

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 to be formed.)	
_____)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Agrium Inc. (“Agrium”) and Potash Corporation of Saskatchewan Inc. (“PCS”) whereby each such entity shall become a subsidiary of Nutrien Ltd. (“Nutrien”) and Respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further

conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent Agrium Inc. is a 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 S.E., Calgary, Alberta, Canada T2J 7E8. Agrium's principal subsidiary in the United States is located at 4582 South Ulster Street, Suite 1700, Denver, Colorado 80237.
2. Respondent Potash Corporation of Saskatchewan Inc. is a 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 122 1st Avenue South, Suite 500, Saskatoon, Saskatchewan, Canada S7K 7G3. PCS's principal subsidiary in the United States is located at 1101 Skokie Blvd., Suite 400, Northbrook, Illinois 60062.
3. Respondent Nutrien Ltd. 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.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. "Agrium" means Agrium Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Agrium, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "PCS" means Potash Corporation of Saskatchewan Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by PCS, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “Nutrien” means Nutrien Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Nutrien, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means any Person that acquires either the Nitrogen Assets or the Phosphate Assets pursuant to this Order.
- F. “Confidential Information” means any and all of the following information:
1. all information that is a trade secret under applicable trade secret or other law;
 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
 3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel, and personnel training techniques and materials); and
 4. all notes, analyses, compilations, studies, summaries, and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order to Maintain Assets; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary, or other obligation restricting disclosure.

- G. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- H. “Divestiture Agreement” means the Nitrogen Acquisition Agreement, Phosphate Acquisition Agreement, or any other agreement between Respondents or a Divestiture Trustee and an Acquirer to divest the Nitrogen Assets or the Phosphate Assets that has been approved by the Commission pursuant to Paragraph VII.A. of the Decision and Order, including any ancillary agreements relating to the divestiture, all amendments, exhibits, agreements, and schedules thereto.
- I. “Effective Date” means the date the Nutrien Arrangement is completed.
- J. “Itafos” means Itafos Conda LLC a limited liability company organized, existing, and doing business under, and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 109 Post Oak Lane, Suite 145, Houston, Texas 77024.
- K. “Nitrogen Business” means all business activities conducted by Agrium prior to the Effective Date at or relating to Agrium’s North Bend, Ohio, facility, including but not limited to researching, developing, manufacturing, and selling nitric acid and other products.
- L. “Nitrogen Divestiture Date” means the date on which Respondents or the Divestiture Trustee close on a transaction to divest the Nitrogen Assets.
- M. “Nitrogen Employee” means any full-time, part-time, or contract individual employed by Agrium at any time and whose job responsibilities primarily relate or related to the Nitrogen Business.
- N. “Nutrien Arrangement” means the arrangement pursuant to section 192 of the Canada Business Corporations Act involving Agrium, Inc., Potash Corporation of Saskatchewan Inc. and Nutrien Ltd. as described in the Arrangement Agreement between Agrium Inc. and Potash Corporation of Saskatchewan Inc. dated September 11, 2016, whereby Agrium Inc. and Potash Corporation of Saskatchewan Inc. will become subsidiaries of Nutrien Ltd. on the date shown in the certificate of arrangement issued by the director appointed pursuant to section 260 of the Canada Business Corporations Act.
- O. “Orders” means this Order to Maintain Assets and the Decision and Order.

- P. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- Q. “Phosphate Business” means all business activities conducted by Agrium prior to the Effective Date at or relating to Agrium’s Conda, Idaho facility, including but not limited to mining, researching, developing, manufacturing, and selling super phosphoric acid, mono-ammonium phosphate, and merchant grade acid.
- R. “Phosphate Divestiture Date” means the date on which Respondents or the Divestiture Trustee close on a transaction to divest the Phosphate Assets.
- S. “Phosphate Employee” means any full-time, part-time, or contract individual employed by Agrium at any time and whose job responsibilities primarily relate or related to the Phosphate Business.
- T. “Trammo” means Trammo, Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Rockefeller Plaza, 9th Floor, New York, New York 10020.

II.

IT IS FURTHER ORDERED that from the time that Respondents execute the Consent Agreement until the Nitrogen Divestiture Date:

- A. Respondents shall operate the Nitrogen Business and Nitrogen Assets in the ordinary course of business consistent with past practices, including but not limited to:
 - 1. Maintaining the (i) Nitrogen Business and Nitrogen Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement, (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the Nitrogen Business and Nitrogen Assets, and (iii) viability, competitiveness, and marketability of the Nitrogen Business and Nitrogen Assets;
 - 2. Providing the Nitrogen Business with sufficient financial and other resources to (i) operate the Nitrogen Business and Nitrogen Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and promotional activities in place prior to the Effective Date; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the Nitrogen Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant

improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects; and

3. Preserving the Nitrogen Business and Nitrogen Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Nitrogen Business and Nitrogen Assets would be diminished.
- B. No later than the Nitrogen Divestiture Date, Respondents shall obtain all Governmental Authorizations and Consents from any Person that are necessary to transfer the relevant assets; *provided, however*, that in the event that Respondents are unable to obtain any:
1. Governmental Authorization, Respondents shall provide such assistance as Acquirer may reasonably request in Acquirer's efforts to obtain a comparable authorization; and
 2. Consent from a third party, Respondents shall, with the acceptance of the Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.
- C. Respondents shall cooperate and assist with an Acquirer's due diligence investigation of the Nitrogen Assets and Nitrogen Business, including but not limited to access to any and all personnel, properties, contracts, authorizations, documents, and information customarily provided as part of a due diligence process.
- D. Respondents shall:
1. No later than twenty (20) days before the Nitrogen Divestiture Date (i) identify each Nitrogen Employee, (ii) allow Acquirer to inspect the personnel files and other documentation of each Nitrogen Employee, to the extent permissible under applicable laws; and (iii) allow Acquirer an opportunity to meet with any Nitrogen Employee outside the presence or hearing of Respondents, and to make an offer of employment;
 2. Remove any contractual impediments that may deter any Nitrogen Employee from accepting employment with Acquirer, including, any non-compete or confidentiality provision of an employment contract;
 3. Provide each Nitrogen Employee with a financial incentive as necessary to accept an offer of employment with Acquirer, including vesting all current and accrued benefits under Respondents' retirement plans as of the date of transition of employment with Acquirer for any Nitrogen Employee who accepts an offer of employment from Acquirer; and

4. Not offer any incentive to any Nitrogen Employee to decline employment with Acquirer or otherwise interfere, directly or indirectly, with the recruitment, hiring, or employment of any Nitrogen Employee by Acquirer.

For purposes of this Paragraph II.D., “Acquirer” shall include any Person with whom Respondents engage in negotiations to acquire the Nitrogen Assets.

III.

IT IS FURTHER ORDERED that from the time that Respondents execute the Consent Agreement until the Phosphate Divestiture Date:

- A. Respondents shall operate the Phosphate Business and Phosphate Assets in the ordinary course of business consistent with past practices, including but not limited to:
 1. Maintaining (i) the Phosphate Business and Phosphate Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement, (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the Phosphate Business and Phosphate Assets, and (iii) the viability, competitiveness, and marketability of the Phosphate Business and Phosphate Assets;
 2. Providing the Phosphate Business with sufficient financial and other resources to (i) operate the Phosphate Business and Phosphate Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and promotional activities in place prior to the Effective Date; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the Phosphate Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects; and
 3. Preserving the Phosphate Business and Phosphate Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondents’ control, as a result of which the viability, competitiveness, and marketability of the Phosphate Business and Phosphate Assets would be diminished.
- B. No later than the Phosphate Divestiture Date, Respondents shall obtain all Governmental Authorizations and Consents from any Person that are necessary to transfer the relevant assets; *provided, however*, that in the event that Respondents are unable to obtain any:

1. Governmental Authorization, Respondents shall provide such assistance as Acquirer may reasonably request in Acquirer's efforts to obtain a comparable authorization; and
 2. Consent from a third party, Respondents shall, with the acceptance of the Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.
- C. Respondents shall cooperate and assist with an Acquirer's due diligence investigation of the Phosphate Assets and Phosphate Business, including but not limited to access to any and all personnel, properties, contracts, authorizations, documents, and information customarily provided as part of a due diligence process.
- D. Respondents shall:
1. No later than twenty (20) days before the Phosphate Divestiture Date (i) identify each Phosphate Employee, (ii) allow Acquirer to inspect the personnel files and other documentation of each Phosphate Employee, to the extent permissible under applicable laws; and (iii) allow Acquirer an opportunity to meet with any Phosphate Employee outside the presence or hearing of Respondents, and to make an offer of employment;
 2. Remove any contractual impediments that may deter any Phosphate Employee from accepting employment with Acquirer, including, any non-compete or confidentiality provision of an employment contract;
 3. Provide each Phosphate Employee with a financial incentive as necessary to accept an offer of employment with Acquirer, including vesting all current and accrued benefits under Respondents' retirement plans as of the date of transition of employment with Acquirer for any Phosphate Employee who accepts an offer of employment from Acquirer; and
 4. Not offer any incentive to any Phosphate Employee to decline employment with Acquirer or otherwise interfere, directly or indirectly, with the recruitment, hiring, or employment of any Phosphate Employee by Acquirer.

For purposes of this Paragraph III.D., "Acquirer" shall include any Person with whom Respondents engage in negotiations to acquire the Phosphate Assets.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Nitrogen Assets, Nitrogen Business, Phosphate Assets, Phosphate Business, and the post-divestiture Nitrogen Business and Phosphate Business; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
 - 2. Complying with financial, regulatory, or other legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Nitrogen Assets, Nitrogen Business, Phosphate Assets, Phosphate Business or the post-divestiture Nitrogen Business and Phosphate Business, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A. of this Order to Maintain Assets, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph IV. as to their employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint Richard Gilmore to serve as Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and any Divestiture Agreement.

- B. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order to Maintain Assets and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in the Orders and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with the Orders or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to the Orders;
 3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
 5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- C. The Monitor shall report in writing to the Commission (i) every thirty (30) days after the Effective Date and (ii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with the Orders.

- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- E. The Monitor's power and duties shall terminate when this Order to Maintain Assets terminates at which time the Monitor's power and duties shall continue as set forth under the Decision and Order, or at such other time as directed by the Commission.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:
 - 1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 - 2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain Assets on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders within thirty (30) days from the date Respondents sign the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates.
- B. With respect to any divestiture required by Paragraphs II. and III. of the Decision and Order, Respondents shall include in their compliance reports (i) the status of the divestiture and transfer of the Nitrogen Assets and the Phosphate Assets; (ii) a description

of all substantive contacts with a proposed acquirer (in the event that the Nitrogen Assets are not divested to Trammo or the Phosphate Assets are not divested to Itafos); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondents completed such divestiture and the date the divestiture was accomplished.

VII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the Nitrogen Business and Phosphate Business and the Nitrogen Assets and Phosphate Assets as a viable, competitive, and ongoing business until the divestitures required by the Decision and Order are achieved; (ii) prevent interim harm to competition pending the divestitures and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents (other than the Nutrien Arrangement); or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with the Orders, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents related to compliance with the Orders, which copying services shall be provided by the Respondents at their expense; and

- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the date that Respondents complete the divestiture required by Paragraphs II. and III. of the Decision and Order; *provided, however*, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: December 27, 2017