and additional cotton breeding assets of Monsanto (collectively, the ''Enhanced Stoneville Assets'') to an acquirer or acquirers acceptable to the United States; (2) Defendants must divest to Syngenta Crop Protection AG (''Syngenta'') forty-three DPL cottonseed lines containing Vip Cot, Syngenta's insect-resistant trait technology that DPL was developing for cottonseed (the ''VipCot Assets''); and (3) Defendant Monsanto must modify its cottonseed trait licenses with seed companies to permit licensees to breed and sell, without penalty, cottonseed containing non-Monsanto traits and cottonseed containing both licensed Monsanto traits and non-Monsanto traits, and modify its Cotton States licenses to remove any provision that allows Monsanto to terminate the license if the licensee sells cottonseed containing other traits.

Until the divestiture of the Enhanced Stoneville Assets has been accomplished, the Hold Separate requires Defendants to take all steps necessary to ensure that DPL is operated as an independent, ongoing, economically viable competitive business held entirely separate, distinct and apart from Monsanto's commercial operations. The proposed Final Judgment provides that if the Enhanced Stoneville Assets are not sold within the time period prescribed in the proposed Final Judgment to an acquirer or acquirers acceptable to the United States, Monsanto will divest DPL.

The Hold Separate also requires Defendants to preserve the divestiture assets. Until the divestiture of the Enhanced Stoneville Assets, Defendants must take all steps necessary to ensure that Stoneville will be maintained and operated as an ongoing, economically viable and active competitor in the development, production, and sale of traited cottonseed. Until the divestiture of the VipCot Assets has been accomplished, Defendants must preserve the VipCot Assets and use all reasonable efforts to proceed with their

development, including maintaining all production processes for the assets, so as not to unduly delay the commercialization and sale of cottonseed containing VipCot in the United States.

The settlement ensures the continuation of current competition in the MidSouth and Southeast between Stoneville and DPL. It also preserves Syngenta's ability to bring cottonseed with VipCot to the market with minimal delay. And, it provides trait developers a seed company independent of Monsanto offering a platform of high-quality germplasm for the development of non-Monsanto traited cottonseed for the MidSouth and Southeast, preserving the prospects for trait competition in cottonseed.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Monsanto is a Delaware corporation with its headquarters in St. Louis, Missouri. Monsanto is a leading global provider of agricultural products for farmers, including seeds for cotton, soybeans, and corn; in-the-seed trait technologies that protect crops against damage from insects and weeds; and crop protection chemicals such as the herbicide Roundup. Monsanto's total revenues in 2006 exceeded $7.3 billion. The vast majority of cotton grown in the U.S. contains biotech traits, and over 96% of the traited cottonseed sold domestically contains Monsanto traits. Monsanto's two groups of cottonseed traits are marketed under the brand names (a) Roundup Ready, and its successor Roundup Ready Flex, both of which make cotton resistant to harm from glyphosate-based herbicides like Monsanto's Roundup, and (b) Bollgard, and its successor Bollgard II, both of which make cotton plants toxic to lepidopteran insect pests such as the cotton bollworm. Monsanto licenses its traits to seed companies, including DPL.

Monsanto's cottonseed sales, primarily through its Stoneville subsidiary, account for approximately 16% of the traited cottonseed sold in the United States in 2006, making Monsanto one of the largest sellers of traited cottonseed in the United States. In the MidSouth and Southeast, Monsanto accounted for 17% and 8%, respectively, of all traited cottonseed sales.

Defendant DPL is a Delaware corporation with its headquarters in Scott, Mississippi. DPL is the largest supplier of traited cottonseed in the United States. In 2006, DPL accounted for approximately 56% of the traited cottonseed sold in the United States, with sales exceeding $417 million. In the MidSouth and Southeast, DPL accounted for 79% and 87%, respectively, of all traited cottonseed sales. DPL does not itself produce traits, but works with biotechnology companies to develop cottonseed traits and to breed the resulting traits into DPL germplasm (the genetic material containing the inherent qualities of cottonseed, such as yield and fiber quality).

The combination of Monsanto and DPL would create the largest provider of traited cottonseed in the United States and give the combined firm about 95% of traited cottonseed sales in the MidSouth and Southeast. The proposed transaction would also eliminate DPL as a partner independent of Monsanto for competing trait developers, thereby substantially delaying or preventing the development and introduction of cottonseed containing non-Monsanto traits. Thus, the proposed transaction would lessen competition substantially in violation of Section 7 of the Clayton Act.

B. The Cotton Industry

Cotton is currently grown on over fifteen million acres in the United States, in seventeen states across the Southern United States from Virginia to California. The industry recognizes four distinct growing regions: the MidSouth, Southeast, Southwest (Texas, Kansas, and Oklahoma), and West (Arizona, New Mexico, and California). The cottonseed varieties grown vary by region because growing conditions, such as soil type and climate, affect seed performance. Farmers choose cottonseed varieties that perform best in their geographic area, placing the greatest emphasis on a variety's yield (*i.e.*, the expected amount of cotton produced per acre).

Cottonseed companies continually work on developing improved cottonseed varieties through their breeding programs. Cotton breeding is a costly and time-consuming process in which the cottonseed company selects lines to breed together (or ''cross''), plants cottonseed generated by that initial cross, and then selects the best plants for further crossing to create a variety with the desired characteristics. In most cases, it takes eight to ten years from the initial cross until a new conventional cottonseed variety (*i.e.*, seed containing no transgenic traits) is ready for market, while a traited version of that same conventional variety may take an additional two to three years.

The success of a cottonseed company's breeding program is dependent on many factors, the most important of which are the quantity and quality of available breeding materials, *i.e.*, germplasm. A company with a large collection of high-quality, or elite, germplasm has a significant advantage because it is able to identify the best genetic material and use it in a wide variety of possible crossing combinations, resulting in a greater likelihood of developing a successful variety.

1. The Development of Traited Cottonseed

Monsanto and DPL partnered in the 1980s to develop and produce traited cottonseed. DPL contributed its high-quality germplasm and experienced cotton breeders; Monsanto, its insect-resistant and herbicide-tolerant traits. In 1996, DPL began to sell the first cottonseed with Monsanto's insect-resistant trait (Bollgard) and, the following year, introduced a variety with Monsanto's herbicide-tolerant trait (Roundup Ready).

Farmers quickly adopted Monsanto-traited cottonseed because its use significantly lowered fanning costs and reduced the risk of crop loss. Farming with conventional seed involved labor-intensive, costly herbicide and insecticide applications at specific times in the growing season. Farmers had to target herbicide applications only on weeds to avoid killing the cotton plants. By planting cottonseed containing an herbicide-tolerant trait, such as Roundup Ready, farmers can spray herbicide over the entire crop to kill weeds without killing the young cotton plants. Cottonseed containing an insect-resistant trait, such as Bollgard, reduces insecticide purchases and spraying. Today, almost all of the cottonseed planted in the MidSouth and Southeast, where insects and weeds pose significant problems, contains traits that provide both insect resistance and herbicide tolerance.

When farmers acquire traited cottonseed, they pay a price per bag to the seed distributor, who, in turn, pays the seed manufacturer (*e.g.*, DPL) for the seed and a separate license fee to the developer of the trait (*e.g.*, Monsanto).

This license fee, commonly referred to as the ''technology fee,'' is usually collected by the seed distributor for the trait developer. Typically, the trait developer shares a portion of the technology fee with the seed distributor and the seed manufacturer. The technology fee can constitute as much as 80% of farmers' total costs for a bag of traited cottonseed.

Only two non-Monsanto cotton traits are currently commercialized. WideStrike is an insect-resistant trait developed by Dow AgroSciences to compete with Monsanto's Bollgard trait. WideStrike is only available in Dow's Phytogen cottonseeds, which are primarily used in California where they perform well. LibertyLink, a trait developed by Bayer CropScience to make cotton tolerant to glufosinate herbicides, competes with Monsanto's Roundup Ready glyphosate herbicide-tolerant trait. LibertyLink is only available in Bayer's FiberMax cottonseeds, which are primarily used in the Southwest where they perform well. Together, cottonseed containing WideStrike or LibertyLink accounted for less than 5% of total United States traited cottonseed sales in 2006.

2. DPL's Trait Development With Monsanto's Competitors

After a failed attempt to merge with Monsanto in the late 1990s, DPL commenced a strategy to replace (or ''trade-out'') the Monsanto traits in DPL cottonseed with traits developed by Monsanto's competitors. DPL has worked with several biotechnology companies, including Syngenta, DuPont, Bayer, and Dow, to develop cottonseed containing the traits developed by these companies that would compete with cottonseed containing Monsanto traits.

The process to develop a cotton trait and breed and commercialize cottonseed varieties with that trait typically takes eight to twelve years and costs over $100 million. The process often requires thousands of attempts before developing a traited cottonseed that can be used to breed commercial varieties. In addition, extensive regulatory approvals, both in the United States and abroad, are required.

Trait developers consider DPL an attractive partner for two reasons. First, DPL is in a strong position to introduce new trait technologies due to its extensive breeding programs, elite germplasm collection, technical service capabilities, know-how, brand recognition, and market position. Second, DPL's trait licenses with Monsanto allow DPL to offer competing trait developers the ability to combine or ''stack'' their traits in DPL cottonseed with Monsanto traits. This stacking right would allow, for example, the developer of an insect-resistant trait to bring that trait to market in cottonseed that also contains Monsanto's Roundup Ready (or Roundup Ready Flex) herbicide-tolerant trait. Most United States farmers choose cottonseed that contains both an insect-resistant trait and an herbicide-tolerant trait. Monsanto's trait licenses with cottonseed companies other than DPL severely restrict the ability of those companies to work with other trait developers, with some licenses prohibiting stacking of Monsanto's traits with another company's traits.

DPL's most advanced work with non-Monsanto trait developers is with Syngenta. DPL's developmental work with Syngenta resulted in a 2004 agreement to commercialize cottonseed with Syngenta's VipCot insect-resistant traits. VipCot has been incorporated into some of DPL's best germplasm, and DPL had expected, before Monsanto's proposed acquisition was announced, to begin marketing such cottonseed as early as 2009.

Monsanto's Cottonseed Business

Facing DPL's strategy to replace Monsanto traits in DPL seed with traits developed by Monsanto's competitors, Monsanto set about building its own cottonseed business to compete vigorously against DPL. Pursuant to this strategy, Monsanto began its Cotton States program in early 2002. Through Cotton States, Monsanto obtains licenses for cotton germplasm that small seed companies, private breeders and universities have developed; improves the germplasm through selective breeding; introduces Monsanto traits; and out-licenses the resulting traited cottonseed varieties to distributors and small cottonseed companies for sale under private labels.

In 2005, Monsanto repurchased Stoneville, the second-largest traited cottonseed company in the MidSouth and Southeast. (Monsanto had previously purchased Stoneville in 1996, and sold it in 1999 shortly before abandoning its attempt to acquire DPL.) Upon reacquiring Stoneville, Monsanto immediately invested capital to improve Stoneville's competitive position. With the acquisition of Stoneville, Monsanto became the second largest seller of traited cottonseed in the important MidSouth and Southeast regions.

Monsanto aggressively worked to strengthen its cottonseed business by, among other things, focusing on advanced breeding techniques and germplasm development and investing in breeding facilities. Monsanto predicted internally that these investments would enable Monsanto to increase its share of the cottonseed business in competition with DPL.

C. Product and Geographic Markets

The relevant antitrust product and geographic markets are the development, commercialization, and sale of traited cottonseed for the MidSouth and Southeast. Growing conditions for cotton differ across regions due to weather conditions, soil type, and varied demands for weed and insect control. Farmers demand cottonseed varieties that produce high yield for their particular growing conditions. Monsanto and DPL recognize this demand and market cottonseed varieties by region.

In many regions of the country, particularly the MidSouth and Southeast, farmers demand that cottonseed have traits that provide insect resistance and herbicide tolerance. In the MidSouth and Southeast, approximately 90% of traited seed purchased by farmers contains both types of traits. Monsanto prices traits by region.

Cotton is a particularly high-value crop in the MidSouth and Southeast, where over 50% of domestic cotton is grown. The cost of cottonseed amounts to only a fraction of the total cost of growing cotton. A small but significant increase in the price of traited cottonseed in the MidSouth and Southeast regions would not cause sufficient farmers to plant other crops, or switch sufficient cottonseed purchases to conventional (non-traited) cottonseed or cottonseed varieties not well suited for their regions to make the price increase unprofitable.

D. The Competitive Effects of the Transaction on the Market for the Development, Production, and Sale of Traited Cottonseed in the MidSouth and Southeast

Monsanto's acquisition of DPL would substantially lessen competition for the development, commercialization, and sale of traited cottonseed in the MidSouth and Southeast. First, the combination would increase the merged firm's ability and incentive to raise prices and reduce choices for traited cottonseed in the MidSouth and Southeast. In the MidSouth, DPL and Stoneville account for approximately 79% and 16%, respectively, of traited cottonseed sales. In the Southeast, DPL and Stoneville account for approximately 87% and 8%, respectively, of traited cottonseed sales. After the proposed acquisition, the combined Monsanto and DPL would

have a market share of approximately 95% for traited cottonseed sales in both the MidSouth and Southeast.[1]

Second, the merger would eliminate DPL as a partner independent of Monsanto for developers of cotton traits that would compete against Monsanto's traits. Syngenta's current efforts to develop and commercialize with DPL cottonseed with Syngenta's VipCot insect-resistant technology to compete with Monsanto's Bollgard traits would be substantially delayed or prevented, preserving Monsanto's current dominance. And, the merger would likely delay, if not deter, efforts to develop other traits that would provide benefits to United States cotton farmers, including herbicide-tolerant traits that would compete with Monsanto's Roundup Ready traits. As a result, farmers likely would have fewer choices of, and face higher prices for, traited cottonseed.

E. Entry

Entry into the traited cottonseed business would be difficult, time consuming, and expensive. It requires the assets and expertise both to breed high-performing varieties of cottonseed and to develop or obtain traits providing insect resistance and herbicide tolerance. For a company that has developed a trait, *de novo* entry to develop, breed, and commercialize cottonseed varieties with the trait takes approximately twelve years, costs millions of dollars, requires a sufficient supply of high-quality germplasm, and is uncertain. Therefore, entry into the traited cottonseed business would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract an anticompetitive increase in the price of traited cottonseed by a combined Monsanto and DPL.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment remedies the anticompetitive effects of the acquisition alleged in the Complaint—the elimination of competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed and the elimination of DPL as a partner independent of Monsanto for developers of traits that would compete against Monsanto—by requiring Defendants to divest the Enhanced Stoneville Assets to an approved acquirer, to divest to Syngenta over forty DPL cottonseed breeding lines containing VipCot, and to make certain licensing term modifications to Monsanto's Cotton States and seed company licenses.

Taken together, these provisions will preserve existing competition in the market for traited cottonseed in the MidSouth and Southeast, will allow Syngenta to market cottonseed with VipCot with no more than minimal delay, and will ensure the continued presence of a cottonseed company independent of Monsanto with sufficient germplasm and breeding capabilities to serve as an effective platform for development of cottonseed traits in competition with Monsanto.

The proposed Final Judgment and its accompanying schedules set forth the specific assets to be divested (including certain limitations to the assets being divested), the modifications that Defendant Monsanto must make to its third-party licenses, and the other obligations of Defendants. The following describes these remedy provisions:

A. The Enhanced Stoneville Assets

The Enhanced Stoneville Assets consist of Monsanto's Stoneville business, promising Monsanto cottonseed germplasm, and twenty lines of elite DPL germplasm, including a dozen of DPL's most promising developmental lines for the MidSouth and Southeast as well as Delta Pearl, the parent of DPL's highly-popular DPL555 variety. The proposed Final Judgment requires Defendants to divest the Enhanced Stoneville Assets to an acquirer acceptable to the United States in its sole discretion. The acquirer must have a credible commitment to the traited cottonseed market and have the intent and capability of competing effectively in the market. The Defendants must divest the assets in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the acquirer as part of a viable, ongoing business engaged in the development, production, and sale of traited cottonseed. These provisions are designed to ensure that the Enhanced Stoneville Assets will be used to preserve competition that would otherwise be lost as a result of the acquisition.

This divestiture will provide the acquirer of the Enhanced Stoneville Assets the tools it needs—including valuable germplasm from Stoneville, Monsanto and DPL—to be a viable and active competitor in the MidSouth and Southeast, restoring the traited cottonseed competition that would otherwise be lost as a result of the acquisition. The Enhanced Stoneville Assets will provide the acquirer a significant base of current and developmental varieties that would be attractive to trait developers looking to introduce traits into cottonseed, particularly cottonseed well suited to the MidSouth and Southeast. The remedy in the proposed Final Judgment will give the acquirer capabilities that exceed those of Stoneville and a foundation on which to replicate the platform for trait development and commercialization that DPL previously provided.

The Enhanced Stoneville Assets include:

1. Stoneville

Defendants will divest Monsanto's U.S. Stoneville business, including all U.S. Stoneville cotton germplasm. This divestiture will give the acquirer the benefit of Stoneville's existing presence in the MidSouth and its germplasm development pipeline, which includes approximately 35 mid-to-full- and full-season lines for potential commercialization in the MidSouth and Southeast between 2008 and 2012. The divestiture will also include Stoneville's breeding facilities, tangible assets, brand names, breeder records and other intangible assets.

The proposed Final Judgment also requires Monsanto to grant the acquirer licenses to Monsanto's current Roundup Ready and Bollgard traits on terms at least as favorable as DPL's current terms with respect to stacking rights, revenue sharing, and options for licensing future traits. This licensing requirement will provide the acquirer of Stoneville the same ability as DPL to offer other trait developers a platform upon which to stack non-Monsanto traits with Monsanto traits.

2. Additional Monsanto Cotton Germplasm

Divesting Stoneville by itself would not fully restore the lost competition between Monsanto and DPL as it would fail to capture the breadth of Monsanto's cotton breeding program that supported Monsanto's projected share growth. In addition to Monsanto's improvements to Stoneville (which included adding a breeding station and personnel), Monsanto worked on advanced breeding techniques and germplasm development to strengthen its future competitive position. The proposed Final Judgment requires Monsanto to divest the germplasm and technology related to

[1] The MidSouth and Southeast traited cottonseed markets are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly used in merger analysis and explained in Appendix A of the Complaint, Monsanto's acquisition of DPL would increase the HHI by 3310 in the MidSouth, resulting in a postmerger HHI of 9110. In the Southeast, the proposed acquisition would increase the HHI by 1489, resulting in a postmerger HHI of 9184.

these programs, as described below. As some of this work was undertaken in connection with Monsanto's trait development efforts, the proposed Final Judgment allows Monsanto to retain assets (and research rights to germplasm) that directly relate to trait development.

Advanced Exotic Yield Lines: Defendants will divest the exclusive right to commercialize varieties from the Advanced Exotic Yield Lines set forth in Schedule D of the proposed Final Judgment. Monsanto developed this germplasm as part of its ongoing non-transgenic yield trait discovery project, which seeks to discover traits in exotic cotton plants that could be bred into commercial varieties to increase yield. This project has resulted in the creation of promising developmental germplasm lines. Monsanto anticipated that varieties developed from these lines would be well suited for the MidSouth and Southeast and could be introduced as early as 2009. The acquirer will be able to commercialize such varieties and use the lines for additional breeding. As these lines were part of Monsanto's ongoing trait research project, Monsanto will be allowed to obtain a license back from the acquirer to continue to use these lines for that research effort.

Marker Assisted Breeding (''MAB'') Populations: Defendants will divest all of the germplasm from Monsanto's MAB program, as listed in Schedule E of the proposed Final Judgment. This program was intended to enable breeders to use sophisticated molecular technology to aid in the selection of promising lines to advance to the next breeding stage. Monsanto anticipated that Stoneville varieties developed through the MAB program would reach the market by 2011, and that MAB would be the primary development source for the varieties that Stoneville would commercialize throughout the next decade.[2]

Cotton States Germplasm: Defendants will divest to the acquirer a non-exclusive, royalty-free license to sell and breed with varieties from Monsanto's recently established Cotton States program that Stoneville currently sells today. In addition, as Monsanto typically uses germplasm in the Cotton States program that is owned by other entities (the ''Cotton States Licensors''), Monsanto will relinquish to the acquirer the rights it possesses to work with the Cotton States Licensors to commercialize varieties that result from pre-existing crosses of Stoneville germplasm and Cotton States Licensors germplasm.[3]

Other Germplasm: Defendants will divest all other germplasm in Defendant Monsanto's possession, except that Monsanto may retain, with certain limitations, certain categories of germplasm used predominantly in its trait development and licensing business.

3. DPL Germplasm

DPL's success is due in significant part to its large collection of high-quality cotton germplasm from which it breeds high-yielding varieties. To ensure that the acquirer will have the scale and scope necessary in the Southeast and MidSouth to be an effective and competitive platform for trait development, Defendants will divest twenty DPL conventional varieties.[4]

Eight of the twenty varieties are in the pedigrees of many of DPL's popular current varieties in the MidSouth and Southeast. In particular, four of these varieties (AZ2099, DP491, Delta Pearl, and DP565) are the recurrent conventional parents for DPL commercial traited varieties that today account for approximately 55% of the cottonseed sold in the Southeast (where Stoneville presently holds only an 8% share of sales). Delta Pearl is the parent of the high-yielding DPL555, which is by far the dominant cottonseed variety in the Southeast.

The twelve other divested DPL varieties constitute a significant portion of DPL's breeding pipeline for the MidSouth and Southeast and represent the varieties, and breeding stock for the varieties, that DPL had chosen to bring to market over the next decade. These twelve varieties were bred at the DPL breeding stations that focus on developing germplasm well suited for the MidSouth and Southeast. Over the past four years, each of these twelve varieties has been ranked by DPL during the regular course of business as falling within DPL's top category for conventional lines based on the variety's performance characteristics, such as yield, fiber quality, and disease resistance. The superiority of these twelve lines is underscored by the fact that DPL selected them for introgression with the traits that DPL was developing with Syngenta, as well as for introgression with Monsanto's latest insect-resistant and herbicide-tolerant traits.

The proposed Final Judgment permits Defendants to retain a license to continue using these twenty lines to breed new varieties and to sell exclusively varieties that contain only Monsanto's traits. This exception to total divestiture (*i.e.*, permitting Defendants to continue selling varieties currently in the market and continue breeding with the divested varieties) is necessary to preserve DPL's current competitiveness, prevent disruption to its breeding program, and provide DPL the ability to compete effectively in the future. The acquirer of the Enhanced Stoneville Assets will have use of these varieties for its breeding program and will have rights to commercialize varieties (including in the MidSouth and Southeast) that contain traits being developed by other trait providers, either alone or in combination with Monsanto's traits.[5] With these rights, the acquirer will be in a position to provide trait developers with a competitive alternative to DPL going forward.

The proposed Final Judgment allows Defendants to continue, for a limited period of time, to sell conventional versions of some of the divested DPL varieties currently being sold by DPL in and outside of the United States, providing for a continuity of supply of conventional cottonseed.

4. Defendant Monsanto Must Divest DPL if Enhanced Stoneville Assets Are Not Divested in a Timely Manner

In merger cases where the United States seeks a divestiture remedy, it requires completion of the divestitures

[2] Although the Advanced Exotic Yield Lines and MAB Populations provide the acquirer with promising germplasm for expanding Stoneville's market share, they provide a limited platform for introducing non-Monsanto traits because many of these lines are already introgressed with Monsanto traits. The proposed Final Judgment addresses this limitation by requiring Defendants to allow the acquirer to breed out Monsanto traits from these lines (creating ''Null Lines''). Further, Defendants are also required to provide any information necessary for the acquirer to obtain regulatory approval for varieties developed from Null Lines.

[3] The proposed Final Judgment, however, does not require Monsanto to divest its Cotton States program. Insisting upon divestiture of the program would have required obtaining consent from all of the Cotton States Licensors and could have resulted in disruption to the licensors' financially beneficial current contractual and business relationships with Monsanto. Rather, this divestiture provides Stoneville the ability to continue working with the germplasm that it had been developing prior to the acquisition.

[4] In 2006, DPL purchased rights to germplasm owned by Syngenta. Under the proposed Final Judgment, Defendants will divest these conventional lines to the acquirer in addition to the twenty lines discussed above.

[5] The proposed Final Judgment limits the acquirer in one respect with regard to non-Monsanto traits. For seven years, Monsanto may prevent it from ''triple-stacking'' in the twenty varieties a Monsanto glyphosate-tolerant trait, a Monsanto insect-resistant trait, and any non-glyphosate herbicide-tolerant trait available at the time the Complaint was filed. Nothing in the decree, however, prohibits Monsanto or the acquirer from commercializing such a triple-stacked cottonseed if licenses could be obtained from all affected rights-holders.

within the shortest time period reasonable under the circumstances. In this case, the proposed Final Judgment provides that Defendants must complete the divestiture within ninety (90) calendar days after the filing of the Complaint. Defendants must use their best efforts to divest the Enhanced Stoneville Assets as expeditiously as possible. The United States, in its sole discretion, may grant one or more extensions of time, not to exceed sixty (60) calendar days in total.

In the event that Defendants do not accomplish the divestiture of the Enhanced Stoneville Assets within the time period permitted in the proposed Final Judgment, the proposed Final Judgment provides that Defendant Monsanto shall divest DPL within sixty (60) days. Requiring divestiture of the acquired company would be necessary to ensure the full restoration of competition as quickly as possible should Defendants not be able to divest the Enhanced Stoneville Assets in an acceptable manner.

If the Defendant Monsanto has not divested DPL within the time period permitted by the proposed Final Judgment, then a trustee shall be appointed by the Court upon application of the United States. The proposed Final Judgment provides that Monsanto will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth the trustee's efforts to accomplish the divestiture of DPL. At the end of ninety (90) calendar days, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. The Syngenta/VipCot Divestiture

The proposed Final Judgment requires Defendants to divest to Syngenta the VipCot Assets listed in Schedule C of the proposed Final Judgment. This divestiture seeks to minimize any delay the acquisition could cause in the commercialization of cottonseed containing VipCot, Syngenta's insect-resistant trait technology that would compete against Monsanto's Bollgard family of traits. The VipCot assets include forty-three lines of DPL germplasm into which DPL has incorporated VipCot, along with performance data and other information.[6] These lines are based on the most promising germplasm that DPL has in its development pipeline for geographies across the Cotton Belt, including the MidSouth and Southeast. They are at various stages of development, with DPL anticipating commercializing varieties from five of these lines as early as 2009, three in 2010 or 2011, and the remainder in 2011 and beyond.

The lines will be transferred to Syngenta along with certain rights to allow Syngenta, by itself or working with others, to bring these varieties to market. Syngenta will have exclusive rights to commercialize varieties developed from these lines so long as the variety has at least one of the Syngenta trait events listed in Schedule C of the proposed Final Judgment, which includes the events that form VipCot. Syngenta will also have exclusive rights to breed with the Syngenta-traited versions of these lines. To facilitate breeding, Monsanto will provide Syngenta the ''recurrent parent'' conventional germplasm for each of the divested lines until December 21, 2014, which will allow Syngenta to complete development of these lines and add other traits.

The proposed Final Judgment also requires Monsanto to offer Syngenta a license to Roundup Ready Flex so that Syngenta can commercialize these VipCot lines stacked with Roundup Ready Flex. Such a license will permit Syngenta to advance these lines by introgressing Roundup Ready Flex into them. It will also permit Syngenta to sell, either independently or in conjunction with an established cottonseed company with a Roundup Ready Flex license, varieties stacked with VipCot and Flex.

The VipCot divestiture to Syngenta will therefore allow Syngenta to commercialize VipCot on the same schedule as DPL's anticipated commercialization and with the same range of options regarding stacking herbicide tolerance or other traits. Defendants must use their best efforts to divest the VipCot Assets as expeditiously as possible and shall not take any action that would harm the VipCot Assets or in any way impede their divestiture.

[6] One of the forty-three lines is a line that DPL purchased from Syngenta in 2006 into which DPL introduced VipCot.

Changes in Third Party Licenses

The proposed Final Judgment requires Monsanto to modify its third-party cottonseed trait and Cotton States Lines licenses no later than ten (10) days after the date of sale of the Enhanced Stoneville Assets, subject to the approval of the United States in its sole discretion. Monsanto will modify its third-party cottonseed trait licenses to remove restrictions on the ability of licensees to develop, market, or sell cottonseed containing traits of companies other than Monsanto, or to combine the licensed Monsanto traits in cottonseed with the traits of other companies. Monsanto will also modify the Cotton States Lines licenses to eliminate any provision that allows Monsanto to terminate the license if the licensee sells cottonseed containing other traits.

These changes will give these competing cottonseed companies the ability to partner with trait developers other than Monsanto without any financial penalty and to offer traits desired by farmers. Trait developers will thereby have access to close to half of the current U.S. cottonseed market, without having to deal with the combined Monsanto/DPL. These changes will ensure that Monsanto cannot prevent trait developers from bringing competing, non-Monsanto traits to the market.

D. Notice Provisions

The proposed Final Judgment provides that Defendant Monsanto shall provide notice to the United States prior to acquiring any company that develops and sells cottonseed in the United States or has developed, or has under development, traits for commercialization in cottonseed in the United States, unless the transaction is otherwise subject to Hart-Scott-Rodino reporting requirements. This provision will allow the United States to assess whether any such transaction would be likely to substantially lessen competition.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton

Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Monsanto's acquisition of DPL. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition in the market for the development, production, and sale of traited cottonseed. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with amendments to the APPA in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally United States* v. *SBC Commc'ns, Inc.,* Nos. 05–2102 and 05–2103,2007 WL 1020746, at *9–16 (D.D.C. Mar. 29, 2007) (assessing public interest standard under APPA and effect of 2004 amendments).[7] Courts in this circuit have held—both before and after the 2004 amendments—that the United States is entitled to deference in crafting its antitrust settlements, especially with respect to the scope of its complaint and the adequacy of its remedy, which are the ''two most significant legal questions'' relating to a public interest determination. *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995); *SBC Commc'ns,* 2007 WL 1020746, at *12–*16.[8]

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[9] In making its public interest determination, a district court must accord due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *SBC Commc'ns*, 2007 WL 1020746, at *16 (United States entitled to ''deference'' as to ''predictions about the efficacy of its remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls

[7] Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). The 2004 amendments do not affect the substantial precedent in this and other circuits analyzing the scope and standard of review for APPA proceedings. *See SBC Commc'ns*, 2007 WL 1020746, at *9 (''[A] close reading of the law demonstrates that the 2004 amendments effected minimal changes. * * * '').

[8] The *Microsoft* court explained that a court making a public interest determination under the APPA should consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *Microsoft,* 56 F.3d at 1458–62.

[9] *Cf BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 2007 WL 1020746, at *16.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Communications*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 2007 WL 1020746, at *14.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 2007 WL 1020746, at *9.[10]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

[10] *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''[T]he Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

Dated: May 31, 2007.

Respectfully submitted,

For Plaintiff

Jill A. Ptacek (WA Bar #18756),

Trial Attorney, U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 7th Street, NW., Suite 500, Washington, DC 20004, Telephone: (202) 307–6607, Facsimile: (202) 307–2784.

[FR Doc. 07–2897 Filed 6–14–07; 8:45 am]

BILLING CODE 4410–11–M