

Ag-biotech merger symposium wrap-up [Ag-Biotech Symposium]

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[Geoffrey A. Manne](#)

On Thursday, March 30, Friday March 31, and Monday April 3, Truth on the Market and the International Center for Law and Economics presented a blog symposium — [Agricultural and Biotech Mergers: Implications for Antitrust Law and Economics in Innovative Industries](#) — discussing three proposed agricultural/biotech industry mergers awaiting judgment by antitrust authorities around the globe. These proposed mergers — [Bayer/Monsanto](#), [Dow/DuPont](#) and [ChemChina/Syngenta](#) — present a host of fascinating issues, many of which go to the core of merger enforcement in innovative industries — and antitrust law and economics more broadly.

The big issue for the symposium participants was **innovation** (as it was for the European Commission, which [cleared](#) the Dow/DuPont merger last week, subject to conditions, one of which related to the firms' R&D activities).

Critics of the mergers, as currently proposed, asserted that the increased concentration arising from the “Big 6” Ag-biotech firms consolidating into the Big 4 could reduce innovation competition by (1) eliminating parallel paths of research and development ([Moss](#)); (2) creating highly integrated technology/traits/seeds/chemicals platforms that erect barriers to new entry platforms ([Moss](#)); (3) exploiting eventual network effects that may result from the shift towards data-driven agriculture to block new entry in input markets ([Lianos](#)); or (4) increasing incentives to refuse to license, impose discriminatory restrictions in technology licensing agreements, or tacitly “agree” not to compete ([Moss](#)).

Rather than fixating on horizontal market share, proponents of the mergers argued that innovative industries are often marked by disruptions and that investment in innovation is an important signal of competition ([Manne](#)). An evaluation of the overall level of innovation should include not only the additional economies of scale and scope of the merged firms, but also advancements made by more nimble, less risk-averse biotech companies and smaller firms, whose innovations the larger firms can incentivize through licensing or M&A ([Shepherd](#)). In fact, increased efficiency created by economies of scale and scope can make funds available to source innovation outside of the large firms ([Shepherd](#)).

In addition, innovation analysis must also account for the intricately interwoven nature of agricultural technology across seeds and traits, crop protection, and, now, digital farming ([Sykuta](#)). Combined product portfolios generate more data to analyze, resulting in increased data-driven value for farmers and more efficiently targeted R&D resources ([Sykuta](#)).

While critics voiced concerns over such platforms erecting barriers to entry, markets are contestable to the extent that incumbents are incentivized to compete ([Russell](#)). It is worth noting that certain industries with high barriers to entry or exit, significant sunk costs, and significant costs disadvantages for new entrants (including automobiles, wireless service, and cable networks) have seen their prices decrease substantially relative to inflation over the last 20 years — even as concentration has increased ([Russell](#)). Not coincidentally, product innovation in these industries, as in ag-biotech, has been high.

Ultimately, assessing the likely effects of each merger using static measures of market structure is arguably unreliable or irrelevant in dynamic markets with high levels of innovation ([Manne](#)).

Regarding patents, critics were skeptical that combining the patent portfolios of the merging companies would offer benefits beyond those arising from cross-licensing, and would serve to raise rivals' costs ([Ghosh](#)). While this may be true in some cases, IP rights are probabilistic, especially in dynamic markets, as [Nicolas Petit](#) noted:

There is no certainty that R&D investments will lead to commercially successful applications; (ii) no guarantee that IP rights will resist to invalidity proceedings in court; (iii) little safety to competition by other product applications which do not practice the IP but provide substitute functionality; and (iv) no inevitability that the environmental, toxicological and regulatory authorization rights that (often) accompany IP rights will not be cancelled when legal requirements change.

In spite of these uncertainties, deals such as the pending ag-biotech mergers provide managers the opportunity to evaluate and reorganize assets to maximize innovation and return on investment in such a way that would not be possible absent a merger ([Sykuta](#)). Neither party would fully place its IP and innovation pipeline on the table otherwise.

For a complete rundown of the arguments both for and against, the full archive of symposium posts from our outstanding and diverse group of scholars, practitioners and other experts is available at [this link](#), and individual posts can be easily accessed by clicking on the authors' names below.

- [Allen Gibby](#)
- [Shubha Ghosh](#)
- [Ioannis Lianos](#)
- [John E. Lopatka](#)
- [Geoffrey A. Manne](#)
- [Diana L. Moss](#)
- [Nicolas Petit](#)
- [Levi A. Russell \(2\)](#)
- [Joanna M. Shepherd](#)

- [Michael Sykuta](#)

We'd like to thank all of the participants for their excellent contributions!

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