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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
Pamela Jones Harbour  
William E. Kovacic  
J. Thomas Rosch

In the Matter of

AGRIUM INC.,  
a corporation.

Docket No. C-

**DECISION AND ORDER**  
**[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of CF Industries Holdings, Inc., by Agrium Inc. (“Respondent Agrium”), and Respondent Agrium having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Agrium 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 ame

Commission hereby makes the following jurisdictional findings and issues 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 SE, Calgary, Alberta, T2J7E8, Canada.
2. The Federal Trade Commission has jurisdiction of the subLs8Jg,()Tj(The F)'28.2000 2 TD(da, with its of2 T

- H. "Carseland Facility" means Agrium's Carseland Nitrogen Operations located approximately 50 km from Calgary, AB, Canada. The Carseland Nitrogen Operations facility produces, among other things, Anhydrous Ammonia, urea, and controlled released urea products.
  
- I. "Carseland Facility Interest" means a fifty percent (50%) interest in the Carseland Facility being purchased by Terra pursuant to and as defined by the October 18, 2009, agreement between Terr

avenue, road, easement, street, alley, or right-of-way, open or proposed, in, on, across, abutting, or adjacent to the property;

4. All certificates for appropriation of water and other water rights generally that relate to the property;
5. All right, title, interest in and to the contracts relating exclusively or primarily to the Marseilles Terminal;
6. All rights under warranties and guarantees, express or implied, wherever located;
7. All dedicated management information systems and information contained in management information systems, and all separately maintained, as well as relevant portions of not separately maintained books, records, and files, wherever located;
8. All federal, state, and local regulatory ad mana





## II.

### **IT IS FURTHER ORDERED** that:

- A. Within forty-five (45) days after the Agrium-CF Acquisition Date, Respondent Agrium shall divest the Ritzville Terminal, and the Carseland Facility Interest, and assign the Ritzville Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, to Terra in a manner that receives the prior approval of the Commission and consistent with the Terra Ritzville Divestiture Agreements.
- B. Within one-hundred-eighty (180) days after the Agrium-CF Acquisition Date, Respondent Agrium shall divest itself of any stock or shares in Terra that CF or Respondent Agrium had acquired before the Agrium-CF Acquisition Date. *PROVIDED, HOWEVER*, that this Paragraph II.B. shall only apply if there is no CF-Terra Acquisition such that the terms of Paragraph X of this Order come into effect.
- C. For the time period following the Agrium-CF Acquisition Date that Respondent Agrium holds, directly or indirectly, any interest in Terra; has the ability or right to elect or appoint a Terra Directors; or has any right to Confidential Business Information of or Relating To Terra, Respondent Agrium shall:
  - 1. not elect or appoint a Terra director;
  - 2. not have a director, officer, partner, employee, agent, or representative on any Terra board;
  - 3. not influence or attempt to influence, directly or indirectly, by voting or otherwise, Terra, or the management or operation of Terra

Secretary of the Commission, with a simultaneous filing with the Assistant Director for Compliance and the Assistant Director for Mergers II of the Bureau of Competition

- E. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agrium that Terra is not an acceptable acquirer of the Ritzville Terminal or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondent Agrium shall immediately notify Terra of the notice received from the Commission and shall as soon as practicable effect the rescission of the Terra Divestiture Agreements with regard to the Ritzville Terminal; and
  2. Respondent Agrium shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Ritzville Terminal and assign the Ritzville Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to the Ritzville Terminal Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. *PROVIDED, HOWEVER*, the Ritzville Terminal Acquirer shall have (a) a secure and stable, independent, long-term source of Anhydrous Ammonia with a capability to supply to the Ritzville Terminal a volume of Anhydrous Ammonia similar to the volume of Anhydrous Ammonia supplied to the Ritzville Terminal before the Ritzville Terminal Divestiture Date at a delivered price of Anhydrous Ammonia consistent with the competitive position of the Ritzville Terminal before the Ritzville Terminal Divestiture Date; (b) an additional secure and stable, independent, long-term source of Anhydrous Ammonia with a capability to supply to the Ritzville Terminal a volume of Anhydrous Ammonia enough to expand the Ritzville Terminal output by 30% over its 2008 output; and (c) a settled transportation plan including, but not limited to, signed contracts with rail or other transportation options, for transportation of the Anhydrous Ammonia from an Anhydrous Ammonia producer/supplier to the Ritzville Terminal. *PROVIDED, FURTHER, HOWEVER*, with respect to assets that are to be divested or agreements entered into pursuant to this paragraph at the Ritzville Terminal Acquirer's option, Respondent Agrium need not divest such assets or enter into such agreements only if the Ritzville Terminal Acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- F. If Respondent Agrium is unable to divest pursuant to Paragraph II.A. of this Order if (1) Terra notifies Respondent Agrium that it invokes a termination provision in the Terra Ritzville Divestiture Agreements terminating its obligation to acquire the Ritzville Terminal and the Carseland Facility Interest, or (2) Terra fails to close the Terra Ritzville Divestiture Agreements as required by such agreements or the terms of this Order, then:
1. Respondent Agrium shall, within one (1) day, notify the Commission of Terra's actions and that the Terra Divestiture Agreements are no longer effective as to the Ritzville Terminal ("Terra Ritzville Termination Date"); and



## 2. Respondent Ag



(3) received a final court decision after all appeals.

- K. The purposes of this Paragraph II of the Order are: (1) to ensure the continuation of the Ritzville Terminal as a going concern in the same manner in which it conducted business as of the Agrium-CF Acquisition Date, (2) to ensure that the Ritzville Terminal Acquirer has the intention and ability to operate the Ritzville Terminal independent of Respondent Agrium, similar to CF's independent use of the Ritzville Terminal, (3) to ensure that the Ritzville Terminal Acquirer has an independent, secure, stable, and long-term source of Anhydrous Ammonia to sell out of the Ritzville Terminal, (4) to ensure that the Ritzville Terminal Acquirer has an independent, secure, stable, and long-term source of Anhydrous Ammonia to expand sales out of the Ritzville Terminal by 30% over its 2008 sales, and (5) to remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission's Complaint.

### III.

**IT IS FURTHER ORDERED** that:

- A. Within forty-five (45) days after the Agrium-CF Acquisition Date, Respondent Agrium shall divest the Marseilles Terminal and assign the Marseilles Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, to Terra in a manner that receives the prior approval of the Commission and consistent with the Terra Marseilles Divestiture Agreements.
- B. If, at the time the Commission determines to make this Order final, the Commission notifies Respondent Agrium that Terra is not an acceptable acquirer of the Marseilles Terminal or that the manner in which the divestiture was accomplished is not acceptable, then, after receipt of such written notification:
1. Respondent Agrium shall immediately notify Terra of the notice received from the Commission and shall as soon as practicable effect the rescission of the Terra Divestiture Agreements with regard to the Marseilles Terminal; and
  2. Respondent Agrium shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Marseilles Terminal and assign the Marseilles Terminal Contracts (including by sub-assignment if necessary) absolutely and in good faith, at no minimum price, to an acquirer of the Marseilles Terminal.



each such agreement, if approved by the Commission as the Divestiture Agreement, shall be incorporated by reference into this Order and made a part hereof. Respondent Agrium shall comply with all terms of the Marseilles Terminal Divestiture Agreement, and any breach by Respondent Agrium of any term of the Marseilles Terminal Divestiture Agreement shall constitute a violation of this Order. If any term of the Marseilles Terminal Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent Agrium cannot fully comply with both terms, the Order Term shall determine Respondent Agrium’s obligations under this Order. Any material modification of the Marseilles Terminal Divestiture Agreement between the date the Commission approves the Marseilles Terminal Divestiture Agreement and the Closing Date, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements, for a period of five (5) years after the relevant Marseilles Terminal Divestiture Date, any modification of the Marseilles Terminal Divestiture Agreement, without the approval of the Commission, shall constitute a failure to comply with this Order. Respondents shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Marseilles Terminal Divestiture Agreement, or after any failure to meet any condition precedent (material or otherwise) to closing (whether waived or not).

E.rs Respondent Agrium shall, prior to the Marseilles Terminal Divestiture Date and as a condition precedent to the consummation of the divestiture pursuant to Paragraph III.A, Paragraph III.B., or Paragraph III

- a. the written agreement of the Marseilles Terminal Acquirer and thirty (30) days prior notice to the Commission; or,
  - b. in the case of a proposed unilateral termination by Respondent Agrium due to an alleged breach of an agreement by the Marseilles Terminal Acquirer, sixty (60) days prior notice to the Commission of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall only be given after the parties have in good faith:
    - (1) attempted to settle the dispute between themselves, and
    - (2) engaged in arbitration and received an arbitrator's decision, or
    - (3) received a final court decision after all appeals.
- H. The purposes of this Paragraph III of the Order are: (1) to ensure the continuation of the Marseilles Terminal as a going concern in the same manner in which it conducted business as of the Agrium-CF Acquisition Date, (2) to ensure that the Marseilles Terminal Acquirer has the intention and ability to operate the Marseilles Terminal independent of Respondent Agrium, (3) to ensure that the Marseilles Terminal Acquirer has an independent, secure, and stable source of Anhydrous Ammonia to sell out of the Marseilles Terminal, and (4) to remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission's Complaint.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. No later than five (5) days after the Agrium-CF Acquisition Date, Respondent Agrium shall terminate certain portions of the Agrium/Rentech Distribution Agreement, and modify and supplement the Agrium/Rentech Distribution Agreement pursuant to the Agrium/Rentech Distribution Amendment.
- B. The purpose of the terminations, modifications, and supplements described in Paragraph IV.A. of this Order, as agreed-to by Respondent Agrium and Rentech in the Agrium/Rentech Distribution Amendment, is to (1) establish Rentech as a viable distributor and marketer of Anhydrous Ammonia similar to the competitive position Respondent Agrium had pursuant to the Agrium/Rentech Distribution Agreement including, but not limited to, the ability to receive, store, and transport Anhydrous Ammonia for customers in the areas where Respondent Agrium had serviced customers pursuant to the Agrium/Rentech Distribution Agreement; and (2) to remedy the lessening of competition resulting from the Agrium-CF Acquisition as alleged in the Commission's Complaint.

**V.**

**IT IS FURTHER ORDERED** that Respondent Agrium and Respondent Agrium's  
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## VI.

### **IT IS FURTHER ORDERED** that:

- A. If Respondent Agrium has not fully complied with the obligations as required by Paragraphs II., III., and IV. of this Order, the Commission may appoint a Divestiture Trustee to divest the Ritzville Terminal and the Marseille Terminal, and terminate the Agrium/Rentech Marketing Agreement, unless otherwise divested or terminated pursuant to this Order, and enter into other agreements, assignments, and licenses, in a manner that satisfies the requirements of this Order. 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, Respondent Agrium shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraphs II, III, and IV. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VI 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 Respondent Agrium to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Agrium, which consent shall not be unreasonably withheld. If any other competition authority has appointed a Person to aid in the divestiture of assets that are the same as the assets to be divested pursuant to this Order, the Commission will consider that Person as a possible Divestiture Trustee. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Agrium has 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 Respondent Agrium of the identity of any proposed Divestiture Trustee, Respondent Agrium shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent Agrium 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 divestitures and contract termination required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VI, Respondent Agrium 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 divest the Ritzville Terminal, and/or divest the Marseilles Terminal, and/or terminate the Agrium/Rentech Marketing Agreement, and



enter into all agreements, licenses and assignments as described in Paragraphs II, III, and IV of this Order.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Ritzville Terminal, and/or divest the Marseilles Terminal, and/or terminate the Agrium/Rentech Marketing Agreement, and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and IV of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that rece

duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Dive

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directions as may be necessary or appropriate to accomplish the obligations under Paragraphs II, III, and IV of this Order.

- G. The Divestiture Trustee(s) appointed pursuant to Paragraph VI of this Order may be the same Person appointed as the Hold Separate Trustee or Monitor pursuant to the Hold Separate Order.

**VII.**

**IT IS FURTHER ORDERED**

- b. cooperate with:
  - (1) the Ritzville Terminal Acquirer in effecting transfer of the Designated Ritzville Terminal Employee to the employ of the Ritzville Terminal Acquirer, if the Designated Ritzville Terminal Employee accepts an offer of employment from the Ritzville Terminal Acquirer; or
  - (2) the Marseilles Terminal Acquirer in effecting transfer of the Designated Marseilles Terminal Employee to the employ of the Marseilles Terminal Acquirer, if the Designated Marseilles Terminal Employee accepts an offer of employment from the Marseilles Terminal Acquirer;
- c. eliminate any contractual provisions or other restrictions entered into or imposed by Respondent Agrium that would otherwise prevent the Designated Ritzville Terminal Employee or Designated Marseilles Terminal Employee from being employed by the Ritzville Terminal Acquirer or Marseilles Terminal Acquirer, respectively;
- d. eliminate any confidentiality restrictions (imposed by Respondent Agrium or CF) that would prevent:
  - (1) the Designated Ritzville Terminal Employee who accepts employment with the Ritzville Terminal Acquirer from using or transferring to the Ritzville Terminal Acquirer any information Relating To the operation of the Ritzville Terminal; or
  - (2) the Designated Marseilles Terminal Employee who accepts employment with the Marseilles Terminal Acquirer from using or transferring to the Marseilles Terminal Acquirer any information Relating To the operation of the Marseilles Terminal.
- e. unless alternative arrangements are agreed upon with the Ritzville Terminal Acquirer or the Marseilles Terminal Acquirer, retain the obligation to provide for the benefit of:
  - (1) any Designated Ritzville Terminal Employee who accepts employment with the Ritzville Terminal Acquirer, all accrued bonuses, vested pensions, and other accrued benefits;
  - (2) any Designated Marseilles Terminal Employee, who accepts employment with the Marseilles Terminal Acquirer, all accrued bonuses, vested pensions, and other accrued benefits.

- B. Respondent Agrium shall not, for a period of two (2) years following the Ritzville Terminal Divestiture Date and Marseilles Terminal Divestiture Date, respectively, directly or indirectly, solicit, induce, or attempt to solicit or induce:
1. any Designated Ritzville Terminal Employee who is employed by the Ritzville Terminal Acquirer to terminate his or her employment relationship with the Ritzville Terminal Acquirer, unless that employment relationship has already been terminated by the Ritzville Terminal Acquirer; *PROVIDED, HOWEVER*, Respondent Agrium may make general advertisements for employees inc



- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Agrium shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent Agrium shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order. Additionally, Respondent Agrium shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph VIII. Respondent Agrium shall include a description of such acquisitions including, but not limited to, the identity of the Person or assets acquired, the location of the Person or assets, and a detailed description of the assets or Person.

## X.

### **IT IS FURTHER ORDERED** that:

- A. In the event of a CF-Terra Acquisition before the Agrium-CF Acquisition Date, Respondent Agrium shall not, without providing advance written notification to the Commission in the manner described in this Paragraph X. and observing the required waiting periods, directly or indirectly acquire CF; and
- B. In the event of a CF-Terra Acquisition before the Agrium-CF Acquisition Date, Respondent Agrium shall not, without providing advance written notification to the Commission in the manner described in this Paragraph X. and observing the required waiting periods, directly or indirectly acquire Terra, through an acquisition of Terra by CF or in any other manner.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification. The Notification shall be filed with the Secretary of the Commission, with a simultaneous filing with the Assistant Director for Compliance of the Bureau of Competition. The Notification need not be made to the United States Department of Justice, and notification is required only of Respondent Agrium and not of any other party to the transaction. Respondent Agrium shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Agrium shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

*PROVIDED, HOWEVER*, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

*PROVIDED, FURTHER, HOWEVER*, that Respondent Agrium's previous notifications pursuant to the Hart-Scott-Rodino Premerger Notification Act for the acquisition of CF shall not qualify as a notification pursuant to this Paragraph X.

*PROVIDED, FURTHER, HOWEVER*, that the terms of this Order and the Hold Separate Order in this matter shall continue to apply to Respondent Agrium if it does not file a Notification pursuant to this Paragraph X., and that the Commission's decision to request additional information, or not request additional information, under this Paragraph X shall not be construed to indicate whether the Commission believes an acquisition by Respondent Agrium of Terra would violate, or not violate, any law enforced by the Commission.

*PROVIDED, FURTHER, HOWEVER*, for the avoidance of doubt, the requirements of this Order, including specifically Paragraphs II, III, and IV, shall be binding upon Respondent Agrium whether or not the Commission determines that further relief may be needed for any acquisition by Respondent Agrium of Terra.

## **XI.**

**IT IS FURTHER ORDERED** that Respondent Agrium shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent Agrium;
- B. acquisition, merger or consolidation of Respondent Agrium; or
- C. other change in the Respondent Agrium, 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.

## **XII.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request filed with the Commission, the Commission shall have access to all information in the possession, custody or control of Respondent Agrium, including but not limited to, all documents, records, reports, memoranda, e-mails, text messages, and other communications, in any form or medium, including electronic, that are relevant to the Commission's investigation of Respondent Agrium's compliance with this Order. 55704001ED0.000au71T





**CONFIDENTIAL EXHIBIT A**  
**Agrium/Rentech Distribution Agreement**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

**CONFIDENTIAL EXHIBIT B**  
**Agrium/Rentech Distribution Amendment**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

**CONFIDENTIAL EXHIBIT C**  
**Terra Ritzville Divestiture Agreements**

**[Redacted From the Public Record Version, But Incorporated By Reference]**

**CONFIDENTIAL EXHIBIT D**  
**Terra Marseilles Divestiture Agreements**

**[Redacted From the Public Record Version, But Incorporated By Reference]**