Written Testimony of

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Joint Testimony on behalf of

National Corn Growers Association

and

American Soybean Association

Before the

Committee on the Judiciary

United States Senate

Hearing on Consolidation and Competition in the U.S. Seed and Agrochemical Industry

On behalf of the National Corn Growers Association (NCGA) and the American Soybean Association (ASA), I would like to thank Chairman Grassley, Ranking Member Leahy and the members of the Senate Judiciary Committee for the opportunity to give our perspective on the accelerating trend of high-profile mergers and acquisitions in the agriculture industry–specifically within the seed and crop protection segments. My name is Chris Novak, and I am the CEO of NCGA. The NCGA and ASA recently partnered to conduct an analysis of the Dow-DuPont merger and we have agreed to conduct a similar joint analysis of the recently announced Bayer-Monsanto acquisition. As a result of this cooperative effort, today I am representing the views of both NCGA and ASA. Together, our associations represent more than half a million corn and soybean farmers nationwide. Our members have a direct interest in ensuring a competitive marketplace for crop production inputs.

The timeline leading up to this hearing is illustrative of the rapidly shifting landscape within our industry. We were originally focused to testify on the impacts of the proposed merger between Dow and DuPont, and ChemChina and Syngenta. While these mergers are significant in their own rights, we believe they must also be viewed in the larger context of consolidations currently underway in American agriculture. In addition to Dow/DuPont and ChemChina/Syngenta, we recently have seen announcements of a proposed merger between PotashCorp and Agrium Inc. and the announced acquisition of Monsanto by Bayer AG.

To view this consolidation in its appropriate context, we should first examine the current state of our nation's farm economy. Unlike many sectors in the U.S. economy, agriculture experienced a boom over the last ten years. Record high commodity prices were driven primarily by increased international demand for livestock feed, domestic demand for biofuels, Chinese oilseed imports and the liberalization of global trade. As demand rose, U.S. producers faced three years of below average yields. The combination of these factors drove farm prices and farm income to near record levels which, in turn, led to a much-needed revitalization of rural America.

Subsequently, as weather patterns returned to more normal levels, agriculture production rose and lagging global economic growth led to a significant reduction in commodity prices. Over the last two years, net farm income has fallen 55 percent[1] and farm debt-to-asset ratios have climbed to levels not seen since 2002[2]. These financial indicators reflect a weakness in the farm economy that is now reverberating through the agribusiness industry. Layoffs in the agriculture equipment industry[3] and the crop input sector[4] are a natural and expected response to the drop in farm income. Just as lower commodity prices are forcing changes at the farm level, agribusiness companies are looking for ways to adapt to today's changing economic environment. Many have begun looking for synergies and evaluating how mergers or acquisitions could help improve their market position. They also are looking to mergers and acquisitions to build economies of scale, increase research and

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[2] *See* http://www.ers.usda.gov/data-products/chart-gallery/detail.aspx?chartId=57202.
[3] *See, e.g.* http://www.thegazette.com/subject/news/business/economy/kinze-manufacturing-to-lay-off-121-20160419 and https://www.deere.com/en_US/corporate/our_company/news_and_media/press_releases/2016/corporate/2016mar10-corporaterelease.page
[4] *See* http://www.usnews.com/news/business/articles/2016-01-06/monsanto-swings-to-1q-loss-amid-lower-seed-sales.

development budgets and to build a complementary portfolio of seeds and crop protection tools that could accelerate innovation and enhance each company's product offering.

NCGA and ASA are taking a cautious approach in evaluating this renewed interest in consolidation. First and foremost, our members want to ensure that any proposed merger will not unduly reduce competition or raise input costs for farmers. To determine the impact of any proposed merger, however, requires careful analysis of individual product lines to determine whether the merged company will have a dominant position within any of a number of market segments. If our analysis determines that competition is decreased or costs would be increased significantly, both NCGA and ASA support the principle that the Department of Justice should apply remedies, including divestiture and/or rejection of a merger, should the merger be judged harmful to market competition.

In the case of the proposed merger between Dow and DuPont, NCGA and ASA retained third-party experts to analyze the potential impact this proposed merger could have on our farmer-members. Specifically, we asked these experts to identify areas of potential overlap between the product lines of Dow and DuPont. We sought a quantitative assessment of the various product categories using the Herfindahl-Hirschman Index, or HHI, and requested an analysis of research and development activity to assess future concentration issues.

Our analysis of the Dow/DuPont merger showed HHI levels below the level classified as highly concentrated[5] for the domestic corn and soybean herbicide and insecticide sector, as well as the soybean seed sector. The HHI level for the domestic corn seed sector, however, was significantly above that level and represents a concern that corn seed industry competition could be diminished as a result of this merger. As the NCGA Board considered this analysis, however, the Board concluded that the increased concentration within the corn seed market did not fundamentally undermine competition within that market. We did ask the Department of Justice to determine whether any remedies were needed to ensure market competition, but we stopped short of calling for the divestiture of seed assets.

The ASA and the NCGA did not conduct a similar analysis of the China National Chemical Corporation, or ChemChina, acquisition of Syngenta AG. This acquisition does not increase concentration in the domestic marketplace since ChemChina has limited presence today in the U.S. market.

The ChemChina-Syngenta merger does have potential implications in another important area. The difficulties that our corn and soybean industries have had in obtaining timely approvals of seed containing new biotechnology-enhanced traits for export to China are well-known. The Chinese regulatory system for biotechnology crop approvals lacks consistency, coherency and a sound basis in science. We appreciate that U.S. Secretary of Agriculture Tom Vilsack has raised concerns about how the ChemChina acquisition might impact future Chinese regulatory approvals for new

[5] *See, e.g.*, https://www.justice.gov/atr/herfindahl-hirschman-index.

biotechnology-enhanced crops.[6] Such favoritism would violate China's commitments under the World Trade Organization. Alternatively, it is possible that having a Chinese company with a significant stake in the development and commercialization of biotechnology traits will improve the transparency, timeliness and predictability of the Chinese approval process. Unfortunately, we will not know which of these scenarios comes to fruition until a clear pattern of discriminatory behavior becomes evident. It is our hope and expectation that the U.S. Trade Representative and the U.S. Department of Agriculture will continue to be vigilant in pushing the Chinese for improvements in their biotechnology approval process—for the benefit of farmers and agribusiness companies.

With any reduction in the number of major market players in the seed industry, it is imperative that open and competitive licensing of biotechnology traits to local and regional seed companies be maintained. The ability of regional seed companies to compete is heavily dependent upon having commercial access to the innovative traits that are likely to come from newly merged companies. The trend of open trait licensing has seen significant growth in both the corn and soybean industries in the past decade. This licensing of traits has allowed seed companies like Ag Reliant, Stine Seed and Beck's Hybrids to expand market share within the corn and soybean seed markets. This is a positive development for farmers, and we have a vested interest in encouraging continued open and competitive licensing in the face of mergers and acquisitions.

With the announcement last week of a proposed deal between Bayer AG and Monsanto, we know the landscape for agriculture will continue to change. NCGA and ASA do intend to examine this proposed merger with the same rigor as the Dow-DuPont consolidation. If our final analysis determines that industry competition is decreased or that input costs may increase significantly, then we will recommend that the U.S. Department of Justice enforce remedies that will preserve a competitive market for our farmers.

While both NCGA and ASA are concerned about the loss of individual competitive market players as a result of ongoing consolidation, we also recognize the potential benefits to farmers from consolidation if robust competition can be preserved.

First, true competition is not based solely on the number of players within a given market. Strong competition can result from having several evenly-matched companies fighting for market share within the seed, chemistry and trait development markets. Our analysis of the Dow-DuPont combination, for example, showed that it would bring together Dow's trait development expertise with Pioneer's germplasm and distribution network—making the new company a far stronger competitor.

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[6] *See e.g.,* http://www.agri-pulse.com/Vilsack-pushes-TPP-biotech-labeling-plan-adds-personal-touch-in-speech-to-Commodity-Classic-03042016.asp (noting a potential "home field advantage" that might put U.S.-based companies at a competitive disadvantage).

Second, the combination of resources that results from a consolidation may provide farmers with better access to the technology. Our analysis showed that Dow's seed products, for instance, have been delivered primarily through a retailer network, while DuPont-Pioneer has relied extensively on its farmer-dealer network for seed delivery. By merging Dow's trait development expertise with Pioneer's germplasm and taking advantage of the existing dual system for delivering seeds to farmers, farmers could see greater access to a broader range of seed products coming from a new company. The Bayer-Monsanto acquisition has been reported to create a $3 billion research platform that will ensure continued innovation for agriculture. In an era of declining federal and state agricultural research investments—these agribusiness research investments are vital to the future of food production.

Finally, we do believe that at least one answer to the consolidation question lies in reducing and eliminating the regulatory barriers facing agriculture. Domestic regulatory hurdles for crop protection chemicals and delays in international approvals for new seed traits represent significant barriers to market entry that are slowing down and even stopping innovations. These barriers are also driving up the cost of seed and chemistry products. The significant capital investments required to develop and secure regulatory approval for new products, coupled with long lead times from innovation to product launch, result in fewer and fewer companies with the resources to truly participate in the marketplace. The companies remaining after this round of consolidation are likely to be better equipped to contend with the range of expensive and resource-consuming regulatory hurdles encountered on the way to market. If we fail to successfully address these issues, however, the trend of consolidation will continue unabated, as only the largest and best-equipped companies will be able to afford to bring new products to market.

Consolidation is an intricate issue that we, as farm organizations, know well. While the number of small farms (less than 50 acres) grew between the 2007 and 2012 Agricultural Census, we've seen a significant decline in the number of small-to-medium sized family farms. Fewer farmers means that the agribusiness industry that supports the farm community has fewer customers—resulting in consolidation beyond the farm gate. The speed at which the industry continues to consolidate, and the tenuous state of our farm economy, dictate that we work diligently to ensure that our farmers will still have access to a range of technologies without suffering higher costs. We recognize that this Committee and the U.S. Department of Justice have a duty to evaluate consolidation trends to identify the positive and negative implications. We are pleased that we can be a part of this process. We look forward to continuing to work with the Department of Justice and Congress to ensure a competitive marketplace for seed and crop protection chemicals.

On behalf of the National Corn Growers Association and the American Soybean Association, thank you for the opportunity to testify today and to share the concerns of our farmers.