

DOJ Announces Largest-Ever U.S. Antitrust Divestiture in the Bayer/Monsanto Transaction

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On May 29, 2018, the DOJ announced the largest-ever antitrust divestiture in the U.S. in connection with Bayer's takeover of Monsanto. In addition to being newsworthy in light of its sheer size (at approximately \$9 billion), the remedy reflects a number of principles that have been emphasized publicly by key U.S. antitrust agency officials in recent months and provides insight into how the U.S. antitrust agencies might approach remedy negotiations in future transactions. Among the key takeaways are that the agencies may require divestitures that extend beyond overlapping product areas and, building on an emerging U.S. enforcement trend, are more likely to seek structural remedies to address innovation and vertical concerns. The Bayer/Monsanto decree also suggests that the U.S. antitrust agencies may require additional provisions to improve effectiveness of the remedy and ease of enforcement. And finally, the consent decree underscores how the Antitrust Division under Assistant Attorney General Makan Delrahim continues to demonstrate an aggressive approach to merger enforcement.

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