

ANALYSIS OF THE AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

*In the Matter of Agrium Inc. and CF Industries Holding, Inc.,
File No. 091-0068, Docket Number C-4277*

I. Introduction

The Federal Trade Commission (“Commission” or “FTC”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Agrium Inc. (“Agrium”), that will completely remedy the anticompetitive effects that would likely result from Agrium’s proposed acquisition of CF Industries Holdings, Inc. (“CF”). Under the terms of the Consent Agreement, Agrium is required to, among other things, divest anhydrous ammonia (“AA”) terminals in Ritzville, Washington, and Marseilles, Illinois to Terra Industries Inc. (“Terra”) or another Commission-approved purchaser. Agrium is also required to divest its rights to market and distribute the AA produced by Rentech at Rentech’s East Dubuque, Illinois manufacturing plant back to Rentech.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

II. Description of the Parties and the Proposed Acquisition

Agrium, a Calgary, Alberta-based company, is a major supplier of agricultural products and services in North and South America. It is also a leading global producer, distributor, and marketer of three primary groups of fertilizers: nitrogen, phosphate, and potash, as well as control release fertilizers and micronutrients. Agrium’s operations in North America include four nitrogen fertilizer manufacturing plants and ten fertilizer storage and distribution terminals. Agrium’s total net sales in 2008 were approximately \$10 billion.

CF Industries Holdings, Inc. is headquartered in Deerfield, Illinois, and is the holding company for CF Industries, Inc., a major producer and distributor of nitrogen and phosphate fertilizers. CF owns two nitrogen fertilizer manufacturing plants and twenty-two fertilizer storage and distribution terminals in North America. Its customers include cooperatives and independent fertilizer retailers primarily located in the eastern and western cornbelt states. CF’s total net sales in 2008 were approximately \$3.9 billion.

On February 25, 2009, Agrium publicly announced that it had submitted a proposal to CF’s board of directors to acquire CF for a total consideration of approximately \$3.6 billion. Since then, Agrium has repeatedly extended its tender offer and CF’s Board of Directors has consistently rejected these offers. Most recently, Agrium increased its offer to approximately

\$4.95 billion. This offer will expire on January 22, 2010. If CF accepts Agrium's tender offer, Agrium will hold 100 percent of the voting securities of CF, and CF will become a wholly owned subsidiary of Agrium.

III. The Proposed Complaint

The proposed complaint alleges that Agrium's acquisition of CF, if consummated, may substantially lessen competition or tend to create a monopoly in the distribution and sale of AA in the Pacific Northwest ("PNW") and two geographic areas in Northern Illinois 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. Specifically, the acquisition would eliminate actual, direct, and substantial competition between Agrium and CF in the relevant markets; increase Agrium's ability to exercise market power unilaterally in the relevant markets; and substantially increase the level of concentration in the relevant markets and enhance the probability of coordination in the two markets in Northern Illinois.

AA is one of the three major forms of nitrogen fertilizer with the other two being urea and urea ammonia nitrate ("UAN"). Of the three nitrogen-based fertilizers, AA has the highest nitrogen content at 82 percent, while urea and UAN have 46 percent and 28 to 32 percent nitrogen content, respectively. AA also tends to be the least expensive nitrogen fertilizer on a per pound of nitrogen basis. Thus, AA can often be the most cost effective means to deliver nitrogen to the soil.

When deciding which type of nitrogen fertilizer to use, customers consider soil and topographical characteristics, equipment, and weather. AA is the most cost effective and efficient to use in dry areas where the topsoil is relatively thin. In moist conditions, there is a danger that AA will leach into the water table, thus becoming less effective, and that the heavy machinery required to apply AA would damage the field.

AA is applied as a fertilizer directly by injecting or "knifing" it into the soil. This process requires specialized equipment to transport, store, and apply the fertilizer. Customers who use AA have already made significant investments to acquire the necessary infrastructure and application equipment. Switching away from AA thus would require customers to: (a) abandon the investments they have already made to use AA; and (b) make additional investments to obtain the necessary infrastructure and application equipment to apply other nitrogen products. These investments are costly and switching from AA to one of the other nitrogen-based fertilizers would be time-consuming. Thus, existing customers are not likely to shift away from using AA.

The proposed complaint alleges that the three geographic areas in which to analyze the competitive effects of the transaction are the PNW and two adjacent areas in Northern Illinois. AA is transported from its site of production or from import terminals by barge, pipeline, rail, and truck to fertilizer storage terminals or, in limited situations, directly to fertilizer retailers. From there, AA is delivered by truck to local fertilizer retailers, where it is stored in smaller scale storage tanks. The fertilizer retailers pump liquid AA from their storage tanks into smaller

mobile nurse tanks. These nurse tanks are then towed to a farmer's field and hitched behind a tractor for application. Because fertilizer application seasons are highly compressed, fertilizer retailers expect a timely and reliable source of AA supply to meet customer demand during the peak of application season. As transportation costs can make it difficult for terminal owners to be price competitive and profitable, AA distributors must have adequate terminals or storage facilities within 100 to 140 miles of customer locations.

In the PNW, Agrium and CF are the only major suppliers of AA. Thus, the proposed acquisition would reduce the number of significant AA suppliers in the PNW from 2 to 1. In the two areas in Northern Illinois, Agrium and CF are two of only three significant suppliers of AA. As a result, the proposed acquisition would reduce the number of major AA suppliers in those areas from three to two.

As stated in the proposed complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. A new entrant would need: (1) sufficient AA storage capacity to supply customers; (2) a proper distribution infrastructure; and (3) a secure source of AA for the storage facility. For a new entrant to satisfy each of these steps requires significant sunk costs, onerous regulatory approvals and local permitting, and technical expertise. This does not take into account the cost and time it takes to achieve a significant market impact. Thus, it is unlikely that new entry or fringe expansion from another supplier would be timely, likely, or sufficient enough to thwart anticompetitive harm from the proposed acquisition.

IV. The Terms of the Agreement Containing Consent Orders

The Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition and preserve competition in each of the relevant markets. Under the terms of the Consent Agreement, Agrium would be required to divest: (1) the CF Ritzville, Washington AA terminal; (2) its Marseilles, Illinois AA terminal; and (3) its rights to market the AA produced by Rentech at Rentech's East Dubuque, Illinois, manufacturing plant. Agrium plans to divest the Ritzville and Marseilles terminals to Terra, but the proposed Decision and Order provides for a divestiture to another purchaser with a source of AA if Terra is unable to accomplish the divestitures. The Order also provides that Rentech will receive the rights to distribute and market the AA produced in its own manufacturing facility in East Dubuque. Pursuant to a settlement agreement between Agrium and the Canadian Competition Bureau, Terra will acquire a 50 percent interest in Agrium's nitrogen fertilizer production plant in Carseland, Alberta. The Carseland divestiture will give Terra an unencumbered supply of AA for the Ritzville, Washington terminal.

The Order to Hold Separate and Maintain Assets requires Agrium to maintain the assets to be divested and operate the Ritzville Terminal independently until the respective divestitures are completed.

A. Key Provisions of the Decision and Order

The proposed Decision and Order will allow for effective divestiture of the key assets that today allow CF to provide an independent competitive presence to Agrium in the relevant markets, and therefore will preserve the market structure. Paragraph II of the Decision and Order provides that Agrium divest the Ritzville Terminal and Carseland Facility Interest to Terra within forty-five days of Agrium's acquisition. This paragraph further states that in the event that the Ritzville Terminal divestiture cannot be made to Terra, Agrium will have one-hundred-twenty days from the date the Decision and Order becomes final to divest these assets to a Commission-approved acquirer that has a secure and stable, independent, long-term source of AA.

Paragraph III of the Decision and Order provides that Agrium divest the Marseilles Terminal to Terra within forty-five days of Agrium's acquisition of CF. If this does not occur, the Order requires that Agrium divest the Marseilles Terminal to a Commission-approved acquirer within one-hundred-twenty days from the date the Decision and Order becomes final. Paragraph IV requires Agrium to terminate its rights to distribute AA produced by Rentech pursuant to the Agrium/Rentech Distribution Agreement no later than five days after Agrium acquires CF.

The Decision and Order defines the scope of the assets to include the attributes of an ongoing business, such as necessary real property, tangible personal property, inventories, contracts, records of the business, accounts receivable permits, and all applicable regulatory registrations, permits, and applications. Pursuant to Paragraphs II.G and III.G of the proposed Decision and Order, Agrium also is required to provide necessary transition services to Terra or another Commission-approved acquirer. The purpose of this provision is to allow for a smooth transition of the terminal operations to the acquirer.

Paragraph V of the proposed Decision and Order requires that the Parties keep private, except where necessary under the agreement, confidential business information related to the divested terminals. Paragraph VI of the proposed Decision and Order provides for appointment of a divestiture trustee. Paragraph VII of the Decision and Order provides mechanisms for the retention of Ritzville Terminal and Marseilles Terminal employees by the Commission-approved acquirer.

Paragraph VIII of the proposed Decision and Order requires that the Parties provide the Commission with "advance written notification" of any intent to acquire assets or interests in terminals that store AA in any area affected by the proposed divestitures. Paragraphs IX-X define reporting obligations. Paragraph XI requires Agrium to provide the Commission access to company information and employees for purposes of determining or securing compliance with the Decision and Order. Paragraph XII states that the Decision and Order shall terminate ten years after the date on which the Order becomes final.

B. Key Provisions of the Order to Hold Separate and Maintain Assets

The Order to Hold Separate and Maintain Assets (“Hold Separate Order”) requires that Agrium maintain the Marseilles Terminal, Ritzville Terminal, and Carseland Facility assets until such time as the assets are divested. The Hold Separate Order requires that Agrium establish a system to maintain confidential information until the divestitures are completed. It also gives the Commission the option to appoint a Monitor to ensure that Agrium complies with all of its obligations and performs all of its responsibilities as required by the Decision and Order and the Hold Separate Order. The Hold Separate Order incorporates the traditional provisions that allow the Monitor broad oversight of the assets, and requires the Monitor to report to the Commission on a regular basis. The Hold Separate Order also requires Agrium to maintain the Ritzville Terminal assets as an independent business pending divestiture. After the acquisition, the Commission can require Agrium to appoint a Manager to run the terminal on an independent basis pending the divestiture of the assets. Finally, the Hold Separate Order allows the Commission to appoint a Hold Separate Trustee to operate the assets if the assets are not divested by the deadline set by the Commission.

The purpose of this analysis is to invite public comment on the proposed Consent Agreement, in order to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement nor is it intended to modify the terms of the proposed Consent Agreement in any way.