

**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

JOINT INITIAL STATUS REPORT

Pursuant to the Individual Practice Rules of this Court and the Court's September 8, 2016 Minute Entry (Dkt. No. 6), the parties hereby submit this initial status report.

1. Nature of the Case

a. Attorneys of Record

Plaintiff United States is represented by William H. Jones II (lead), Lisa A. Scanlon, Pamela P. Cole, Robin S. Crauthers, Andrew J. Ewalt, Steven Kramer, Ann Lucas, Michael Rabkin, Kelsey W. Shannon, Adam C. Speegle, Paul J. Torzilli and Jeffrey G. Vernon of the Antitrust Division of the Department of Justice, and Thomas P. Walsh, Assistant United States Attorney.

Defendant Deere & Co. is represented by David Meyer, Roxann Henry, David Cross, Jonathan Gowdy, and Jessie Liu of Morrison & Foerster LLP, 2000 Pennsylvania Ave., N.W., Washington, DC 20006; and Ronald Safer, Patricia Holmes, Matthew Fischer, and Valarie Hays

of Riley, Safer, Holmes & Cancila LLP, Three First National Plaza, 70 West Madison St., Suite 2900, Chicago, IL 60602. Mr. Meyer and Ms. Henry will serve as lead trial counsel.

Defendant Precision Planting LLC & Defendant Monsanto Co. are represented by Paul H. Friedman (lead) and Brian Rafkin of Dechert LLP, 1900 K Street, N.W., Washington, DC 20006; Michael Weiner, Morgan Feder, Jill Ross, and Samuel Stelk of Dechert LLP, 1095 Ave. of the Americas, New York, NY 10036; Barbara Wootton, Wrede Smith, and Francesca Pisano of Arnold & Porter LLP, 601 Massachusetts Ave., N.W., Washington, DC 20001; and George Lombardi and Brett Walker of Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, IL 60601.

b. Basis of Federal Jurisdiction

This Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25.

c. Claims Asserted in the Complaint

United States' Position: The United States alleges that Deere's planned acquisition of Precision Planting is likely to substantially lessen competition in the market for high-speed precision planting systems in violation of Section 7 of the Clayton Act. The United States described the bases for its claims in the Complaint, and does not believe substantive argument is appropriate in this Joint Status Report.

Defendants' Position: The transaction will not substantially lessen competition; competition will intensify. Similarly, "high speed precision planting systems" is not a relevant antitrust market and does not reflect economic realities. Deere's acquisition of Precision will bring growers more choices for planting equipment, available through a broader network of dealers and foster greater innovation across the entire crop production cycle leading to increased crop

yields. Moreover, the transaction the plaintiff seeks to enjoin entails not only Deere's acquisition of Precision but also Deere's binding commitments relating to the few Precision products that enable faster planting speeds. These commitments further ensure that the future with the transaction will provide growers with greater choice and intensified competition.

d. Major Legal and Factual Issues

A principal legal and factual issue is whether the alleged “high speed planting systems market” constitutes a relevant antitrust market.

A principal legal issue is whether the planned transaction is likely to substantially lessen competition in the alleged market in violation of Clayton Act § 7.

A principal factual issue is whether the planned transaction is likely to have substantial anticompetitive effects in the alleged market.

Related factual issues may include the merged firm's likely market power in the alleged relevant market, whether potential entry or expansion will prevent the exercise of market power and potential procompetitive effects and efficiencies claimed by Defendants.

e. Relief Sought by the Plaintiff

The United States seeks a permanent injunction preventing Defendants from carrying out the planned acquisition of Precision Planting by Deere or any other transaction that would combine the two companies, and that the United States be awarded costs of this action. Defendants deny that Plaintiff is entitled to any of the relief sought in the Complaint.

2. Pending Motions and Case Plan

a. Pending Motions

Protective Order: Defendants Deere and Monsanto have filed a Motion to Supplement the Protective Order in this action to allow a single in-house counsel at each party to access

confidential information under prescribed processes. (Dkt. Nos. 63, 64). Two competitors of Deere along with Plaintiff have briefed their opposition (Dkt. Nos. 82, 83, 86, 88). Defendants' reply will be filed on October 14, 2016. Defendants request oral argument on this motion at the October 18, 2016 hearing.

Motion to Seal: The United States filed a Motion for Leave to File Under Seal its Opposition to Defendants' Motion to Supplement, and certain exhibits. (Dkt. No. 84). The United States noticed that motion for presentment on October 18, 2016.

b. Proposed Discovery Plan

The Court entered a Scheduling and Case Management Order on September 27, 2016, that set out applicable discovery deadlines. (Dkt. No. 61)

i. General Type of Discovery Needed

The parties anticipate obtaining document discovery, written discovery, and depositions from each other, as well as nonparties. The parties will also engage in expert discovery.

ii. Date for Rule 26(a)(1) Disclosures

In accordance with the Scheduling and Case Management Order, the parties exchanged initial disclosures on October 3, 2016.

iii. Date to Issue Written Discovery

Under the Scheduling and Case Management Order, written discovery must be issued with sufficient time to allow a response before the applicable fact discovery deadline.

iv. Fact Discovery Completion Date

Under the Scheduling and Case Management Order, fact discovery must be complete by December 16, 2016, except for discovery regarding witnesses newly added to the final trial witness lists (which must be exchanged on November 30, 2016).

v. Expert Discovery Completion Date

Under the Scheduling and Case Management Order, the parties will exchange opening expert reports on December 23, 2016 and rebuttal expert reports on January 10, 2017. Expert discovery closes January 19, 2017.

vi. Dispositive Motion Deadline

The United States will not file any dispositive motion. At this time, the Defendants do not anticipate filing any dispositive motions.

c. Trial Length and Jury Trial

No jury trial is requested. The parties estimate that trial will take 15-18 trial days.

The parties ask the Court to consider scheduling a status conference in December, during which the parties could raise procedural and logistical questions relating to trial and any additional issues that may have arisen. The United States proposes that the Court also schedule a status conference in mid-November to address any additional issues that may arise, which could be conducted telephonically, whereas Defendants believe that any issues that may arise during the fact discovery period could be presented to the Court as necessary under the procedures set forth in the Case Management Order. The parties would file with the Court, at least three business days before the date of any scheduled conference, a joint status report stating whether the scheduled conference with the Court is needed and, if so, outlining any issues requiring the Court's assistance.

3. Magistrate Judge

The parties do not consent to proceed before a Magistrate Judge.

4. Status of Settlement Discussions

The parties engaged in settlement discussions before the Complaint was filed, but did not reach an agreement. The parties are not presently engaged in settlement discussions.

The Defendants are open to discussion regarding a Settlement Conference; Plaintiff does not request a Settlement Conference.

Dated: October 13, 2016

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