

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

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney**

)	
In the Matter of)	
)	
Agrium Inc.,)	
a corporation;)	
)	Docket No. C-4638
Potash Corporation of Saskatchewan)	
Inc.,)	
a corporation; and)	
)	
Nutrien Ltd.,)	
a corporation.)	
)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Potash Corporation of Saskatchewan Inc. (“PotashCorp”), a corporation subject to the jurisdiction of the Commission, and Respondent Agrium Inc. (“Agrium”), a corporation subject to the jurisdiction of the Commission, have agreed to merge, such that each shall become a subsidiary of Respondent Nutrien Ltd. (“Nutrien”), a corporation, 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, 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 PotashCorp is a corporation organized, existing, and doing business under and by virtue of the laws of Canada with its headquarters and principal place of business located at 122 1st Avenue South, Saskatoon, Saskatchewan, Canada S7K 7G3.

2. Respondent Agrium is a corporation organized, existing, and doing business under and by virtue of the laws of Canada with its headquarters and principal place of business located at 13131 Lake Fraser Drive S.E., Calgary, Alberta, Canada T2J 7E8.

3. Respondent Nutrien is a corporation organized, existing, and doing business under and by virtue of the laws of Canada with its registered office located at 122 1st Avenue South, Suite 500, Saskatoon, Saskatchewan, Canada S7K 7G3, and its principal places of business to be located at 122 1st Avenue South, Suite 500, Saskatoon, Saskatchewan, Canada, S7K 7G3 and at 13131 Lake Fraser Drive S.E., Calgary, Alberta, Canada T2J 7EK.

II. JURISDICTION

4. Respondents PotashCorp and Agrium, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE PROPOSED MERGER

5. Pursuant to an Arrangement Agreement (the “Merger Agreement”) dated September 11, 2016, PotashCorp and Agrium have agreed to a merger (the “Merger”) in which PotashCorp and Agrium shareholders will own 52% and 48% of Nutrien, respectively.

IV. THE RELEVANT PRODUCT MARKETS

A. Superphosphoric Acid

6. Superphosphoric acid (“SPA”) is a relevant product market in which to analyze the effects of the Merger. SPA is a highly concentrated form of phosphoric acid that contains phosphate, an essential crop nutrient. SPA is purchased by agricultural wholesalers and retailers, who use it to produce the liquid phosphate fertilizer known as ammonium polyphosphate, which is sold to farmers.

7. A small but significant and non-transitory increase in the price of SPA would not induce customers to switch to dry phosphate fertilizer. Many farmers perceive advantages, including higher crop yield and quality, to using liquid rather than dry phosphate fertilizer, particularly in the early stages of crop development. In addition, liquid phosphates can be applied more directly to the seed than dry phosphates and can more easily be combined with other nutrients. Consistent with these perceived advantages, SPA typically garners a premium price over dry phosphates. This premium has at times expanded significantly without prompting customers to shift their purchases from liquid to dry phosphate fertilizers.

B. 65%-67% Concentration Nitric Acid

8. Nitric acid of 65%-67% concentration is a relevant product market in which to analyze the effects of the Merger. Nitric acid is a chemical compound produced through the interaction of ammonia, water, and a catalyzing agent. Nitric acid is used as a feedstock for nitrogen-based fertilizers and explosives and also is sold on the market for a variety of industrial uses, including in the production of stainless steel, metal-based specialty chemicals, and water-treatment and cleaning products. Nitric acid of 65%-67% concentration is the preferred concentration for most such industrial uses.

9. A small but significant and non-transitory increase in the price of 65%-67% concentration nitric acid would not induce customers to switch to other nitric acid concentrations or other chemical products. For most customers, there are no functionally equivalent chemical substitutes for 65%-67% concentration nitric acid. Purchasing lower-concentration nitric acid and increasing its concentration is not an economical alternative because the customer would have to pay both higher shipping costs to transport more diluted acid and the costs of constructing evaporation equipment. Purchasing 98% concentration nitric acid and diluting it down also is not an economical alternative due to the significant environmental and safety hazards associated with transporting and storing highly concentrated nitric acid.

V. THE RELEVANT GEOGRAPHIC MARKETS

10. The relevant geographic market in which to analyze the effects of the Merger with respect to SPA is no broader than North America. Transporting SPA overseas is logistically challenging and expensive, thus offshore imports of SPA are negligible.

11. The relevant geographic market in which to analyze the effects of the Merger with respect to 65%-67% concentration nitric acid encompasses customer locations near and to the east of PotashCorp's Lima, Ohio and Agrium's North Bend, Ohio nitric acid plants, including customer locations in Ohio, Kentucky, Pennsylvania, Maryland, West Virginia, and New Jersey. Because freight costs for nitric acid are high, and to ensure more reliable and flexible deliveries, customers strongly prefer to purchase nitric acid from more proximate suppliers. Customers near and to the east of PotashCorp's and Agrium's Ohio nitric acid plants lack viable alternative suppliers for 65%-67% concentration nitric acid.

VI. MARKET STRUCTURE

12. PotashCorp and Agrium are two of only three suppliers of SPA in North America.

13. PotashCorp and Agrium are the primary suppliers of 65%-67% concentration nitric acid to customer locations near and to the east of PotashCorp's Lima, Ohio and Agrium's North Bend, Ohio nitric acid plants. Other producers of 65%-67% concentration nitric acid have minimal sales into this region.

14. For both relevant markets, the Merger would result in highly concentrated markets under standards set forth in the 2010 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines and the relevant case law, and the Merger is therefore presumptively unlawful.

VII. ENTRY CONDITIONS

15. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or deter the expected anticompetitive effects of the Merger. Producers of SPA or 65%-67% concentration nitric acid outside the relevant geographic markets are unlikely to defeat a price increase within the relevant geographic markets. Construction of new production facilities within the relevant geographic markets would entail significant capital costs.

VIII. EFFECTS OF THE MERGER

16. The Merger, if consummated, is likely to substantially lessen competition in the relevant lines of commerce in the following ways, among others:

- a. by eliminating direct and substantial competition between PotashCorp and Agrium;
- b. by increasing the likelihood that the merged entity will unilaterally exercise market power; and
- c. for SPA, by increasing the likelihood of coordinated interaction among the remaining competitors in the relevant market.

17. The ultimate effects of the Merger would be to increase the likelihood that prices of SPA and 65%-67% concentration nitric acid will rise and that quality, selection, service, and innovation will be lessened.

IX. VIOLATIONS CHARGED

18. The allegations contained in Paragraphs 1 through 17 above are hereby incorporated by reference as though fully set forth here.

19. The Merger described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

20. The Merger described in Paragraph 5, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of December, 2017, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: