

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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In the Matter of)	
)	
Agrium Inc. ,)	
a corporation;)	
)	Docket No. G4638
Potash Corporation of Saskatchewan)	
Inc.,)	
a corporation; and)	
)	
Nutrien Ltd. ,)	
a corporation to be formed.)	
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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 and an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft 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 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 thereafter 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

C. “Nutrien” means Nutrien Ltd., its directors, officers, employe

- 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.

- 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 on 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, 11th 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

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 real 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 review 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 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

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 review of the Phosphate Assets and Phosphate Business, including but not limited 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 (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

- 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 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 the 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 180 days after the Effective Date and (ii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with the 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 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,

of all substantive contacts with a proposed acquirer (in the event that Nitrogen Assets are not divested to Trammo

