

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosb
Edith Ramirez
Julie Brill

In the Matter of
AGRIUM, INC .,
a c

¹ Complaint ¶ 17.

Agrium to divest CF's Ritzville, Washington, and Agrium's Marsilles, Illinois, anhydrous ammonia terminals to Terra and to terminate its distribution agreement with Rented Energy Midwest Corporation – all triggered by completion of Agrium's acquisition of CF. The Hold Separate Order requires Agrium to maintain and hold separate Agrium's Marsilles, Illinois terminal pending its divestiture. As a part of the divestiture, Agrium also agreed to sell its 50% interest in the Carbon and Nitrogen Operations facility in Alberta, Canada, which produces anhydrous ammonia and would supply the Ritzville terminal.

Ultimately, Agrium was not successful in acquiring CF. Agrium announced on March 11, 2010, that it would not go forward with the acquisition, and let its outstanding offer for CF expire on March 22, 2010. CF completed its acquisition of Terra on April 19, 2010. Agrium withdrew its Hart-Scott-Rodino ("HSR") filing to acquire CF on November 23, 2010.³ Although Agrium's obligations to divest never ripened, it has been holding the Marsilles terminal separate as required by the Hold Separate Order.

II. AGRIVIUM'S PETITION

Agrium states that the remedial purpose of the Order was to remedy the lessening of competition resulting from the Agrium-CF acquisition as alleged in the Commission's Complaint.⁴ Agrium adds, "Similarly the purpose of the Hold Separate Order is to facilitate the purpose of the Consent Agreement in remedying the lessening of competition as alleged in the Complaint."⁵ Agrium notes that the Agrium-CF acquisition never occurred and that Agrium "no longer intends to pursue acquisition of CF."⁶ Agrium asserts that these circumstances constitute changed conditions of fact that eliminate the need for the Order.⁷

Agrium also asserts that the public interest wants setting aside the Order because the Order is imposing significant costs on Agrium.⁸ Agrium claims to have lost the flexibility to operate the terminal as it chooses. Specifically, Agrium states that the Order "limit how

² Petition at 2-3.

³ Petition at Exhibit 1: Letter to Premerger Notification Office from Joseph J. Simons, November 23, 2010.

⁴ Petition at 4.

⁵ *Id.*

⁶ *Id.* and Petition at Exhibit A, Affidavit of Joni Palus in Support of Petition of Agrium, Inc. To Reopen and Set Aside Orders (Affidavit") ¶¶ 12-13.

⁷ Petition at 5 ("Without the Agrium-CF acquisition, the factual underpinning of the Commission's Complaint and subsequent Orders have been eliminated.').

⁸ Petition at 5.

Petition at 5, citing Affidavit ¶ 9. Agium also states that the judicial reports require

¹⁹ Complaint ¶ 17.

²⁰ It is very unlikely that Agium would attempt to acquire CF again. *See* Petition at

Agrium has terminated and abandoned its proposed acquisition of CF and has withdrawn its HSR filing; and there is no indication that it will be reprised.²² This constitutes changed facts that eliminate the need to retain the Orders.

IT IS ORDERED that this matter be, and it hereby is, reopened and that the Decision and Order and Order to Hold Separate be, and they hereby are, set aside.

By the Commission.

Donald S. Clark

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²² Additionally, CF's acquisition of Tera has created additional market overlaps that very likely would be implicated by any future combination of Agrium and CF, all of which could be reviewed pursuant to a new HSR filing.