

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

*In the Matter of Agrium Inc., Potash Corporation of Saskatchewan Inc. and Nutrien Ltd.
File No. 161-0232*

I. Introduction

The

III. The Relevant Markets

A. Superphosphoric Acid

Phosphate is an essential plant nutrient that farmers apply to crops on a seasonal basis. SPA, a highly concentrated form of phosphoric acid, is used to produce the liquid phosphate fertilizer known as ammonium polyphosphate (“APP”). SPA is purchased by agricultural wholesalers and retailers, who convert it to APP and sell APP to farmers.

The relevant product market does not include dry phosphate fertilizers such as monoammonium phosphate (“MAP”) or diammonium phosphate (“DAP”). Many farmers perceive advantages, including higher crop yield and quality, to using liquid rather than dry phosphate fertilizer, particularly in the early stages of crop development. In addition, liquid phosphates can be applied more directly to the seed than dry phosphates and can easily be combined with other nutrients. Consistent with these perceived advantages, SPA typically garners a premium price over dry phosphates. This premium has at times expanded significantly without prompting customers to shift their purchases substantially from liquid to dry phosphate fertilizers.

The relevant geographic market in which to analyze the effects of the Merger for SPA is no broader than North America. SPA is caustic, requires special handling and equipment, and is perishable outside certain temperature ranges. As a result, importing offshore SPA is logistically challenging and expensive, and imports of SPA are rare and do not constrain the prices of SPA produced in North America.

Currently, three firms – PotashCorp, Agrium, and J.R. Simplot Company (“Simplot”) – manufacture all the SPA produced in North America. PotashCorp has two SPA plants, located in Aurora, North Carolina and White Springs, Florida. Agrium’s sole SPA plant is located in Conda, Idaho. Simplot has SPA plants in Rock Springs, Wyoming and Pocatello, Idaho. Absent the proposed remedy, the Merger would result in the merged entity controlling more than 75% of SPA production capacity in North America.

B. 65%-67% Concentration Nitric Acid

Nitric acid is a chemical compound produced through the interaction of ammonia, water, and a catalyzing agent. Nitric acid is used as a feedstock for nitrogen-based fertilizers and explosives and is also sold for a variety of industrial uses, including the production of stainless steel, metal-based specialty chemicals, and water-treatment and cleaning products. Nitric acid is produced at different concentration levels, which reflect the amount of water present together with the pure nitric acid. Both PotashCorp’s plant in Lima, Ohio and Agrium’s plant in North Bend, Ohio produce nitric acid at 65%-67% concentration, which is the preferred concentration for most industrial uses.

Customers could not quickly or easily switch from 65%-67% concentration nitric acid to other nitric acid concentrations or other chemical products. For most customers, there are no chemical substitutes that are functionally equivalent to nitric acid. Purchasing lower-

concentration nitric acid and increasing its concentration is not an economical alternative because customers would need to invest in constructing an evaporation tower, which few if any nitric acid customers have today. Additionally, buying lower-concentration nitric acid requires customers to pay to ship and store more water to receive the same amount of acid. Purchasing 98% concentration nitric acid and diluting it down is also not an economical alternative due to the significant environmental and safety hazards associated with transporting and storing highly concentrated nitric acid. The relevant product market is therefore limited to 65%-67% concentration nitric acid.

V. Entry

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the expected anticompetitive effects of the Merger. New entry into SPA production, even of modest capacity, would likely take years and cost at least \$100 million. No entry has occurred into North American SPA production in the past five years, nor is any in progress or anticipated. Although two new nitric acid facilities have been constructed in recent years, those facilities are outside the relevant geographic market and make nitric acid for their internal use at a lower concentration. Existing suppliers of 65%-67% concentration nitric acid are unlikely to expand their sales footprint enough to defeat a price increase by the merged entity in the relevant geographic market.

VI. The Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the Merger by requiring the merging parties to divest Agrium's Conda, Idaho facility to Itafos and Agrium's North Bend, Ohio facility to Trammo. These divestitures will preserve the competition that currently exists in the relevant markets.

Under the proposed Consent Agreement, Agrium's phosphate operations at Conda, Idaho, as well as related phosphate mines, customer and supplier contracts, and intellectual property, will be sold to Itafos as phosphate and related assets.

The Commission will appoint an interim monitor to ensure the merging parties' compliance with the Decision and Order and to keep the Commission informed about the status of the divestiture. The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.