

Press Release dated 20th June, 2018

CCI approves the acquisition of Monsanto by Bayer AG under Section 31(7) of the Competition Act, 2002, subject to modifications/remedies to address the anti-competitive effects resulting from the said acquisition

On 7th August, 2017, the Competition Commission of India (Commission) received a notice from Bayer Aktiengesellschaft (Bayer) in relation to its proposed acquisition of Monsanto Company (Monsanto). Bayer, the acquirer, is a German stock corporation and is a life sciences company with competencies in the areas of health care and agriculture. The activities of Bayer are carried out in three main divisions *viz.* pharmaceuticals, consumer health, and crop sciences. Monsanto is a global supplier of agricultural products like seeds, biotechnology traits, and herbicides.

Based on its investigation, the Commission was of the opinion that the proposed combination is likely to have an appreciable adverse effect on competition in some markets in India but the same could be addressed by way of modifications to the proposed combination. Accordingly, the Commission approved the proposed combination under Section 31(7) of the Competition Act, 2002, subject to the following remedies to be implemented by the parties:

- A. Divestment of the following businesses of Bayer to an independent entity, which meets the parameters prescribed in the order of the Commission:
 - Glufosinate ammonium (a non-selective herbicide);
 - Crop traits of cotton and corn; and
 - Hybrid seeds of vegetables

- B. Divestment of the shareholding of Monsanto in Maharashtra Hybrid Seed Company Limited (26%), to an independent entity, which meets the parameters prescribed in the order of the Commission.

- C. In addition to the above divestiture, Bayer is also bound by the following commitments for a period of 7 (seven) years from the closing of the Bayer/Monsanto transaction,
 - i. The resultant entity of the combination (Combined Entity) would follow a policy of broad based, non-exclusive licensing of Genetically Modified (GM) as well as non-GM traits currently commercialized in India or to be introduced in India in the future, on a fair, reasonable and non-discriminatory terms (FRAND Terms);

 - ii. The Combined Entity would follow a policy of non-exclusive licensing of non-selective herbicides and / or their active ingredient(s) in case of launch of new GM / non-GM traits in India that restrict agricultural producers including farmers to use specific non-selective herbicide(s) being supplied only by the parties, on a fair, reasonable and non-discriminatory basis;

- iii. Combined entity would allow Indian users / potential licensees to access the following on FRAND Terms: (a) existing Indian agro-climatic data owned and used by the Combined Entity for its digital applications commercialized in India; (b) commercialized digital farming platform(s) of the Combined Entity for supplying/selling agricultural inputs to agricultural producers in India; and (c) digital farming applications of the Combined Entity, commercialized in India, on subscription basis. This remedy shall operate for a period of 7 years from the commencement of commercialization of digital farming product(s) or digital farming platform(s), subject to a total period of 10 years from the closing of the combination.
- iv. Combined Entity would also grant access to Indian agro-climatic data, free of charge to Government of India and its institution(s), to be used exclusively for creating a public good in India.
- v. Combined Entity is barred from offering its clients, farmers, distribution channels and/or its commercial partners, two or more products as bundle which may potentially have the effect of exclusion of any competitor.
- vi. Combined Entity is further barred from imposing, directly or indirectly, commercial dealings capable of causing exclusivity in the sales channel for supply of agricultural products.

The Commission further ensured in its order, that in case the Combined Entity offers better commercial terms to a new licensee for any of the above licenses, then it would be bound to offer, within 60 days, such similar terms to all existing licensees.

Bayer is also directed to disclose, on its Indian websites, all contact details to facilitate the implementation of remedies ordered by the Commission.

The remedies ordered by the Commission will strengthen the agricultural input suppliers in India, by enabling innovation and launch of new products for the benefit of the farmers.

For legally binding text of the modifications and other details, please visit

https://www.cci.gov.in/sites/default/files/Notice_order_document/Order_14.06.2018.pdf
