



**competition commission**  
south africa

## **COMMISSION CONDITIONALLY APPROVES BAYER AND MONSANTO TRANSACTION**

The Commission has approved, with conditions, the merger whereby Bayer Aktiengesellschaft (Bayer) intends to acquire Monsanto Corporation (Monsanto).

Bayer is active in the crop protection business in South Africa selling fungicides, insecticides, herbicides and seed treatment products among others. On the other hand, Monsanto is active in the supply of seeds, bio-technology traits and herbicides in South Africa. Both Bayer and Monsanto are also involved in research and development (R&D) for bio-technology traits and the discovery and development of active ingredients globally, which are critical inputs in the development of genetically modified (GM) seeds and agro-chemicals, respectively.

The Commission identified competition concerns in the market for the supply of GM cotton seeds as it is a merger to monopoly in South Africa. The proposed merger also results in the removal of potential competition as it removes the opportunity for Bayer to independently enter into South Africa and compete against Monsanto, particularly in the development and production of traits for seeds and the accompanying herbicides used in a number of agricultural markets. There are also several structural factors in this seed industry which are conducive for coordinated conduct which would be enhanced by the proposed merger through the prevalence of cross licensing agreements.

In order to remedy all the identified concerns, the Commission has imposed conditions for the merged entity to divest and sell the entire global Liberty Link trait technology and the associated Liberty branded agro-chemicals business of Bayer.

The Commission has also imposed a condition that requires the potential buyer of the divested businesses to commercialize the divested products in South Africa, or alternatively, oblige the potential purchaser to license the divested business to a South African third party to commercialize anywhere in the world should the purchaser be unable to do so. Finally, the Commission identified public interest concerns specific to South Africa relating to employment and support for emerging farmers, that have been remedied.

The Commission was officially notified of the merger on 1 February 2017 and approved the transaction on 3 May 2017. In terms of the Competition Act, the merger is defined as an intermediate merger, and therefore the Commission is obliged to make a decision within 60 business days from date of notification, which decision is final. South Africa was first to be notified of this global transaction, it has also been or will be notified in several other jurisdictions including the United States, European Union, Brazil, Russia, China and India.

[ENDS]

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## **SUMMARY OF CONDITIONS**

In light of the several competition and public interest concerns arising, the Commission imposed a set of remedies that allay the concerns arising from the merger. The following remedies have been imposed:

### **GM cotton seed remedies**

The merging parties will divest the Bayer cotton business in South Africa. Bayer effectively operates through an exclusive license from an Australian company, and a result of this divestiture, the license and business will be transferred and sold to another independent South African third party. The sale of the Bayer cotton business will enable an entity other than the merging parties to supply GM cotton seed in South Africa.

### **Liberty and Liberty Link technology remedies**

Both Monsanto and Bayer have technological systems, that is, the development and production of traits for seeds and the accompanying herbicides that are applied on those traited seeds.

Monsanto has the Roundup Ready system which is comprised of its glyphosate herbicides (RoundUp) and RoundUp traited seeds. On the other hand, Bayer has the Liberty Link system which is comprised of the glufosinate ammonium active ingredient (Liberty) and Liberty Link technology. The proposed merger results in the removal of competition as it removes the opportunity for Bayer to independently enter into South Africa and compete against Monsanto.

In order to remedy all the inter-linked concerns involving traits and systems, the merging parties will divest and sell the entire global Liberty Link technology and the associated Liberty branded agro-chemicals business. The Commission has also imposed a condition that the potential purchaser of the Liberty Link technology and Liberty business will be obliged to commercialise the Liberty Link technology and Liberty products in South Africa, or alternatively, oblige the potential purchaser to license the Liberty Link technology and associated Liberty chemicals to a third party to commercialise should the purchaser be unable to do so. This provision is to ensure that South Africa will directly benefit from the divestiture of these global businesses of Bayer.

### **Public interest**

On employment concerns, the Commission imposed a moratorium on merger specific retrenchments in South Africa such that they are limited to 20 employees. In this regard, the merging parties are still obliged to follow the Labour Relations Act provisions should they proceed with these retrenchments. Further, the merged entity will be required to maintain the existing employment levels of the combined entity over a period of 3 (three) years. In other words, should the merging proceed to retrench the 20 employees they are obliged to create at least 20 other opportunities with a view to maintain existing employment levels.

On corporate projects, the merged entity will be required to continue with these projects over periods ranging between 3 (three) years and 5 (five) years. Lastly, the merged entity has committed to offer a 25% discount to small emerging farmers relating to Seeds and Poncho® value offering for a period of 3 (three) years.