

Complaint

IN THE MATTER OF

AGRIUM, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3981; File No. 0010100**Complaint, November 13, 2000--Decision, November 13, 2000*

This consent order addresses the acquisition by Agrium of the nitrogen fertilizer business of Unocal Corporation. The complaint alleges that the proposed acquisition would substantially lessen competition in the markets for urea, ammonia, and UAN 32% in the Northwest United States. The order would require Agrium to divest Unocal's deepwater terminal at Rivergate, part of its upriver terminal at Hedges and the leases on three UAN terminals to J.R. Simplot Company. The order also requires Agrium to provide a long term lease on ammonia storage at Hedges and perpetual access to the Hedges dock, roadway, railspur and weight scales.

Participants

For the Commission: *John B. Kirkwood, K. Shane Woods, Patricia A. Hensley, Joe Lipinsky, Michael Lewkonja, Nathan Rush, Virginia A. Davidson, Robert J. Schroeder, Daniel P. Ducore, James M. Ferguson, and Louis Silvia.*

For the Respondents: *William Blumenthal, King & Spalding and John Collins, Dewy Ballantine.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (ACommission@) having reason to believe that Respondents Agrium Inc. (AAgrium@), and Union Oil Company of California and Unocal Corporation (AUnocal@), have entered into an agreement whereby Agrium would acquire certain assets owned by Unocal 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 (AFTC

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Act@), as amended, 15 U.S.C. ' 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. ' 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. ' 45(b), stating its charges as follows:

Agrium

1. Agrium is a corporation organized, existing and doing business under and by virtue of the laws of the country of Canada, with its office and principal place of business located at 13131 Lake Fraser Drive SE, Calgary, Alberta, T2J7E8, Canada.

2. Agrium is a leading producer and marketer of fertilizer in North America and a major retail supplier of agricultural products and services in North America. In 1999, Agrium operated six nitrogen fertilizer plants and generated wholesale sales of nitrogen fertilizer of approximately \$500 million.

3. Agrium is acquiring Unocal=s corporate assets through its wholly owned subsidiary RSI Acquisition, Inc., a California corporation with its principal place of business located at 4582 S. Ulster St., Suite 1400, Denver, Colorado 80237.

4. At all times relevant herein, Respondent Agrium has been and is now engaged in commerce as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and is a corporation whose business is in or affecting commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

Unocal

5. Union Oil Company of California, a wholly owned subsidiary of Unocal Corporation, is a corporation organized,

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existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.

6. Unocal Corporation is 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 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.

7. Unocal manufactures, distributes, and sells nitrogen-based fertilizers. Unocal operates seven nitrogen fertilizer plants and three deepwater terminals within the states of Alaska, Washington, Oregon, and California.

8. Unocal operates its Agricultural Products Business, which includes its nitrogen fertilizer manufacturing and distribution facilities, through Prodicta, LLC, and Alaska Nitrogen Products, LLC, two wholly owned subsidiaries of Union Oil Company of California.

9. At all times relevant herein, Respondent Unocal has been and is now engaged in commerce as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and is a corporation whose business is in or affecting commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

The Proposed Merger and Acquisition

10. Pursuant to a Purchase and Sale Agreement between RSI Acquisitions Inc. and Unocal, dated January 19, 2000 (hereinafter referred to as the AAgreement@), Unocal agreed to sell to Agrium its Agricultural Products Business for a purchase price of \$325 million plus an AEarn-Out@ for six years based on the future relationship between certain commodity price indexes and certain

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forecasted prices for Kenai, Alaska, facilities (hereinafter referred to as the AAgrium Acquisition@).

Count One B UREA

11. One relevant line of commerce is the production, distribution, and wholesale sale of the nitrogen-based fertilizer urea.

12. One relevant section of the country is the Northwest, which consists of the states of Washington, Oregon, and Idaho.

13. Respondent Agrium is one of the largest suppliers of urea in the Northwest.

14. Respondent Unocal is one of the largest suppliers of urea in the Northwest.

15. Respondents Agrium and Unocal are direct and substantial competitors in the business of producing, distributing, and selling urea in the relevant section of the country set out in Complaint Paragraph 12.

16. The business of producing, distributing and selling urea in the relevant section of the country set out in Complaint Paragraph 12 is highly concentrated. The Agrium Acquisition would significantly increase concentration in this relevant section of the country as evidenced by an increase in the Herfindahl-Hirschman Index (commonly referred to as AHHI@) of over 2200 to over 4800.

17. The effect of the proposed Agrium Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the production, distribution and sale of urea in the relevant section of the country set out in Complaint Paragraph 12, in violation of Section 7 of the Clayton Act, as

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amended, 15 U.S.C. ' 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, in the following ways, among others:

a. the Agrium Acquisition would eliminate actual and potential competition between Agrium and Unocal to supply urea in this relevant section of the country; and

b. Agrium would be likely to exact anticompetitive price increases from buyers of urea in this relevant section of the country.

18. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 12.

Count Two B UAN 32

19. One relevant line of commerce is the production, distribution, and wholesale sale of the nitrogen-based fertilizer UAN 32% solution (AUAN 32").

20. One relevant section of the country is the Northwest, as defined in Complaint Paragraph 12.

21. Respondent Agrium is one of the largest suppliers of UAN 32 in the Northwest.

22. Respondent Unocal is one of the largest suppliers of UAN 32 in the Northwest.

23. Respondents Agrium and Unocal are direct and substantial competitors in the business of producing, distributing, and selling UAN 32 in the relevant section of the country set out in Complaint Paragraph 20.

24. The business of producing, distributing, and selling UAN 32 in the relevant section of the country set out in Complaint

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Paragraph 20 is highly concentrated. The Agrium Acquisition would significantly increase concentration in this relevant section of the country as evidenced by an increase in the HHI of over 1922 to over 4200.

25. The effect of the Agrium Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the production, distribution, and sale of UAN 32 in the relevant section of the country set out in Complaint Paragraph 20, 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, in the following ways, among others:

a. the Agrium Acquisition would eliminate actual and potential competition between Agrium and Unocal to supply UAN 32 in this relevant section of the country; and

b. Agrium would be likely to exact anticompetitive price increases from buyers of UAN 32 in this relevant section of the country.

26. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 20.

Count Three B Ammonia

27. One relevant line of commerce is the production, distribution, and wholesale sale of the nitrogen-based fertilizer anhydrous ammonia (Aammonia@).

28. One relevant section of the country is the Northwest, as defined in Complaint Paragraph 12.

29. Respondent Agrium is one of the largest suppliers of ammonia to the Northwest.

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30. Respondent Unocal is one of the largest suppliers of ammonia to the Northwest.

31. Respondents Agrium and Unocal are direct and substantial competitors in the business of producing, distributing, and selling ammonia in the relevant section of the country set out in Complaint Paragraph 28.

32. The business of producing, distributing, and selling ammonia in the relevant section of the country set out in Complaint Paragraph 28 is highly concentrated. The Agrium Acquisition would significantly increase concentration in this relevant section of the country as evidenced by an increase in the HHI of over 1560 to over 3800.

33. The effect of the Agrium Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the production, distribution, and sale of ammonia in the relevant section of the country set out in Complaint Paragraph 28, 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, in the following ways, among others:

a. the Agrium Acquisition would eliminate actual and potential competition between Agrium and Unocal to supply ammonia in this relevant section of the country; and

b. Agrium would be likely to exact anticompetitive price increases from buyers of ammonia in this relevant section of the country.

34. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 28.

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35. The proposed acquisition described in Complaint Paragraph 10 herein, if consummated, would violate 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.

WHEREFORE THE PREMISES CONSIDERED, the Federal Trade Commission, on this thirteenth day of November, 2000, issues its Complaint against said Respondents.

By the Commission, Commissioner Swindle not participating.

DECISION AND ORDER

The Federal Trade Commission (ACommission@) having initiated an investigation of the acquisition by Respondent Agrium, Inc. (AAgrium@) of assets held by Respondents Union Oil Company of California (AUnion Oil@) and Unocal Corporation (AUnocal@), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 45, and Section 7 of the Clayton Act, as amended 15 U.S.C. ' 18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (AConsent Agreement@), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of 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

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alleged in such Complaint, or that 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

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission hereby makes the following jurisdictional findings and issues the following 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. For the purposes of this matter, Agrium, Inc. acquires all assets through its wholly owned subsidiary RSI Acquisition, Inc., a California company with its principal place of business located at 4582 S. Ulster St., Suite 1400, Denver, Colorado 80237.
2. Respondent Union Oil Company of California, a wholly owned subsidiary of Unocal Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal place of business at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.
3. Respondent Unocal Corporation is 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 at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents and the proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in this order, the following definitions shall apply:

- A. **AAgrium@** means Agrium, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Agrium, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. **AUnion Oil@** means Union Oil Company of California, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Union Oil Company of California, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. **AUnocal@** means Unocal Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Unocal Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. **ARespondents@** means Agrium, Union Oil, and Unocal, individually and collectively.
- E. **ASimplot@** means J.R. Simplot Company, a Nevada corporation with its principal place of business at 999 Main Street, Suite 1300, Boise, Idaho 83605.

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- F. ACommission@ means the Federal Trade Commission.
- G. AAlternate Acquirer@ means the entity or entities to whom the Divestiture Assets, as defined in Paragraph I.L., may be divested by the Respondents pursuant to Paragraph II. of this Decision and Order or by the trustee pursuant to Paragraph V. of this Decision and Order, as applicable.
- H. ADivestiture Agreement@ means the July 12, 2000, Purchase and Sale Agreement and the August 3, 2000, Amendment to that Agreement (and all Exhibits attached to either) between Simplot and Agrium whereby Simplot acquires the Divestiture Assets from Agrium. All references in this Decision and Order to Exhibits are to the Exhibits of the Divestiture Agreement, unless otherwise specified.
- I. ARivergate@ means the terminal facility that has Atidewater@ access and is located in Portland, Oregon, as defined in Exhibit A.
- J. AHedges@ means the terminal facility located in Kennewick, Washington, as defined in Exhibit C.
- K. AApportioned Hedges@ means the divested terminal facility comprised of a 600 x 700 foot block in the east south east corner of Hedges and a 200 foot wide corridor along the south east property line of Hedges, as illustrated in Exhibit B.
- L. ADivestiture Assets@ means all of Agrium=s right, title, and interest acquired from Union Oil and Unocal pursuant to the Acquisition in all assets described in the Divestiture Agreement, including, without limitation, the following:
 - 1. The real property Rivergate together with all rights, interests, improvements, and appurtenances pertaining thereto, including but not limited to the following assets:
 - a. All fertilizer terminal related assets such as the Atidewater@ piers, ship unloading systems,

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warehousing facilities, machinery, fixtures, equipment, technology, know-how, specifications, designs, drawings, processes, quality control data, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and any tangible personal property defined in Exhibit E;

- b. Any adjacent strips and gores between the property and any abutting properties, and any land lying in or under the bed of any creek, stream, or waterway or any highway, avenue, road, easement, street, alley, or right-of-way, open or proposed, in, on, across, abutting, or adjacent to the property;
- c. All certificates for appropriation of water and other water rights generally that relate to the property;
- d. All right, title, interest in and to the contracts listed in Exhibit D;
- e. All rights under warranties and guarantees, express or implied, wherever located;
- f. 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;
- g. All federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, wherever located;
- h. All items of prepaid expense;
- i. Services of one to four Crane Operators at any given time for a period of (12) twelve months following the

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Closing Date, according to the terms of the Crane Operator Labor Agreement set out in Exhibit J; and

- j. Any additional assets defined in the Divestiture Agreement.
2. The real property Apportioned Hedges together with all rights, interests, improvements, and appurtenances pertaining thereto, including but not limited to the following assets:
- a. A 10,000 short ton dry warehouse, related loading and unloading equipment, machinery, fixtures, equipment, designs, drawings, and transportation and storage facilities;
 - b. Any adjacent strips and gores between the property and any abutting properties, and any land lying in or under the bed of any creek, stream, or waterway or any highway, avenue, road, easement, street, alley, or right-of-way, open or proposed, in, on, across, abutting, or adjacent to the property;
 - c. A lease for transfer, storage, and handling of up to 20,000 short tons of anhydrous ammonia at the ammonia facilities at Hedges for a period of ten years with an option to extend the lease for another ten years, according to the terms of the Transfer, Storage, and Handling Agreement set out in Exhibit I;
 - d. A perpetual, non-exclusive easement granting to Simplot or the Alternate Acquirer, as applicable, the right-of-way to pass and repass, and to install and/or maintain utilities to or from Apportioned Hedges over and along the private roadway and the rail track spur (as identified in Exhibit A of the Easement Agreement), according to the terms of the Easement Agreement set out in Exhibit L;

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- e. An irrevocable, non-exclusive license to access the Pier (as identified in Exhibit A of the Easement Agreement) for the purposes of barge unloading and loading of dry fertilizer products, according to the terms of the Easement Agreement set out in Exhibit L;
- f. Truck and rail car scale services, according to the terms of the Easement Agreement set forth in Exhibit L;
- g. For five (5) years, either a commercially reasonable lease for ammonia barge services or, if an agreement cannot be reached, an unconditional option to purchase one barge at its independently appraised value, according to the terms of the Divestiture Agreement;
- h. Right of First Refusal on the non-divested portion of the Hedges site, according to the terms of the Right of First Refusal Agreement set out in Exhibit G;
- i. All rights under warranties and guarantees, express or implied, wherever located;
- j. All separately maintained, as well as relevant portions of not separately maintained books, records, and files, wherever located;
- k. All federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, wherever located;
- l. All items of prepaid expense; and
- m. Any additional assets defined in the Divestiture Agreement.

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3. Agrium storage and handling lease for the Tidewater Terminal Co., Inc. terminal at East Pasco, Washington (defined as ALease@ in the Divestiture Agreement), and Prodicta leases for the Tidewater Terminal Co., Inc. terminals at Vancouver and Wilma, Washington (as listed in Exhibit D) .

PROVIDED, HOWEVER, Divestiture Assets do not include the following assets:

- (1) Product inventory located at either Rivergate or Apportioned Hedges;
 - (2) The non-divested, western portion (approximately 29 acres) of Hedges including the pier and related ammonia truck and barge handling equipment systems and sites (as illustrated in Exhibit B);
 - (3) The assets and facilities known as the N-Phuric Production Facility, as illustrated by Exhibit B; and
 - (4) Any additional assets excluded in the Divestiture Agreement.
- M. ANitrogen-Based Fertilizers@ means urea, UAN 32% solution, and anhydrous ammonia.
- N. AAacquisition@ means the proposed acquisition by Agrium of Unocal's Agricultural Products Business as described in the January 19, 2000, Purchase and Sale Agreement between RSI Acquisition, Inc., and Union Oil.
- O. AAgricultural Products Business@ means the assets of Prodicta LLC, a Delaware limited liability company, and the assets of Alaska Nitrogen Products LLC, an Alaska limited liability company, both with their principal places of business at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.

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Prodicta LLC and Alaska Nitrogen Products LLC are wholly owned subsidiaries of Respondent Union Oil.

- P. **AAcquisition Agreement@** means the January 19, 2000, Purchase and Sale Agreement between RSI Acquisition, Inc., and Union Oil.
- Q. **AClosing Date@** means the date, as defined in the Divestiture Agreement, when the parties have fully consummated the transfer of assets contemplated in the Divestiture Agreement.
- R. **ANorthwest@** means the State of Washington and any and all land and territorial waters subject to the jurisdiction of the State of Washington; the State of Oregon and any and all land and territorial waters subject to the jurisdiction of the State of Oregon; and the State of Idaho and any and all land subject to the jurisdiction of the State of Idaho.
- S. **AThird Party Approvals@** means all consents or waivers from private entities, and local, state and federal regulatory bodies, or other consents or waivers from partners or otherwise, that are necessary to effect the complete transfer of the Divestiture Assets to Simplot or the Alternate Acquirer, as applicable.
- T. **AUnocal Employees@** means all employees currently employed by Unocal who work primarily at the Rivergate facility, including but not limited to (a) individuals executing the duties generally performed by executive managers, managers, and supervisors, (b) all **AEmployees@** as that term is defined and used in the Divestiture Agreement, and (c) all other personnel necessary and beneficial to maintaining Rivergate as an ongoing facility.
- U. **ACrane Operators@** means qualified, state certified crane operators of the type currently utilized at Rivergate.

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IT IS FURTHER ORDERED that:

- A. Respondents shall divest or cause to be divested to Simplot, or to the Alternate Acquirer if applicable, absolutely and in good faith, at no minimum price, the Divestiture Assets as ongoing facilities in the distribution and wholesale sale of Nitrogen-Based Fertilizers.
- B.
 - 1. The divestiture shall be made immediately after Respondent Agrium consummates the Acquisition, and shall be pursuant to and in accordance with the Divestiture Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Decision and Order). Failure to comply with the Divestiture Agreement shall constitute a failure to comply with this Decision and Order.
 - 2. PROVIDED, HOWEVER, that if Respondents have divested the Divestiture Assets to Simplot prior to the date the Decision and Order becomes final, and if, at the time the Commission determines to make the Decision and Order final, the Commission notifies Respondents that Simplot is not an acceptable acquirer or that the Divestiture Agreement specifies an unacceptable manner of divestiture, then Respondents shall immediately rescind the transaction with Simplot and shall divest the Divestiture Assets within four (4) months of the date the Decision and Order becomes final. Respondents shall divest the Divestiture Assets only to an Alternate Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondents shall secure all Third-Party Approvals prior to the Closing Date.
- D. The purpose of the divestiture of the Divestiture Assets is to ensure the continued use of the Divestiture Assets in the same

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businesses in which they were engaged at the time of the announcement of the proposed Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

- E. Respondents shall waive and not exercise any preferential right, right of first refusal, back-in right, or any contractual option that would permit Respondents, as a result of the divestiture to Simplot or Alternate Acquirer, as applicable, to acquire any interest in any Divestiture Asset acquired pursuant to this Decision and Order by Simplot or Alternate Acquirer, as applicable.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Divestiture Assets, and shall not cause the wasting or deterioration of the Divestiture Assets, nor shall they cause the Divestiture Assets to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Divestiture Assets. Respondents shall comply with the terms of this Paragraph until such time as Respondents have divested the Divestiture Assets pursuant to the terms of this Decision and Order. Respondents shall conduct or cause to be conducted the business of the Divestiture Assets in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Divestiture Assets in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operation of any Divestiture Asset and Respondents shall continue to operate the Divestiture Assets

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at a level and manner consistent with those maintained by Respondents in the ordinary course of business consistent with past practices.

- B. Respondents shall use best efforts to keep the organization and properties of each Divestiture Asset intact, including current business operations and physical facilities. Included in the above obligations as set forth in Paragraph III.A. and B., Respondents shall, without limitation:
1. Maintain operations and departments and neither reduce hours nor manner of operation of any Divestiture Asset;
 2. Not transfer inventory or equipment from any Divestiture Asset or make any physical alterations to any Divestiture Asset other than in the ordinary course of business consistent with past practice, or unless otherwise agreed to by Respondents in the Divestiture Agreement; and
 3. Make any payment required to be paid under any contract or lease when due, maintain and renew all permits and licenses associated with any Divestiture Asset, and otherwise pay all liabilities and satisfy all obligations associated with any Divestiture Asset, in each case in a manner consistent with past practice.

IV.**IT IS FURTHER ORDERED** that:

- A. From the date Respondents sign the Consent Agreement until the divestiture is completed pursuant to the terms of this Decision and Order, Respondents shall take, or cause to be taken, reasonable steps, including implementing appropriate incentive plans (such as vesting or crediting of all current and accrued benefits and pensions, to which Unocal Employees are entitled) and paying bonuses, to cause the Unocal Employees to accept offers of employment from Simplot or the Alternate Acquirer, as applicable.

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- B. For a period of two (2) years following the date Respondents sign the Consent Agreement, Respondents shall not solicit for employment any Unocal Employee employed by Simplot or the Alternate Acquirer, as applicable, unless and until such employee=s employment by Simplot or the Alternate Acquirer, as applicable, has been terminated.

V.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested or have not caused to be divested, absolutely and in good faith the Divestiture Assets to Simplot or the Alternate Acquirer, as applicable, within the time period required by Paragraph II. of this Decision and Order, the Commission may appoint a trustee to divest or cause to be divested the Divestiture Assets.
- B. 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, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to ' 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Decision and Order.
- C. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.A. of this Decision and Order, Respondents shall consent to the following terms and

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conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest or cause to be divested, respectively, the Divestiture Assets.
3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture and obtain the consents required by this Decision and Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph V.C.3. to accomplish the divestiture and obtain the consents, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time or that consents can be obtained in a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however,*

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the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access, subject to any legally recognized privilege of Respondents, to the personnel, books, records and facilities related to the Divestiture Assets or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture and consents shall be accomplished only in a manner that receives the prior approval of the Commission; *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) days of receiving written notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable

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and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Divestiture Assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph V.A. of this Decision and Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Decision and Order.

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11. In the event that the trustee determines that he or she is unable to divest or cause to be divested the Divestiture Assets in a manner consistent with the Commission's purpose as described in Paragraph II., the trustee may divest assets similar and corresponding to the Divestiture Assets of Respondents as necessary to achieve the remedial purposes of this Decision and Order.
12. The trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture and to obtain the necessary consents.

VI.

IT IS FURTHER ORDERED that, for a period commencing on the date this Decision and Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, in (a) any of the Divestiture Assets required to be divested pursuant to Paragraph II. of this Decision and Order, and (b) any terminal facility that has Atidewater@ access and is used in the transfer and storage of UAN 32% solution in the Northwest.

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 (hereinafter referred to as Athe 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, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and

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notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the Afirst 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), Respondents shall not consummate the transaction until twenty (20) 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.

VII.**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Decision and Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II. through IV. of this Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. through IV. of this Decision and Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. through IV. of the Decision and Order, including a description of all substantive contacts or negotiations relating to the divestitures and the approvals. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal

Decision and Order

memoranda, and all reports and recommendations concerning the divestiture and approvals. The final compliance report required by this Paragraph VII. A. shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

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- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondents that may affect compliance obligations arising out of this Decision and Order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Decision and Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matter contained in this Decision and Order; and
- B. Upon five (5) days= notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

X.

Analysis to Aid Public Comment

IT IS FURTHER ORDERED that this Decision and Order shall terminate:

- A. With respect to Respondent Agrium, on November 13, 2010.
- B. With respect to Respondents Unocal and Union Oil, when the transfer of the Divestiture Assets to Respondent Agrium has been completed pursuant to the Acquisition Agreement.

By the Commission, Commissioner Swindle not participating.

[Confidential Appendix I Redacted From Public Record Version]

**Analysis of the Proposed Consent Order to Aid Public
Comment**

The Federal Trade Commission ("Commission") has accepted for public comment an Agreement Containing Consent Order with Agrium, Inc. (AAgrium@) and Union Oil Company of California and Unocal Corp. (AUnocal@). The purpose of the agreement is to remedy the anticompetitive effects of Agrium's proposed acquisition of Unocal's nitrogen fertilizer business. The proposed order would require that Agrium divest assets that are integral to the sale of nitrogen fertilizers in the Northwest (Washington, Oregon, and Idaho).

Analysis to Aid Public Comment

Nitrogen fertilizers are used by farmers around the world to improve crop yields by supplying the nitrogen essential to plant growth. Agrium, with production facilities in Texas and near its headquarters in Alberta, Canada, is one of the world's largest producers of nitrogen fertilizers. In 1998, Agrium's wholesale sales of nitrogen fertilizers were \$501 million. Unocal produces and sells nitrogen fertilizers through its subsidiaries Alaska Nitrogen Products LLC and Prodicta LLC, which have production and distribution facilities in Alaska, Washington, Oregon and California. Unocal's 1998 wholesale sales of nitrogen fertilizers were approximately \$377 million.

Agrium and Unocal are the leading sellers of anhydrous ammonia, urea, and UAN 32% solution, which are the most popular nitrogen fertilizers in the Northwest. Substitution among these fertilizers, and between them and other nitrogen fertilizers, is limited because of agricultural considerations (they differ in their suitability for particular crops, soils, weather conditions, etc.) and commercial factors (e.g., each of these fertilizers requires different storage and application equipment). In the manufacture of an important resin, there is no substitute for urea.

The complaint alleges that Agrium's proposed acquisition of Unocal, if consummated, may substantially lessen competition 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. The complaint identifies three relevant lines of commerce (product markets) in which to analyze the effects of this acquisition: urea, ammonia, and UAN 32%. The relevant section of the country (geographic market) alleged in the complaint is the Northwest, which consists of the states of Washington, Oregon, and Idaho. In urea, Agrium's acquisition of Unocal would result in an increase in the Herfindahl-Hirschman Index (commonly referred to as HHI) from 2200 to over 4800; in ammonia, the HHI rises from 1922 to over 4200; and in UAN 32% it rises from 1560 to over 3800. By eliminating competition between Agrium and Unocal, who are the top two suppliers of each of these products in the Northwest, the

Analysis to Aid Public Comment

acquisition would enable Agrium to unilaterally increase the prices of ammonia, urea, and UAN 32% in that geographic market.

It is unlikely that the competition eliminated by the proposed acquisition would be replaced by new entry into the Northwest. The construction of a new nitrogen fertilizer plant to supply the Northwest appears to be uneconomic. One recent attempt at building a plant in the region was abandoned four years after it was first announced. Design, site selection, permitting and construction of a new plant to supply the Northwest would require considerably more than two years. Producers with plants in the Northwest cannot expand output because these plants are operating at capacity. Importers of offshore fertilizers are unlikely to ship significantly more to the Northwest because the transfer and storage terminals they need are either unavailable or more expensive to use than Unocal's Rivergate terminal. Midwest producers face obstacles to increasing shipments to the Northwest, including high transportation costs, commitments to local customers, the attractiveness of netbacks closer to their plants, and differences in seasonal demand that often make California a better market for their product.

The proposed consent order would require that Agrium divest Unocal's deepwater terminal at Rivergate, part of its upriver terminal at Hedges (containing urea storage and land for expansion and road access), and leases on three UAN terminals (including one with deepwater access) to J.R. Simplot Company. The order would also require Agrium to provide Simplot with a long-term lease on the ammonia storage at Hedges and perpetual access to the Hedges dock, roadway, rail spur and weight scales.

The Commission is preliminarily satisfied that Simplot is well qualified to reproduce Unocal's competitive role in the Northwest. Simplot is a \$2.8 billion agribusiness that, among other things, produces, wholesales and retails nitrogen and other

Analysis to Aid Public Comment

fertilizers around North America. It operates a large nitrogen fertilizer production facility in Manitoba, numerous phosphate plants, and a chain of retail outlets. In the Northwest, Simplot is a substantial source of phosphate fertilizers, but its wholesaling of nitrogen fertilizers is very limited. The proposed divestiture would enable Simplot to become a major wholesaler of nitrogen fertilizers in the Northwest.

The proposed order requires that respondents divest the specified assets to Simplot, in accordance with the agreement between Agrium and Simplot, immediately after Agrium acquires Unocal. If, at the time the Commission decides to make the proposed consent order final, the Commission notifies the respondents that Simplot is not an acceptable acquirer, or that the agreement with Simplot is not an acceptable manner of divestiture, the respondents must immediately rescind the transaction and divest those assets to an acceptable acquirer, and in an acceptable manner, within four months of the date the proposed consent order becomes final.

For a period of ten (10) years from the date the proposed order becomes final, respondents are required to provide written notice to the Commission prior to acquiring any interest in (1) any asset to be divested or (2) any terminal with deepwater access used in the transfer and storage of UAN 32 in the Northwest. These appear to be the only assets in the Northwest whose acquisition might substantially affect competition in the sale of the relevant products but not trigger a reporting obligation under the Hart-Scott-Rodino Act. Respondents are required to provide to the Commission a report of compliance with the proposed order within thirty (30) days of the date the order becomes final and every sixty (60) days thereafter until respondents have complied with the divestiture obligations. Respondents are also required to provide annual reports during the term of the order. For Agrium the term of the order would be ten years; for Unocal it would be until the assets to be divested are transferred to Agrium.

The Agreement Containing Consent Order has been placed on the public record for thirty (30) days for receipt of comments by

Analysis to Aid Public Comment

interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the order or make it final. By accepting the proposed 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 order, including the specified divestitures, to aid the Commission in its determination of whether it should make the order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the order in any way.

Complaint

IN THE MATTER OF

WEIDER NUTRITION INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3983; File No. 9823035

Complaint, November 15, 2000--Decision, November 15, 2000

This consent order addresses Weider Nutrition's advertisements claiming that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. The complaint alleges that the Respondent could not substantiate its claims regarding PhenCal and PhenCal 106. The consent order requires Weider Nutrition to pay \$400,000.00 in consumer redress and to have competent and reliable scientific substantiation for any future claims that PhenCal and PhenCal 106: (1) cause significant weight loss; (2) significantly increase a person's ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as "Phen-Fen"; (6) are safe when used to promote or maintain weight loss; (7) the safety of such product or program; (8) the effect of such a product on a condition or disease; (9) the comparative affect or their product to any other product. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. The order provides a safe harbor not prohibiting representations that permitted by a standard promulgated by the Food and Drug Administration for labeling or in a drug approval.

Participants

For the Commission: *Lemuel W. Dowdy, Laura D. Koss, Joni Lupovitz, Richard Cleland, Elaine D. Kolish, and BE.*

For the Respondents: *Claude C. Wild III, Patton Boggs.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Weider Nutrition International, Inc. ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: