

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

DEERE & COMPANY;

PRECISION PLANTING LLC;

and

MONSANTO COMPANY,

*Defendants.*

Civil Action No. 1:16-cv-08515

Judge Chang

Magistrate Judge Weisman

**DEFENDANTS' LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS  
AS TO WHICH THERE IS NO GENUINE LEGAL ISSUE**

Pursuant to Northern District of Illinois Local Rule 56.1, Defendants Deere & Company (“Deere”), Precision Planting LLC (“Precision”), and Monsanto Company (“Monsanto”) respectfully submit this statement of material facts as to which there is no genuine issue in support of their Motion for Summary Judgment.

**I. DESCRIPTION OF THE PARTIES AND PRODUCTS**

1. Deere is a Delaware corporation headquartered in Moline, Illinois. Deere manufactures equipment and components used in agriculture, construction, forestry, and turf care. Deere sells planters and retrofit products that can be used to upgrade planters. Dkt. 222-2 (“Uncontested Facts”) ¶ 1.

2. Precision is a Delaware limited liability company headquartered in Tremont, Illinois. Precision sells products that may be retrofitted onto planters manufactured by Deere, Kinze Manufacturing, Inc., CNH Industrial N.V. (“CNH”), AGCO Corporation (“AGCO”), and others, or in some cases incorporated into new planters at the factory level. Uncontested Facts ¶ 2.

3. Monsanto is a Delaware corporation headquartered in St. Louis, Missouri. Monsanto is a global provider of agricultural products, including seeds and herbicides. Monsanto owns Precision and is the parent corporation of Precision. Uncontested Facts ¶ 3.

4. Deere markets and sells the ExactEmerge wholegood planter and the ExactEmerge Retrofit Kit. Precision markets and sells the SpeedTube, vDrive, vSet, and 20/20 SeedSense products. Uncontested Facts ¶¶ 6-7.

## **II. JURISDICTION AND VENUE**

5. The parties stipulated that the United States District Court for the Northern District of Illinois has personal jurisdiction over Deere, Precision, and Monsanto for purposes of this case. Dkt. 222-1 (“Stipulations”) ¶ 1.

6. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22. Dkt. 1 (“Compl.”) ¶ 46.

## **III. STATEMENT OF MATERIAL FACTS**

### **A. The Complaint’s Definition of “High-Speed Precision Planting Systems”**

7. The government’s Complaint alleges that the relevant product market is “[h]igh-speed precision planting systems.” Compl. ¶ 26.

8. The government further alleges that “[h]igh-speed precision planting systems comprise several critical components that are incorporated in planter row units. These components typically include a seed delivery cartridge, an advanced seed meter, an electric drive, and a control system.” Compl. ¶ 14.

**B. Dr. Tasneem Chipty’s Market Definition and Proffered Hypothetical Monopolist Test**

9. The government’s economic expert, Dr. Tasneem Chipty, asserted that she conducted a hypothetical monopolist test for market definition purposes. Declaration of John M. Majoras (“Majoras Dec.”), Ex. D (“Chipty Report”) ¶ 104.

10. Dr. Chipty based her so-called hypothetical monopolist test on her review of certain internal Deere business documents. *See* Chipty Report n.242-45 (identifying the documents that Dr. Chipty relied on); Majoras Dec., Ex. A (“Chipty Dep.”) 231:1-19 (“central to [her] analysis”); *id.* 236:9, 237:13-15 (“Yes. In short form, that is what I used . . . . Those were the documents that I used in the formal implementation of the hypothetical monopolist test.”); *id.* 238:19-22 (noting that “the 5 to 15 percent document set were a central component – input into the hypothetical monopolist test numerical calculations.”); Chipty Report ¶ 107 (stating that her hypothetical monopolist test was “[b]ased on this information”). She specifically relied on five such documents. *See* Majoras Dec., Ex. I (Email from C. Meskan to H. Mouser (June 2, 2015), JD-000056755); *id.* at Ex. J (Email from H. Mouser to W. Robinson (June 2, 2015), JD-000106552); *id.* at Ex. K (Deere, Styx Equipment Valuation – Key Assumptions (June 18, 2015), JD 000069407-19); *id.* at Ex. L (Deere, Project Styx (Aug. 18, 2015), JD 000041994-2000); *id.* at Ex. M (Deere, Project Styx (Presentation to Board of Directors) (Aug. 2015), JD-000042070-75).

11. Dr. Chipty did not rely on any other documents for what she called her hypothetical monopolist analysis. Chipty Report n.242-245 (identifying the documents on which Dr. Chipty relied).

12. Dr. Chipty did not investigate how the figures in the documents she relied on were determined by the employees that provided them. Chipty Dep. 231:13-17 (“Q. Did you make any attempt to investigate how that 5 to 15 percent figure was determined by the employees who referenced it? A. I don’t have any information outside of the set of documents that I cite.”).

13. The documents upon which Dr. Chipty relied in performing what she described as her hypothetical monopolist test were created by Deere employees before Deere entered into various third-party licenses and other agreements with Ag Leader Technology (“Ag Leader”), CNH, and AGCO. Chipty Report n.242-245 (identifying documents created from June through August, 2015); Chipty Dep. 314:7-315:21 (acknowledging that, at the time the documents she relied on were created, the Deere personnel did not contemplate the third-party licenses and other agreements with Ag Leader and CNH).

14. Dr. Chipty did not rely on any numerical data such as actual pricing data for her hypothetical monopolist analysis. Chipty Dep. 247:12-15 (“Q. What numerical data did you look at to validate the 5 to 15 percent assumption in those documents? A. So I didn’t look at numerical data.”); Chipty Dep. at 249:19-22 (“[sales] data were not available to me to do the numerical analysis that could have allowed an alternative estimation of the 5 to 15 percent”).

15. Dr. Chipty did not econometrically estimate demand for “high-speed precision planting systems.” Chipty Dep. 257:23-24 (“I myself did not econometrically estimate demand . . . .”).

16. The government does not offer any economic analysis to support the conclusion that a sufficient number of consumers would switch to Precision's vSet, vDrive, SeedSense 20/20, and Speed Tube products (the "Precision Products") rather than divert to other products in response to any post-merger price increase on Deere's ExactEmerge products so as to make such a price increase profitable.

17. The government does not offer any economic analysis to support the conclusion that a sufficient number of consumers would switch to Deere's ExactEmerge products rather than divert to other products in response to any post-merger price increase on the Precision Products so as to make such a price increase profitable.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, John M. Majoras, certify that on April 5, 2017, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send notice of the electronic filing to all counsel of record.

/s/ John M. Majoras  
John M. Majoras