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CHILE TACKS ON ANTITRUST BEHAVIOURAL REMEDIES IN BAYER/MOSANTO DEAL

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Chile's competition watchdog has conditionally cleared Bayer's acquisition of Monsanto, subject to the divestment of certain seed and herbicide businesses and the agrochemical company agreeing not to offer exclusivity rebates for some of its products.

The enforcer confirmed its clearance of the US$63 million merger on 6 June, which closed on the following day.

As part of the remedies package, Chile's National Economic Prosecutor has prohibited Bayer from offering any exclusivity-related rebates to distributors that sell Monsanto's "Roundup" branded herbicides containing glyphosate. Brands affected by the commitments include Full, Platinum and Ultramax.

The agency has also barred Bayer from tying or packaging the distribution of glyphosate weed killer brands with its other agrochemical products.

Any distribution agreement in which Bayer determines discounts derived from the money value or volume of sales of its products cannot be calculated based on its Roundup glyphosate herbicides, the authority said.

The restrictions on glyphosate herbicide discounts and rebate policies applies for a period of five years starting yesterday.

Brazil's Administrative Council for Economic Defence (CADE) also imposed restrictions on bundling and exclusivity agreements when it conditionally approved the deal in February. Russia and China's clearances of the deal were conditioned on Bayer promising to share patented technology with local farmers in addition to seed and herbicide divestments.

Bayer must ensure that all of its crop science division employees and current distributors are notified of the conditions imposed by the

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Chilean enforcer within 30 business days of its clearance of the deal, the authority said. Bayer must also inform all future crop science division employees and distributors of the commitments relating to the Roundup glyphosate herbicides.

The agrochemical company has also agreed to divest its broad-spectrum herbicide “Basta” brand, as well as parts of its non-selective vegetable seeds businesses. The divestitures are similar to those mandated in Mexico’s clearance of the deal on 5 June.

German chemical company BASF will acquire Bayer’s divested businesses in Chile. Antitrust agencies in multiple jurisdictions – including the US and the EU – have chosen BASF as the preferred divestment purchaser.

The wider merger, which was first announced in September 2016, has garnered considerable antitrust scrutiny worldwide.

In March, the European Commission conditioned its clearance of the deal on significant divestitures, covering Bayer’s entire vegetable seed business and most of its broadacre seeds and trait assets. The European watchdog also specified that Bayer must sell all of its herbicide lines, and three products being researched as alternatives to glyphosate. The divestitures are estimated to be worth more than US$6.9 billion.

The US Department of Justice required Bayer to sell off its seed treatment and digital farming assets.

Canada cleared the deal on the previous week, while South Africa granted the deal a conditional pass in May 2017.

BASF will first takeover Bayer’s divested businesses in the US and Canada. It plans to finalise its control of all the divestments it has acquired by 2019, according to a report issued by the Chilean authority.

A spokesperson for Bayer said the company does not “provide any details on the regulatory process”. Monsanto did not respond to a request for comment.

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