

**Summary of the expert legal opinion of the law firm Linklaters LLP
on the question of whether the members of the Board of Management of
Bayer AG
were acting in line with their duties under German stock corporation law
when taking the decision to enter into and to close the merger agreement
with Monsanto Company,
in particular concerning the liability risks arising from the
glyphosate business**

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The Supervisory Board of Bayer AG, Leverkusen, Germany, instructed the Düsseldorf office of the renowned law firm Linklaters to opine on the question of whether the members of the Board of Management of Bayer AG were acting in line with their duties under German stock corporation law when taking the decision to enter into and to close the merger agreement with Monsanto Company, including risks arising from the glyphosate business.

According to Linklaters expert legal opinion, the members of the Board of Management acted in line with their German statutory legal duties in every respect when they decided to enter into the takeover agreement titled “Agreement and Plan of Merger” (hereinafter: “**Merger Agreement**”). This applies in particular with respect to the handling of the liability risks resulting from Monsanto’s glyphosate business.

Pursuant to section 93 (1) sentence 2 of the German Stock Corporation Act (*Aktiengesetz – AktG*), management board members may exercise a wide entrepreneurial margin of discretion (so-called *business judgement rule*) if, when making entrepreneurial decisions, they can reasonably assume that they are acting on the basis of adequate information and in the company’s best interest. In this context, the relevant perspective for management board members is that at the time of their decision (“*ex-ante-perspective*”). A breach of their legal duties is excluded if they act within the wide margin of discretion that is granted to them.

1. Based on the considerations set out in detail below, Linklaters concludes that the members of the Board of Management of Bayer AG acted in line with the requirements of the business judgment rule and thus fully complied with their duties pursuant to German stock corporation law when taking the decision to enter into the Merger Agreement:
 - (i) The decision of the members of the Board of Management to enter into the Merger Agreement with Monsanto constituted an entrepreneurial decision within the meaning of section 93 (1) sentence 2 AktG, because in the context of this decision, the Board of Management could at least choose between the two legally permitted behavioural alternatives to either pursue the merger on the negotiated basis or to end the takeover attempt.
 - (ii) The members of the Board of Management could reasonably assume, on the whole and also concerning the liability risks arising from the glyphosate business of Monsanto, that they were acting on the basis of adequate information.

The information basis developed covered all essential topics which are relevant in the course of an M&A transaction of such scope. In particular, all apparent chances and risks of the transaction were examined and discussed in detail during a great number of meetings. When this was made, comprehensive information for discussion and decision-making purposes had been considered by the Board of Management, including a very detailed presentation setting out the overall process. The Board of Management also ensured, by means of an adequate and professional update process, that the information basis available to it was at any time up to date and was verified with Monsanto in the course of a confirmatory due diligence prior to the conclusion of the Merger Agreement. Also, the possible risks arising from the – few – glyphosate-related lawsuits pending at that time and from possible further glyphosate-related lawsuits were outlined and assessed on the basis of the scientific findings available. The Board of Management reviewed detailed and regularly updated expert legal advice.

- (iii) Moreover, the members of the Board of Management could reasonably assume to act in the company's best interest. The Board of Management comprehensively weighed all chances and risks of the acquisition and came to the permissible conclusion that the chances created by the acquisition clearly outweighed the risks. In particular, it assumed that the current market situation, which is strongly influenced by a consolidation round, necessarily requires a merger with a company that has a strong position in the "Seeds & Traits" sector in order to remain competitive in the long term. Furthermore, it took into consideration that Monsanto is one of the most innovative companies in the "Seeds & Traits" area and excellently complements Bayer concerning its business portfolio and in regional terms. It furthermore took into consideration that, due to the merger, significant cost and sales synergies could be generated. In the Board of Management's opinion, these advantages related to the acquisition of Monsanto outweighed the considered risks related to the acquisition. The members of the Board of Management consequently could assume, when taking the decision concerning the acquisition, that they were acting in the company's best interest.
2. Finally, the members of the Board of Management were also acting in line with their duties under German stock corporation law when they decided to close the Merger Agreement despite any changes that had occurred following the conclusion of the Merger Agreement.
- (i) The Board of Management was not obliged to satisfy the antitrust authorities' demands for the sale of certain business units in order to gain their approval for the closing of the Merger Agreement and would consequently have been entitled to terminate the Merger Agreement in accordance with its provisions.
 - (ii) The Board of Management's decision to adhere to the Merger Agreement despite the existing termination option and to implement the acquisition was, however, in line with its duties since the Board of Management, also when taking this decision, could reasonably assume that it was acting on the basis of adequate information and in the company's best interest.
 - (iii) Following the conclusion of the Merger Agreement, the Board of Management comprehensively dealt with the progress of the acquisition process in a great number of meetings and informed itself about the chances and risks created by the transaction. It consequently could assume at any time that it was acting on the basis of adequate information.

The decision of the Board of Management to adhere to the Merger Agreement despite the existing termination option was also taken in the company's best interest since the Board of Management had carefully weighed the circumstances speaking in favour of and against the closing of the acquisition and – within the scope of its entrepreneurial margin of discretion – had come to the conclusion, which was comprehensible in every respect, that the closing of the acquisition (still) was in the interest of Bayer. In particular, by terminating the Merger Agreement, it would have deprived itself of all chances created by the acquisition, but Bayer nevertheless would have been required to bear the transaction costs incurred so far and the reverse break-fee to Monsanto in the amount of USD 2 billion.