

**Analysis of the
Complaint and Proposed Consent Order
to Aid Public Comment
*In the Matter of Agrium Inc. and UAP Holding Corporation
File No. 0810073, Docket No. C-4219***

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from Agrium Inc. ("Agrium"), and UAP Holding Corporation, ("UAP") (collectively "the Parties") an Agreement Containing Consent Orders ("the proposed consent order"). The Parties have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Agrium's proposed acquisition of all of the outstanding voting stock of UAP.

II. Description of the Parties and the Proposed Acquisition

Agrium is a Calgary, Alberta-based agricultural products company, a major producer of fertilizer in the Americas, and is the largest operator of retail farm stores in the United States. Agrium has approximately 433 retail locations in 31 states, in all areas of the country except for a north-south band from the Northern plains to Texas. Agrium's stores operate under the "Crop Production Services" brand in the East and Midwest, and under "Western Farm Service" in the West. Agrium had nearly \$4.2 billion in sales in 2006, of which more than \$1 billion came from its U.S. farm stores, the majority from fertilizer sales. Agrium is a multinational fertilizer and farm products company that develops, manufactures, and markets chemical and agricultural products and services that it distributes to customers in the Americas and elsewhere.

UAP is a publicly-traded U.S. company based in Colorado that develops, manufactures, and markets a line of products and value-added services including chemicals, fertilizer, and seed to farmers, commercial growers, and regional dealers throughout the world. UAP is the second-largest operator of farm stores in the U.S., measured by sales, and its 370 retail stores operate in all 50 states—making it, with Helena Chemical, one of only two farm store operators with a national footprint. UAP's U.S. farm store sales in 2006 constituted more than one-third of its \$2.85 billion in total sales. UAP's retail sales are weighted more toward pesticides, though fertilizer sales account for about 30% of its revenue.

Agrium and UAP announced on December 3, 2007, that their respective boards of directors had approved the sale and purchase of all outstanding shares of UAP stock to Agrium for approximately \$2.65 billion pursuant to the stock purchase agreements by and between Agrium and UAP. As a result of the merger, Agrium will hold 100% of the voting securities of UAP. Upon completion of the merger, UAP will become a wholly owned subsidiary of Agrium.

III. The Draft Complaint

The draft complaint alleges that the transaction may substantially lessen competition in the market for the retail sale of bulk fertilizer, and in certain cases related services, by farm stores. Retail farm stores sell mainly three classes of products: pesticides, seed, and fertilizer. Additionally, farm stores can deliver a range of services to meet the specific needs of particular growers. Retail farm stores, for example, often deliver fertilizer directly to the grower, and in many cases apply fertilizer to growers' fields, usually with the store's equipment. The stores often provide a variety of agronomic services to the grower in order to help maximize the efficiency of the fields.

Farmers typically want one-stop shopping from their farm stores, favoring a single provider who can provide all the inputs and services they require. Although farmers sometimes visit the store, sales representatives from the stores also call upon the farmers, and bulk fertilizer is usually delivered to the farms in trucks or spreaders.

Bulk fertilizer is a critical product without which most agricultural growers cannot profitably operate. Growers must have it, must have the proper amount, and must have it exactly on time, to produce their harvest. Fertilizer is usually applied before planting, and then again at the same time as planting. Along with occasional applications during the growing season, there is usually a fall application of fertilizer. Agricultural growers have no close substitutes for bulk fertilizer purchased through farm stores.

The relevant geographic markets within which to analyze the likely effects of the proposed transaction are a series of small areas within the United States, typically extending 20-30 miles from a farm store. Transportation costs can make fertilizer prices less competitively attractive at distances over about 25-30 miles because of high fuel costs and the low price-to-weight ratio of bulk fertilizer. Furthermore, application services require application equipment that often travels slowly, and can tie up several employees and pieces of equipment if traveling more than 20-30 miles.

The proposed merger of Agrium and UAP would impact six geographic markets, including three in the central "thumb" of Michigan, two in east/central Michigan, and one on the eastern shore of Maryland. The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the areas in or near the towns of Croswell, MI; Richmond, MI; Imlay City, MI; Vestaburg, MI; Standish, MI; and Pocomoke/Girdletree, MD. In each of these identified areas, Agrium and UAP own farm stores that are well-situated among a small number of competitors in the market for the group of growers located proximate to their stores.

The draft complaint further alleges that new entry would not prevent or counteract the anticompetitive effects of this acquisition in the relevant geographic markets. New farm store entry has become highly infrequent, due to the risks involved in expending significant sunk costs

to obtain enough customers to make a new store viable in a mature industry. Furthermore, because reliable supply and service is so important, loyalty to existing suppliers is typically high among growers, making it particularly difficult for a new entrant to develop a sufficient customer base.

The draft complaint also alleges that Agrium's acquisition of all of the outstanding voting securities of UAP, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets in violation 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, by eliminating direct competition between farm retail stores owned or controlled by Agrium and farm retail stores owned and controlled by UAP; by increasing the likelihood that Agrium will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining farm retail store firms. Each of these effects increases the likelihood that the prices of bulk fertilizer or related services will increase, in the geographic markets alleged in the complaint. Other competitors are not effective competitive constraints to Agrium or UAP throughout each relevant trade area, due to factors such as location, and size and scale of their operations.

IV. The Terms of the Agreement Containing Consent Orders

The Agreement Containing Consent Orders ("proposed consent order") will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Agrium must divest five UAP farm stores and two Agrium farm stores. UAP's farm stores that will be divested are located in Croswell, MI; Richmond, MI; Imlay City, MI; Vestaburg, MI; and Standish, MI. Agrium's farm stores that will be divested are located in Snow Hill, MD and Keller, VA. An Order to Hold Separate and Maintain Assets requires that the stores to be divested be operated independently, and appoints an Interim Monitor to ensure that the Commission's interests are protected.

A. Key Provisions of the Decision and Order

The proposed Orders will allow for effective divestiture of the key assets that today allow UAP to provide an independent competitive presence to Agrium in the relevant markets, and therefore will preserve the market structure. Paragraph II of the Decision and Order provides that Agrium divest itself of five UAP stores in Michigan, and two Agrium stores in Maryland and Virginia within 180 days of its acquisition of UAP, and that Agrium further comply with all provisions of a divestiture agreement to be approved by the Commission. The agreement also provides that the two Agrium stores located in Snow Hill, Maryland and Keller, Virginia, be sold to a single buyer. Because Agrium's Keller location provides the Snow Hill location with dry bulk blended fertilizer, the Keller store must be sold to maintain the existing market dynamic. If the Snow Hill store were sold alone, it would be unable to sell bulk dry blended fertilizer to local farmers.

The Decision and Order defines the scope of the assets to include the attributes of an ongoing business, such as necessary real property, tangible personal property, inventories, contracts, records of the business, accounts receivable permits, and intellectual property (other than the UAP and Agrium trade names). Pursuant to Paragraph II.E. of the proposed Decision and Order, Agrium also is required, for a period of up to a year, provide necessary transition services to the buyer at cost. The purpose of this provision is to allow for a relatively smooth transition of the store operation to the acquirer. Paragraph II.F. of the Decision and Order provides mechanisms for retention of each UAP store's employees by the acquiring party.

Paragraph III of the proposed Decision and Order requires that the Parties keep private, except where necessary under the agreement, confidential business information related to the divested UAP stores. Paragraph IV of the proposed Decision and Order requires that the Parties provide the Commission with "advance written notification" of intent to acquire any assets engaged in the sale of agricultural products in any area affected by the proposed divestitures. Paragraph V of the proposed Decision and Order provides for appointment of a divestiture trustee. Paragraphs VI-VIII define reporting obligations.

B. Key Provisions of the Order to Hold Separate

The Order to Hold Separate and Maintain Assets requires the Parties to maintain the assets to be divested as independent businesses pending divestiture, and to maintain the viability of these businesses. The proposed Order also provides for the appointment of an interim monitor to oversee the UAP assets in the relevant markets. The proposed Order incorporates the traditional provisions that allow the Interim Monitor broad oversight of the assets, and requiring the Monitor to report to the Commission on a regular basis. Furthermore, the proposed Order has provisions requiring the Parties to appoint a Manager who would run the assets on an independent basis, and requiring the Parties to give that Manager financial incentives in the success of the assets. The Parties will also be required to provide the held separate businesses with necessary support, but provides that employees of the Parties will not have access to confidential information, except to the extent necessary to accomplish the divestitures, comply with laws or regulations, or comply with the Orders. The Order requires that the Parties establish a system to prevent unauthorized disclosure of such confidential information, and, more generally, written procedures covering the management, maintenance and independence of the held separate assets. The Order also requires that the Parties provide the held separate assets with the financial resources and support that the Monitor believes are necessary to run the assets on an independent basis, including maintenance and replacement of existing assets, and business expansion.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order

and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.