

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

**COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch**

In the Matter of)	
)	
Agrium, Inc.,)	
a foreign corporation,)	
)	
and)	
)	Docket No. C-4219
UAP Holding Corp.,)	
a corporation.)	
)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondents Agrium Inc. ("Agrium"), a foreign corporation, and UAP Holding Corp. ("UAP"), a Delaware corporation having its principal place of business in Colorado, both subject to the jurisdiction of the Commission, have agreed to merge, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Agrium is a Canadian corporation organized, existing, and doing business under, and by virtue of, the laws of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive SE, Calgary, Alberta, Canada, T2J 7E8. In the United States, Agrium operates its chemical and agricultural business through its subsidiary, Agrium USA, headquartered at Suite 1700, 4582 South Ulster Street, Denver, Colorado, 80237. Agrium is a multinational fertilizer and farm products company that develops, manufactures, and markets chemical and agricultural products and services that it distributes to customers in the Americas and elsewhere.

2. Respondent UAP is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 7251 W 4th Street, Greeley, Colorado, 80634. UAP is an agricultural products company that develops, manufactures, and markets a line of products and value-added services including chemicals, fertilizer, and seed to farmers, commercial growers, and regional dealers throughout the world.

II. JURISDICTION

3. Agrium and UAP are, and at all times relevant herein have been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

4. Agrium and UAP announced on December 3, 2007, that their respective boards of directors had approved the sale and purchase of all outstanding shares of UAP stock to Agrium for approximately \$2.65 billion pursuant to the stock purchase agreements by and between Agrium and UAP. As a result of the merger, Agrium will hold 100% of the voting securities of UAP. Upon completion of the merger, UAP will become a wholly owned subsidiary of Agrium.

IV. VIOLATIONS CHARGED

Product Market

5. The relevant line of commerce in which to analyze the effects of the proposed merger described herein is the retail sale of bulk fertilizer by farm stores, together with, in certain cases, related services. Retail farm stores sell mainly three classes of products: pesticides, seed, and fertilizer. Additionally, farm stores can deliver a range of services to meet the specific needs of particular growers. Retail farm stores, for example, often deliver fertilizer directly to the grower, and in many cases apply fertilizer to growers’ fields, usually with the store’s equipment. The stores often provide a variety of agronomic services to the grower in order to help maximize the efficiency of the fields.

6. Farm stores physically consist largely of office space, a shed housing substantial storage, especially for fertilizer, and usually a bulk blending plant for dry fertilizer. To be a full-service operation, a farm store must have a blender. Farm stores also usually have rolling stock consisting of trucks of various sizes, and, if they perform application services, various pieces of spreader and applicator machinery.

7. Fertilizer is sold to commercial growers mostly in bulk, in three ways: solid (“dry”), liquid, and gas (anhydrous ammonia). With the exception of small quantities of micronutrients, bulk fertilizer consists of nitrogen, potash or phosphates, or some combination of them. Bulk dry fertilizer is sometimes sold and applied in pure form, but for small and medium-sized growers it is more often custom-blended at the farm store to meet the grower’s particular needs. Liquid fertilizer, unlike dry, does not require bulk blending. Bulk dry fertilizer is difficult to handle and store, expensive to ship, and generally must be blended and purchased locally.

8. Farmers typically want one-stop shopping from their farm stores, favoring a single provider who can provide all the inputs and services they require. Although farmers sometimes visit the store, sales representatives from the stores invariably call upon the farmers, and bulk fertilizer is usually delivered to the farms in trucks or spreaders.

9. Bulk fertilizer is a critical product without which most agricultural growers cannot profitably operate. Growers must have it, must have the proper amount, and must have it exactly on time, to produce their harvest. Fertilizer is usually applied before planting, and then again at the same time as planting. Along with occasional applications during the growing season, there is usually a fall application of fertilizer. Agricultural growers have no close substitutes for bulk fertilizer purchased through farm stores.

Geographic Market

10. The relevant geographic markets within which to analyze the likely effects of the proposed transaction are a series of small areas within the United States, typically extending 20-30 miles from a farm store. Transportation costs can make fertilizer prices less competitively attractive at distances over about 25-30 miles because of high fuel costs and the low price-to-weight ratio of bulk fertilizer. Furthermore, application services require application equipment that often travels slowly, and can tie up several employees and pieces of equipment if traveling more than 20-30 miles. Beyond this distance, farm stores cannot effectively service growers, since their sales and operations staff need to visit customers’ farms frequently and thereby maintain the relationship upon which the business depends.

Market Structure

11. The proposed merger of Agrium and UAP would impact six geographic markets, including three in the central “thumb” of Michigan, two in east/central Michigan, and one on the eastern shore of Maryland. Specifically these areas are Croswell, MI; Richmond, MI; Imlay City, MI; Vestaburg, MI; Standish, MI; and Pocomoke/Girdletree, MD. In each of these identified areas, Agrium and UAP own farm stores that are well-situated among a small number of competitors in the market for the group of growers located proximate to their stores. The pricing of bulk fertilizer by the retail farm store to any particular customer within the store’s trade area depends on a number of factors, and typically is the product of individual negotiations between a farm store and a grower.

12. In Croswell, Agrium has four farm stores between 10 and 19 miles from UAP's Croswell store. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores and east of Croswell.

13. In Richmond, UAP's Richmond store is 26 miles southeast of Agrium's Melvin store. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores and east of Richmond.

14. In Imlay City, UAP's Imlay City store is 17 miles northeast of Agrium's Melvin store, and 13 miles northeast of Agrium's Brown City store. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores, and the area north and east of Melvin.

15. In Standish, UAP's Standish store is 16 miles north of Agrium's store in Linwood, and eight miles north of an Agrium satellite location at Pinconning. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores, and the area north of Standish.

16. In Vestaburg, UAP's Vestaburg store is located 22 miles west of Agrium's store in Breckenridge. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores.

17. In Girdletree and Pocomoke, Agrium's Snow Hill store is 12 miles northeast of UAP's store in Pocomoke City, and six miles north of UAP's Girdletree location. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores, extending a few miles south of UAP's locations and a few miles north of Agrium's location.

Conditions of Entry

18. New entry would not prevent or counteract the anticompetitive effects of this acquisition in these relevant markets. New farm store entry has become highly infrequent, due to the risks involved in expending significant sunk costs to obtain enough customers to make a new store viable in a mature industry. Furthermore, because reliable supply and service is so important, loyalty to existing suppliers is typically high among growers, making it particularly difficult for a new entrant to develop a sufficient customer base.

Effects of the Acquisition

19. In the areas identified in paragraphs 11 through 17, above, UAP and Agrium compete directly with each other in the retail sales of bulk fertilizer. Other competitors are not effective competitive constraints to Agrium or UAP throughout each relevant trade area, due to factors such as location, and size and scale of their operations.

20. The effects of the merger, if consummated, may be to substantially lessen competition or tend to create a monopoly in each of the relevant retail farm store markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the merger would:

- a. eliminate actual, direct, and substantial competition between Agrium and UAP in the relevant markets;
- b. increase Respondents' ability to exercise market power unilaterally in the relevant markets; and
- c. substantially increase the level of concentration in the relevant markets and enhance the probability of coordination.

21. The merger agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

22. The merger described in Paragraph 4, if consummated, would constitute a violation of 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of May, 2008, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL