Translation from German into English

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Summary

of the expert legal opinion of Prof Dr Mathias Habersack of the Ludwig Maximilian University (*Ludwig-Maximilians-Universität*) of Munich on the question of whether the members of the Board of Management (*Vorstand*) of Bayer AG were acting in line with their duties under 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

The Supervisory Board (*Aufsichtsrat*) of Bayer AG, Leverkusen, commissioned Prof Dr Mathias Habersack of the Ludwig Maximilian University of Munich to prepare an expert legal opinion 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 risks arising from the glyphosate business.

According to the results of the legal opinion, it can be ruled out that the members of the Board of Management of Bayer AG breached their duty of care in connection with the conclusion and closing of the Merger Agreement pursuant to section 93 para. 1 sentence 2 of the German Stock Corporation Act (*Aktiengesetz – AktG*). This is because the decisions of the Board of Management to enter into and to close the Merger Agreement with Monsanto are covered by the business judgment rule set out in section 93 para. 1 sentence 2 of the German Stock Corporation Act, pursuant to which, in the context of entrepreneurial decisions, management board members do not act in breach of duty if, when taking these decisions, they could reasonably assume that they were acting on the basis of adequate information and in the company's best interest. Based on the considerations set out in summary below, the members of the Board of Management of Bayer AG did not act in breach of their duty of care when taking their decisions to enter into and to close the Merger Agreement with Monsanto.

The following applies in this context:

1. According to the results of the examination, the members of the Board of Management could, when taking their decision to enter into the Merger Agreement, reasonably assume that they were acting on the basis of adequate information and in the company's best interest and did therefore not act in breach of their duty of care.

    a. Decisions on the implementation of M&A transactions are entrepreneurial decisions. Therefore, the decision of the members of the Board of Management to enter into the Merger Agreement with Monsanto is an entrepreneurial decision within the meaning of section 93 para. 1 sentence 2 of the German Stock Corporation Act.

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The members of the Board of Management could reasonably assume that they were taking the decision on the conclusion of the Merger Agreement, including the liability risks arising from the glyphosate business of Monsanto, on the basis of adequate information.

b. Comprehensive information on the key chances and risks of the transaction, including the risks arising from the glyphosate business of Monsanto and an assessment of these risks, was available to the Board of Management prior to the conclusion of the acquisition. The detailed information on the liability risks arising from the glyphosate business of Monsanto in turn resulted from the fact that the Board of Management had ensured that it was provided with comprehensive information on the scientific findings and risks associated with glyphosate and that such information was evaluated. The Board of Management took the findings derived from these documents and their subsequent updates into account on an ongoing basis in the further acquisition process until the closing of the acquisition. In addition, the Board of Management ensured that the assessments of, *inter alia*, the liability risks arising from the glyphosate business of Monsanto were confirmed by Monsanto in the course of a due diligence process prior to the conclusion of the Merger Agreement.

c. The members of Bayer AG's Board of Management could reasonably assume to act in the company's best interest when they decided to acquire Monsanto. Strategic considerations, which were comprehensible in every respect, were decisive for the Board of Management's decision; the Board of Management assumed and was also permitted to assume that the terms of the acquisition negotiated and agreed with Monsanto were attractive for Bayer and that the financial burden associated with the obligation to pay the purchase price was bearable. The Board of Management deemed the risks associated with the acquisition to be manageable – which is also perfectly plausible. This applies in particular also to the liability risks arising from Monsanto's glyphosate business of which the Board of Management was aware and which it took into account when making its decision. In this respect, based on the comprehensive information available to it, the Board of Management was permitted to assume that the prospects of success of the pending lawsuits or any potential lawsuits were low. This view of the Board of Management was plausible and reasonable in all respects in particular because national regulatory authorities worldwide agreed that glyphosate-based herbicides do not cause cancer if used under the conditions intended.

2. According to the results of the examination, the members of the Board of Management could also reasonably assume that they were acting on the basis of adequate

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information in the company's best interest when taking their decision to close the Merger Agreement, thus not having acted in breach of their duty of care.

a. The Board of Management's decision to close the Merger Agreement can undoubtedly be qualified as a business decision because the Board of Management had to choose between two behavioural alternatives and had to predict the consequences of those two behavioural alternatives.

b. Furthermore, when deciding to close the Merger Agreement, the Board of Management was also in possession of adequate information with respect to the liability risks in connection with Monsanto's glyphosate business. Following the conclusion of the Merger Agreement and until the closing of the acquisition of Monsanto, the Board of Management comprehensively dealt with the progress of the acquisition process. In particular with respect to any potential liability risks in connection with Monsanto's glyphosate business, the Board of Management could base its decision on updated information regarding pending or potential lawsuits.

c. Furthermore, from the ex-ante-perspective, which is the only perspective that is relevant in this respect, the Board of Management's decision to close the Merger Agreement is reasonable in every respect so that the members of the Board of Management were permitted to assume that they were acting in Bayer AG's best interest. What was decisive for the Board of Management's decision was, first of all, the fact that the potential for value creation of the Monsanto acquisition had not changed compared to the planning prepared in 2016 and that the acquisition of Monsanto was still very attractive and still met the expectations initially envisaged for the transaction. Specifically in connection with the liability risks from the glyphosate business, the Board of Management was permitted to assume that these risks had not changed materially since the conclusion of the Merger Agreement. This is because, according to the then present state of scientific knowledge, glyphosate-based herbicides, if used under the conditions and for the purposes intended, was still deemed not to be likely to pose any risk in relation to causing cancer in humans. Furthermore, by terminating the Merger Agreement, Bayer would not only have deprived itself of all chances created by the acquisition but would also have been required to pay a penalty of U.S.$2 billion.