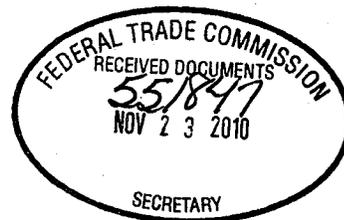


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of
AGRIUM INC.,
a corporation.

Docket No. C-4277

PETITION OF AGRIMUM, INC. TO REOPEN AND SET ASIDE ORDERS

Pursuant to Section 5(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(b), and Section 2.51 of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.51, Agrium, Inc. (“Agrium”), Respondent in the above-captioned matter, hereby petitions the Federal Trade Commission (“Commission”) to reopen and set aside the Commission’s Decision and Order (“Consent Agreement”), dated February 3, 2010, and the Order to Hold Separate and Maintain Assets (“Hold Separate Order”), dated December 22, 2009 (collectively, the “Orders”) in their entirety.

The Orders were premised upon Agrium’s acquisition of CF Holdings, Inc. (“CF”). But at the time the Orders were issued, CF was itself attempting to acquire another company, Terra Industries, Inc. (“Terra”). CF’s efforts to acquire Terra were ultimately successful, and Agrium abandoned its plans to acquire CF as a result. Accordingly, there has been a material change in fact and circumstances that renders the provisions of the Orders unnecessary. Agrium will not proceed with the proposed acquisition of CF due to CF’s acquisition of Terra, and thus, the Orders’ remedial

measures are no longer required to preserve competition in the relevant markets defined by the Commission's complaint in this matter ("Complaint"). Additionally, the Orders no longer serve the public interest.

I. Factual Background

On February 25, 2009, Agrium proposed to acquire all of the voting shares of CF for approximately \$3.6 billion. After CF rejected this proposal, Agrium periodically increased the price of its offer, culminating in a proposal of approximately \$4.5 billion on November 5, 2009. On December 22, 2009, the Commission accepted, subject to final approval, an Agreement Containing Consent Orders, the Hold Separate Order and the Consent Agreement that would have allowed Agrium to acquire CF subject to certain divestitures and other relief. Final approval was granted on February 3, 2010. The Orders would have settled the Commission's Complaint, which was issued simultaneously and alleged that Agrium's acquisition of CF would have anticompetitive effects in certain relevant markets, violating Section 5 of the FTC Act, as amended 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended 15 U.S.C. § 18.

The Orders required, among other obligations, that Agrium divest itself of terminal assets in Illinois and the Pacific Northwest, terminate its distribution agreement with Rentech Energy Midwest Corporation, maintain and hold separate its Marseilles, Illinois terminal ("Marseilles Terminal"), and periodically inform the Commission of the steps Agrium had taken to maintain and hold separate the Marseilles Terminal. Consent Agreement ¶¶ II.A, III.A, IV.A, IX.A; Hold Separate Order ¶ II.

Though the Complaint and Orders were premised on the consummation of the Agrium-CF acquisition, Agrium announced on March 11, 2010 that it would not go forward with the acquisition. Instead, Agrium let its outstanding offer to CF expire on

March 22, 2010. See Press Release, Agrium, Agrium to Terminate Offer to Acquire CF Industries (Mar. 11, 2010) available at <http://www.agrium.com/news/1578.jsp>. Agrium made this decision after CF acquired Terra, thereby changing the contours of the proposed acquisition. Following the acquisition of Terra by CF, and as stated in the accompanying Affidavit in Support of Petition of Agrium, Inc. to Reopen and Set Aside Orders (“Affidavit”), Agrium no longer intends to pursue an acquisition of CF and has withdrawn its pre-merger notification filing. Affidavit ¶¶ 12, 13, attached as Exhibit A.

II. Argument

Because the CF-Terra acquisition and subsequent termination of the proposed Agrium-CF acquisition constitute a material change in fact, and because there is no public interest served by keeping the Orders in place, the Commission should reopen and set aside the Consent Agreement and the Hold Separate Order in their entireties.

A. Legal Standard for Reopening and Setting Aside an Order

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission’s Rules of Practice, 16 C.F.R. § 2.51, provide that, upon the request of a party, the Commission shall reopen an order and consider whether it should be modified if the party establishes “a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified, or set aside, in whole or in part, or that the public interest so requires.” 16 C.F.R. § 2.51(b) (2010). A request to reopen is sufficient when it “identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.” *In re Eli Lilly and Co.*, Docket No. C-3594, Order Reopening and Setting Aside Order, 127 FTC 577, 578 (May 13, 1999). Reopening is also appropriate where a respondent makes “a *prima facie* showing

of a legitimate ‘public interest’ reason or reasons justifying relief.” 65 Fed. Reg. 50637 (Aug. 21, 2000). Once the Commission reopens an Order, it then proceeds to balance the reasons favoring the requested modification against any reasons disfavoring the modification. The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm. 16 C.F.R. § 2.51 (2010). Agrium respectfully asserts that both the changed circumstances and public interest standards are met.

B. The Changed Conditions of Fact Warrant Reopening and Setting Aside the Orders

The stated purpose of the remedial actions in the Commission’s Consent Agreement is to “remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission’s Complaint.” Consent Agreement ¶ IV.B. Similarly, the purpose of the Hold Separate Order is to facilitate the purpose of the Consent Agreement in remedying the lessening of competition as alleged in the Complaint. *See* Hold Separate Order ¶¶ II.D, III.E, IV.C, V.D, and VI.F. The Complaint, in turn, hinged on the fact that the Commission believed that the proposed Agrium-CF acquisition would violate the Clayton and Federal Trade Commission Acts. *See* Compl. 1. The acquisition in question, however, never occurred. As affirmed in the accompanying Affidavit, Affidavit ¶¶ 12, 13, attached as Exhibit A, and stated in a Press Release dated March 11, 2010, “Agrium . . . will no longer pursue an acquisition of CF Industries Holdings Inc. or the election of its nominees to the CF board of directors.” *See* Press Release, Agrium, *supra*. According to Commission precedent, termination of a transaction constitutes a change in fact sufficient to vacate an order because it eliminates any need for it. *In re Johnson & Johnson Corp.*, Docket No. C-4154, Order Reopening

and Setting Aside Order, at *4 (May 25, 2006). Without the Agrium-CF acquisition, the factual underpinnings of the Commission's Complaint and subsequent Orders have been eliminated.

C. The Public Interest Warrants Reopening and Setting Aside the Orders

Because Agrium has abandoned the proposed acquisition of CF, no public interest is served by keeping the Orders in place. In addition to serving no benefit, the Orders impose significant costs on Agrium. The Orders limit how Agrium conducts business at its Marseilles Terminal: limiting Agrium from transferring or firing employees; requiring it to maintain current contracts; requiring it to continue existing levels of maintenance and continue with previously-planned improvements; preventing it from selling any part of the Marseilles Terminal property or using it as collateral; requiring Agrium to maintain corporate financial support; and requiring it continue EH&S and engineering support services. Affidavit ¶ 9, attached as Exhibit A.

In addition, the Orders require Agrium to submit periodic reports to the FTC documenting Agrium's compliance with the Orders. These reports require considerable attention from Agrium's executives, attorneys and staff. Affidavit ¶ 10, attached as Exhibit A. They must interview staff and review records to ensure that Agrium has continued to hold separate and maintain the Marseilles Terminal. *Id.* These costs create no value and are passed on to Agrium's customers and its shareholders.

The public interest is best served by setting aside the Orders. Both because the Orders' costs outweigh their benefit and because "clearing the marketplace of outdated orders can often be one of the most pro-competition and pro-consumer activities an agency can perform." *In re LaFarge S.A.*, Docket No. C-4014, Petition of LaFarge

S.A. To Reopen and Set Aside Order at *8 n.14 (FTC Apr. 29, 2005) (quoting FTC Press Release (Aug. 9, 1995) (remarks of Chairman Pitofsky)). Agrium's request to set aside the Orders and eliminate unnecessary costs and burdens is therefore consistent with the "pro-competition" and "pro-consumer" goals of the Commission. Press Release, FTC, FTC to "Sunset" Existing Administrative Orders Automatically after 20 Years, under New Rule (November 20, 1995) available at <http://www.ftc.gov/opa/1995/11/sun3.shtm>; Bureau of Competition, FTC, *Competition Counts: How Consumers Win When Businesses Compete*, available at <http://ftc.gov/bc/edu/pubs/consumer/general/zgen01.pdf>.

III. Conclusion

For the foregoing reasons, Agrium respectfully requests that the Commission set aside the Consent Agreement and the Hold Assets Order in their entirety.

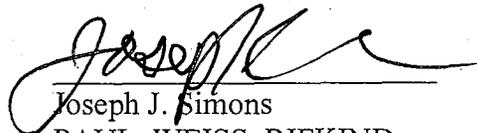

Joseph J. Simons
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON, LLP
2001 K Street N.W.
Washington, D.C. 20006
Tel: 202-223-7300
Fax: 202-223-7420
jsimons@paulweiss.com
Counsel for Agrium, Inc.

Exhibit A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of
AGRIUM INC.,
a corporation.

Docket No. C-4277

**AFFIDAVIT OF JONI PAULUS IN SUPPORT OF PETITION OF AGRIUM, INC.
TO REOPEN AND SET ASIDE ORDERS**

I, Joni Paulus, hereby state as follows:

1. I am General Counsel of Agrium, Inc., a company organized, existing, and doing business under the laws of Canada.

2. I submit this affidavit, in support of Agrium's Petition to Reopen and Set Aside Orders ("Petition").

3. On February 25, 2009, Agrium proposed to acquire all of the voting shares of CF for approximately \$3.6 billion. CF rejected this offer, and Agrium periodically increased its proposed purchase price, finally offering approximately \$4.5 billion on November 5, 2009.

4. On December 22, 2009, the Commission accepted, subject to final approval, an Agreement Containing Consent Orders, an Order to Hold Separate and Maintain Assets, and a Proposed Decision and Order ("Proposed Consent") (collectively, the "Orders") that would have allowed Agrium to acquire CF subject to certain divestitures and other relief in order to settle the Commission's simultaneously-issued complaint alleging that the acquisition would have anticompetitive effects in certain relevant markets.

5. On February 3, 2010, the Commission made the Proposed Consent final. Agrium has provided all of the reports required by the Orders and complied with the other provisions of the Orders as well.

6. I have read and am familiar with the Decision and Order ("Consent Agreement") dated February 3, 2010, and the Order to Hold Separate and Maintain Assets ("Hold Separate Order") dated December 22, 2009.

7. The Orders require Agrium to, among other obligations, retain all interest in its Marseilles, IL terminal ("Marseilles Terminal"), maintain the employees of the Marseilles Terminal, maintain relationships with the terminal's current vendors and

suppliers, continue maintenance and planned upgrades, and maintain financial, EH&S, engineering, and corporate support for the Marseilles Terminal.

8. As General Counsel, I am familiar with Agrium's efforts to comply with the Orders, and have assisted in the preparation of the compliance filings Agrium has submitted to the Commission pursuant to the Orders documenting its efforts to hold separate and maintain the Marseilles Terminal. Prior to the finalization of the Consent Agreement, these compliance filings were due every thirty days. They are now due every sixty days.

9. The Orders constrain how Agrium operates the Marseilles Terminal. For example, Agrium cannot fire workers or transfer them from the Marseilles Terminal to another part of the company. Agrium must maintain current standards of maintenance and continue planned upgrades regardless of whether those upgrades are in the best interest of Agrium. It must maintain current relationships with suppliers and vendors, and it must maintain financial, EH&S, engineering and corporate support for the Marseilles Terminal.

10. In addition, the 60-day reports require Agrium's lawyers and senior executives to conduct an investigation including interviewing staff and reviewing records to ensure that Agrium's compliance obligations have been met. The cost in lawyer fees and employee time of these reports is in the thousands of dollars per report.

11. On March 12, 2010, CF entered into a merger agreement with Terra Industries, Inc. ("Terra").

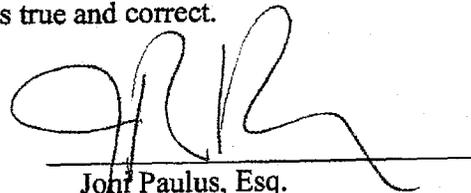
12. Given CF's proposed merger with Terra, Agrium declared that it would not proceed with its proposed acquisition of CF.

13. Agrium's outstanding bid to acquire all of CF's voting shares expired on March 22, 2010. Agrium has withdrawn its HSR filing and no longer intends to pursue an acquisition of CF. Attached as Exhibit 1 is a letter from Joseph J. Simons, Counsel for Agrium, withdrawing Agrium's HSR filing.

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed November 19, 2010



John Paulus, Esq.

Exhibit 1

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

2001 K STREET, NW
WASHINGTON, DC 20006-1047

TELEPHONE (202) 223-7300

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

WRITER'S DIRECT DIAL NUMBER

(202) 223-7370

WRITER'S DIRECT FACSIMILE

(202) 204-7370

WRITER'S DIRECT E-MAIL ADDRESS

jsimons@paulweiss.com

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

PARTNERS RESIDENT IN WASHINGTON

CRAIG A. BENSON
HENK BRANDS
PATRICK S. CAMPBELL
CHARLES E. DAVIDOW
KENNETH A. GALLO
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MARCO V. MASOTTI*
EDWIN S. MAYNARD*
DAVID W. MAYO*
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ROBYN F. TARNOFSKY*
JUDITH R. THOYER*
DANIEL J. TOAL*
MARK A. UNDERBERG*
LIZA M. VELAZQUEZ*
LAWRENCE G. WEE*
THEODORE V. WELLS, JR.*
STEVEN J. WILLIAMS*
LAWRENCE I. WITDORCHIC*
JORDAN E. YARETT*
KAYE N. YOSHINO*
TONG YU*
TRACEY A. ZACCONE*
T. ROBERT ZOCHOWSKI, JR.*

*NOT AN ACTIVE MEMBER OF THE DC BAR

November 23, 2010

Via Facsimile and Hand Delivery

Premmerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Attention: Mr. B. Michael Verne

Department of Justice
Antitrust Division, Office of Operations
Premmerger Notification Unit
950 Pennsylvania Avenue, N.W. Room 3335
Washington, DC 20530

Re: Premmerger Notification and Report Forms of Agrium Inc.
Transaction Numbers 2010-0094 and 2010-0095

Ladies and Gentlemen:

On behalf of Agrium Inc., as acquiring person, I hereby withdraw, effective immediately, the above-referenced Premmerger Notifications filed with respect to proposed acquisitions of voting securities of Terra Industries Inc. (2010-0094) and CF Industries Holdings, Inc. (2010-0095). By copy of this letter, I am notifying Robert S. Tovsky and Eric D. Rohlck of the Federal Trade Commission of this withdrawal.

Kindly acknowledge receipt of this letter by stamping the enclosed copy and returning it to our waiting messenger.

If you have any questions, please call me at (202) 223-7370.

Very truly yours,



Joseph J. Simons

Enclosure

cc: Eric D. Rohlek, Esq.
Robert S. Tovsky, Esq.