

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.)	
)	

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of the proposed merger of Respondent Agrium Inc. (“Agrium”) and Respondent Potash Corporation of Saskatchewan Inc. (“PCS”) whereby each such entity shall become a subsidiary of Respondent Nutrien Ltd. (“Nutrien”), and Respondents having been furnished thereafter with a copy of a draft of the 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 the complaint, a statement that the signing of said 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 issued and served its Complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and

placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

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, the following definitions shall apply:

- 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 the 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; (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. “Consent” means any approval, consent, ratification, waiver, or other authorization.
- H. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.

- I. “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 this Order, including any ancillary agreements relating to the divestiture, all amendments, exhibits, agreements, and schedules thereto.
- J. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph VI. of this Order.
- K. “Effective Date” means the date the Nutrien Arrangement is completed.
- L. “Governmental Authorization” means any consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- M. “Gyp-0” means the stack of phosphogypsum stored at Agrium’s Conda, Idaho, facility, described as Gyp-0.
- N. “Intellectual Property” means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (vi) and all rights in internet web sites and internet domain names presently used.
- O. “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.
- P. “MAP” means mono-ammonium phosphate.
- Q. “Nitrogen Acquisition Agreement” means the Asset Purchase Agreement between Agrium U.S. Inc. and Trammo Nitrogen Products, Inc., and Trammo, Inc., dated November 5, 2017, including all ancillary agreements, amendments, schedules, exhibits, and attachment thereto.
- R. “Nitrogen Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Nitrogen Business, including, but not limited to:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of the Nitrogen Business since the date of the announcement of the Nutrien Arrangement and not replaced;
3. all inventories;
4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
5. all Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law); and
7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondents (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings;

Provided, however, that the Nitrogen Assets need not include (i) Nitrogen Retained Assets or (ii) any assets that would otherwise be part of the Nitrogen Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

- S. “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 or other products.
- T. “Nitrogen Divestiture Date” means the date on which Respondents or the Divestiture Trustee close on a transaction to divest the Nitrogen Assets.
- U. “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.

- V. “Nitrogen Retained Assets” means:
1. corporate or regional offices operated by Respondents that are not primarily related to the Nitrogen Business;
 2. corporate, business, or other names of Agrium, or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof of Agrium;
 3. software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);
 4. enterprise software that Respondents used primarily to manage and account for businesses other than the relevant business to be divested;
 5. the portion of any Record that contains information about any business that Agrium operated prior to the Effective Date that it is not required to divest; and
 6. any Record of which Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the Record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes.
- W. “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.
- X. “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.
- Y. “Phosphate Acquisition Agreement” means the Asset Purchase Agreement by and among Itafos Conda LLC, Itafos, and Nu-West Industries, Inc., Nu-West Mining, Inc., and Agrium Inc., dated November 6, 2017, including all ancillary agreements, amendments, schedules, exhibits, and attachment thereto.
- Z. “Phosphate Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Phosphate Business, including, but not limited to:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. all Tangible Personal Property, including any Tangible Personal Property removed from the Phosphate Business since the date of the announcement of the Nutrien Arrangement and not replaced;
3. all inventories;
4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
5. all Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law); and
7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondents (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings;

Provided, however, that the Phosphate Assets need not include (i) Phosphate Retained Assets or (ii) any assets that otherwise would be part of the Phosphate Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

- AA. “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.
- BB. “Phosphate Divestiture Date” means the date on which Respondents or the Divestiture Trustee close on a transaction to divest the Phosphate Assets.
- CC. “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.

- DD. “Phosphate Products” means any products or services relating to the Phosphate Business manufactured or provided by Agrium from a property or facility that is not included in the Phosphate Assets, including but not limited to, ammonia, SPA processing, and storage.
- EE. “Phosphate Retained Assets” means:
1. corporate or regional offices operated by Respondents that are not primarily related to the Phosphate Business;
 2. Agrium facilities located at or near the Homestead distribution terminal in Nebraska or near Standard, Alberta, Granum, Alberta and Watson, Saskatchewan;
 3. Gyp-0, North Rasmussen Ridge Mine, and other mines that no longer actively produce phosphate ore;
 4. corporate, business, or other names of Agrium, or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof of Agrium with respect to, or associated with, the foregoing other than “Conda Phosphate Operations.”
 5. software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);
 6. enterprise software that Respondents primarily use to manage and account for businesses other than the relevant business to be divested;
 7. the portion of any Record that contains information about any business that Agrium operated prior to the Effective Date that it is not required to divest; and
 8. any Record of which Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the Record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes.
- FF. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- GG. “Respondents” means Agrium, PCS, and Nutrien, individually and collectively.

- HH. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- II. “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.
- JJ. “Transitional Services” means administrative, operational, and technical assistance, consultation, services, or training with respect to the operation of the relevant business.
- KK. “UAN” means urea ammonium nitrate.

II.
(Divestiture of the Nitrogen Assets)

IT IS FURTHER ORDERED that:

- A. No later than ten (10) business days from the Effective Date, Respondents shall divest the Nitrogen Assets, absolutely and in good faith, to Trammo pursuant to the Nitrogen Acquisition Agreement; *provided, however*, that if Respondents have divested the Nitrogen Assets to Trammo prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. Trammo is not acceptable as the Acquirer of the Nitrogen Assets, then Respondents shall immediately rescind the Nitrogen Acquisition Agreement, and shall divest the Nitrogen Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 2. The manner in which the divestiture to Trammo was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Nitrogen Acquisition Agreement) to the manner of divestiture of the Nitrogen Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Respondents shall:

1. At the option of the Acquirer of the Nitrogen Assets and in a manner that receives the prior approval of the Commission:
 - (a) Provide Transitional Services to the Acquirer for twelve (12) months from the Nitrogen Divestiture Date; and
 - (b) Purchase (i) ammonia as a customer from the Acquirer for five (5) years from the Nitrogen Divestiture Date and (ii) UAN terminaling services as a customer from the Acquirer for three (3) years from the Nitrogen Divestiture Date;
2. Provide the assistance set forth in Paragraph II.B.1. (collectively “Transitional Assistance”) in quality and quantity and on terms and conditions sufficient for an Acquirer to operate the Nitrogen Business post-divestiture in substantially the same manner as Agrium prior to the Effective Date (including the ability to develop new products, increase sales of current products, and maintain the competitiveness of the Nitrogen Business);

Provided, however, that Respondents shall give priority to Acquirer’s requirements for Transitional Assistance over Respondents’ own requirements and take all actions that are reasonably necessary to ensure uninterrupted Transitional Assistance;

Provided further that (i) Acquirer may terminate any Transitional Services at any time upon commercially reasonable notice and without cost or penalty and (ii) at Acquirer’s request, Respondents shall file with the Commission any request for prior approval to extend the term of any Transitional Services needed to achieve the purposes of this Order; and

Provided further that Respondents shall not seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondents’ breach of any agreement relating to Transitional Services.

C. 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.

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

E. 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.E., "Acquirer" shall include any Person with whom Respondents engage in negotiations to acquire the Nitrogen Assets.

F. For a period of two (2) years after the Nitrogen Divestiture Date, Respondents shall not solicit or induce any Nitrogen Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided, however*, that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees or (ii) hire employees if employment has been terminated by an Acquirer or who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.

G. Notwithstanding any other provision of this Order, Respondents shall allow an Acquirer to use any of the names and marks referenced in Paragraph I.V.2. on a temporary basis during the removal and replacement of signage and replacement of other business items and materials.

- H. The purpose of the divestiture of the Nitrogen Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Nutrien Arrangement by Respondents and to remedy the lessening of competition resulting from the Nutrien Arrangement as alleged in the Commission's Complaint.

III.
(Divestiture of the Phosphate Assets)

IT IS FURTHER ORDERED that:

- A. No later than ten (10) business days from the Effective Date, Respondents shall divest the Phosphate Assets, absolutely and in good faith, to Itafos pursuant to the Phosphate Acquisition Agreement; *provided, however*, that if Respondents have divested the Phosphate Assets to Itafos prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. Itafos is not acceptable as the Acquirer of the Phosphate Assets, then Respondents shall immediately rescind the Phosphate Acquisition Agreement, and shall divest the Phosphate Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 2. The manner in which the divestiture to Itafos was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Phosphate Acquisition Agreement) to the manner of divestiture of the Phosphate Assets as the Commission may determine are necessary to satisfy the requirements of this Order.
- B. Respondents shall:
1. At the option of the Acquirer of the Phosphate Assets and in a manner that receives the prior approval of the Commission:
 - (a) Provide Transitional Services to the Acquirer for twelve (12) months from the Phosphate Divestiture Date;
 - (b) Provide Phosphate Products to the Acquirer for six (6) years from the Phosphate Divestiture Date; and
 - (c) Purchase MAP as a customer from the Acquirer for six (6) years from the Phosphate Divestiture Date;

2. Provide the assistance set forth in Paragraph III.B.1. (collectively “Transitional Assistance”) in quality and quantity and on terms and conditions sufficient for an Acquirer to operate the Phosphate Business post-divestiture in substantially the same manner as Agrium prior to the Effective Date (including the ability to develop new products, increase sales of current products, and maintain the competitiveness of the Phosphate Business);

Provided, however, that Respondents shall give priority to Acquirer’s requirements for Transitional Assistance over Respondents’ own requirements and take all actions that are reasonably necessary to ensure uninterrupted Transitional Assistance;

Provided further that (i) Acquirer may terminate any Transitional Services at any time upon commercially reasonable notice and without cost or penalty and (ii) at Acquirer’s request, Respondents shall file with the Commission any request for prior approval to extend the term of any Transitional Services needed to achieve the purposes of this Order; and

Provided further that Respondents shall not seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondents’ breach of any agreement relating to Transitional Services.

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

E. 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.E., "Acquirer" shall include any Person with whom Respondents engage in negotiations to acquire the Phosphate Assets.

- F. For a period of two (2) years after the Phosphate Divestiture Date, Respondents shall not solicit or induce any Phosphate Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided, however*, that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees or (ii) hire employees if employment has been terminated by an Acquirer or who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- G. Notwithstanding any other provision of this Order, Respondents shall allow an Acquirer to use any of the names and marks referenced in Paragraph I.EE.4. on a temporary basis during the removal and replacement of signage and replacement of other business items and materials.
- H. The purpose of the divestiture of the Phosphate Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Nutrien Arrangement by Respondents and to remedy the lessening of competition resulting from the Nutrien Arrangement as alleged in the Commission's Complaint.

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 their obligations or as permitted under this Order, the Order to Maintain Assets, 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, 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 this Order 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 and in consultation with the Commission:

1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order 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 this Order 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 this Order;
 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 for a period of two (2) years after the Effective Date and thereafter every ninety (90) days, (ii) no later than ten (10) days after Respondents have completed their obligations required by Paragraphs II. and III. of this Order ("Final Report"), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.
- 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 ten (10) business days after the Monitor has completed his Final Report, 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 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 this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraphs II. and III. of this Order, the Commission may appoint a Divestiture Trustee to divest any of the Nitrogen Assets or the Phosphate Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Nitrogen Assets or the Phosphate Assets, as the case may be, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order;
 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI. in an amount equal to the delay, as

determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's 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 gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VII.

IT IS FURTHER ORDERED that:

- A. If Trammo does not acquire the Nitrogen Assets or Itafos does not acquire the Phosphate Assets, then Respondents shall set forth the manner in which they will accomplish the relevant divestiture and other obligations under this Order in one or more agreements with the Acquirer and submit such agreements to the Commission for the prior approval required by this Order.
- B. Respondents shall comply with all terms of the Divestiture Agreement, which is incorporated into this Order and made a part hereof; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. In the event of a conflict between the terms of this Order and the Divestiture Agreement, such that Respondents cannot fully comply with both, the terms of this Order shall govern.
- C. Respondents shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

VIII.

IT IS FURTHER ORDERED that:

- A. Respondents shall notify the Commission via email to bccompliance@ftc.gov of the Effective Date no later than five (5) days after the Effective Date.
- B. 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 this Order:
 - 1. Thirty (30) days from the date this Order is issued and every thirty (30) days thereafter for a period of one (1) year (for a total of twelve reports) and every ninety (90) days thereafter for a second period of one (1) year (for a total of four reports); and
 - 2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.
- C. With respect to any divestiture required by Paragraphs II. and III. of this 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) if Trammo does not acquire the Nitrogen Assets or Itafos does not acquire the Phosphate Assets, a description of all substantive contacts with a proposed acquirer; 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.

IX.

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

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

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, 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 this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on February 5, 2028.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: February 5, 2018