

Department of Justice

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JUSTICE DEPARTMENT REQUIRES DIVESTITURE OF CERTAIN HERBICIDES, INSECTICIDES, AND PLASTICS BUSINESSES IN ORDER TO PROCEED WITH DOW-DUPONT MERGER

Divestitures Will Preserve Competition in U.S. Markets for Broadleaf Herbicides for Winter Wheat, Insecticides for Chewing Pests and Acid Copolymers and Ionomers

WASHINGTON – The Department of Justice announced today that it will require The Dow Chemical Company (Dow) and E.I. DuPont de Nemours & Co. (DuPont) to divest multiple crop protection and two petrochemical products to proceed with their proposed merger valued at about \$130 billion.

The Justice Department’s Antitrust Division, along with the offices of three state attorneys general, filed a civil antitrust lawsuit today in the U.S. District Court for the District of Columbia to enjoin the proposed transaction, along with a proposed settlement that, if approved by the court, would resolve the department’s competitive concerns. The participating state attorneys general offices represent Iowa, Mississippi, and Montana.

The department said that, without the divestitures, the proposed merger likely would reduce competition between two of only a handful of chemical companies that manufacture certain types of crop protection chemicals and the only two U.S. producers of acid copolymers and ionomers, potentially harming U.S. farmers and consumers.

“The Department of Justice conducted a thorough investigation into this merger,” said Acting Assistant Attorney General Andrew Finch of the Justice Department’s Antitrust Division. “As originally proposed, the merger would have eliminated important competition between Dow and DuPont in the development and sale of insecticides and herbicides that are vital to American farmers who plant winter wheat and various specialty crops. In addition, it would have given the merged company a monopoly over ethylene derivatives known as acid copolymers and ionomers that are used to manufacture many products, including food packaging. The remedies obtained by today’s settlement, including the divestiture of DuPont’s market-leading Finesse and Rynaxypyr crop protection products, will preserve vigorous competition in the sale of these products and benefit American farmers and consumers alike.”

According to the department's complaint, Dow and DuPont are two of only a few significant competitors in the markets for broadleaf herbicides for winter wheat and insecticides for chewing pests. Specifically, DuPont's Finesse product is the market leading broadleaf herbicide for winter wheat, and Dow recently introduced a new broadleaf herbicide called Quelex to compete with Finesse. DuPont's Rynaxypyr line of products, which are marketed in the United States under the brand names Altacor, Coragen, and Prevathon, are the top selling insecticides for chewing pests, and compete with Dow's methoxyfenozide products, sold in the United States under the Intrepid brand, and Dow's spinetoram products, sold under the Delegate and Radiant brands. The complaint alleges that the loss of competition between Dow and DuPont would result in higher prices, less favorable contractual terms, and a reduced incentive to innovate for each of these products.

The department's complaint further alleges that Dow and DuPont are the only two U.S. suppliers of acid copolymers and ionomers, both of which are high-pressure ethylene derivative products that are important inputs for food packaging and other plastics applications. According to the complaint, customers for each of these products would have no choice but to accept higher prices from the merged company following the transaction.

Under the terms of the proposed settlement, DuPont must divest its market-leading Finesse herbicide and Rynaxypyr insecticide products to a buyer to be approved by the United States. The department said that the divestiture of these products, which have total combined annual U.S. sales of over \$100 million, would preserve competition in U.S. markets for broadleaf herbicides for winter wheat and insecticides for chewing pests. The proposed settlement further requires Dow to divest its U.S. acid copolymers and ionomers business to a buyer approved by the United States to remedy the merger's harm in the U.S. markets for acid copolymers and ionomers.

The department's Antitrust Division and the European Commission cooperated closely throughout the course of their respective investigations. The European Commission announced on March 27, 2017, that it will approve the merger conditioned on certain divestitures to address concerns in a variety of products. These divestitures included several products also divested in the Antitrust Division's proposed settlement, as well as Dupont's assets used for research and development of new crop protection chemicals. Like the European Commission, the Antitrust Division examined the effect of the merger on development of new crop protection chemicals but, in the context of this investigation, the market conditions in the United States did not provide a basis for a similar conclusion at this time.

Dow, a Delaware corporation headquartered in Midland, Michigan, operates in approximately 180 countries, and employs over 50,000 people worldwide. Dow's primary lines of business are chemical, plastic, and agricultural products and services, and its products are used in various end markets, ranging from agriculture to consumer goods. In 2016, Dow reported global revenues of approximately \$48 billion.

DuPont, a Delaware corporation headquartered in Wilmington, Delaware, operates in approximately 90 countries, and employs more than 60,000 people worldwide. Dow's primary

products include crop protection chemicals and performance materials such as plastics and polymers. In 2016, DuPont reported global revenues of \$24.6 billion.

As required by the Tunney Act, the proposed consent decree, along with the department's competitive impact statement, will be published in the *Federal Register*. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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