

Complaint

IN THE MATTER OF

**AGRIUM, INC.
AND
UAP HOLDING CORP.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

*Docket C-4219; File No. 081 0073
Complaint, May 1, 2008 – Decision, June 10, 2008*

This consent order addresses the \$2.65 billion acquisition by Agrium of all outstanding shares of UAP stock. The 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 in or near the towns of Croswell, MI; Richmond, MI; Imlay City, MI; Vestaburg, MI; Standish, MI; and Pocomoke/Girdletree, MD. The Complaint further alleges that the acquisition would eliminate direct competition between farm retail stores owned or controlled by Agrium and farm retail stores owned and controlled by UAP and increase the likelihood that Agrium will unilaterally exercise market power or facilitate, collude or coordinate interaction among the remaining farm retail store firms. The order requires that Agrium divest itself of five UAP stores in Michigan, and two Agrium stores in Maryland and Virginia. The order also provides that the two Agrium stores located in Snow Hill, Maryland and Keller, Virginia, be sold to a single buyer.

Participants

For the Commission: *Stephen Antonio, Donald R. Gordon, Victoria Lippincott and Victoria Luxardo.*

For the Respondents: *Deborah Feinstein, Arnold & Porter LLP; Joseph Simons, Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Joseph Larson, Wachtell, Lipton, Rosen, & Katz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the “Commission”),

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having reason to believe that respondents Agrium Inc. (“Agrium”), a foreign corporation, and UAP Holding Corp. (“UAP”), a Delaware corporation having its principal place of business in Colorado, both subject to the jurisdiction of the Commission, have agreed to merge, 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Agrium is a Canadian 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, Canada, T2J 7E8. In the United States, Agrium operates its chemical and agricultural business through its subsidiary, Agrium USA, headquartered at Suite 1700, 4582 South Ulster Street, Denver, Colorado, 80237. 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.

2. Respondent UAP is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 7251 W 4th Street, Greeley, Colorado, 80634. UAP is an agricultural products company 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.

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II. JURISDICTION

3. Agrium and UAP are, and at all times relevant herein have been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED TRANSACTION

4. 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.

IV. VIOLATIONS CHARGED**Product Market**

5. The relevant line of commerce in which to analyze the effects of the proposed merger described herein is the retail sale of bulk fertilizer by farm stores, together with, in certain cases, related services. 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.

6. Farm stores physically consist largely of office space, a shed housing substantial storage, especially for fertilizer, and usually a

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bulk blending plant for dry fertilizer. To be a full-service operation, a farm store must have a blender. Farm stores also usually have rolling stock consisting of trucks of various sizes, and, if they perform application services, various pieces of spreader and applicator machinery.

7. Fertilizer is sold to commercial growers mostly in bulk, in three ways: solid ("dry"), liquid, and gas (anhydrous ammonia). With the exception of small quantities of micronutrients, bulk fertilizer consists of nitrogen, potash or phosphates, or some combination of them. Bulk dry fertilizer is sometimes sold and applied in pure form, but for small and medium-sized growers it is more often custom-blended at the farm store to meet the grower's particular needs. Liquid fertilizer, unlike dry, does not require bulk blending. Bulk dry fertilizer is difficult to handle and store, expensive to ship, and generally must be blended and purchased locally.

8. 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 invariably call upon the farmers, and bulk fertilizer is usually delivered to the farms in trucks or spreaders.

9. 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.

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Geographic Market

10. 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. Beyond this distance, farm stores cannot effectively service growers, since their sales and operations staff need to visit customers' farms frequently and thereby maintain the relationship upon which the business depends.

Market Structure

11. 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. Specifically these areas are 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 pricing of bulk fertilizer by the retail farm store to any particular customer within the store's trade area depends on a number of factors, and typically is the product of individual negotiations between a farm store and a grower.

12. In Croswell, Agrium has four farm stores between 10 and 19 miles from UAP's Croswell store. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores and east of Croswell.

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13. In Richmond, UAP's Richmond store is 26 miles southeast of Agrium's Melvin store. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores and east of Richmond.

14. In Imlay City, UAP's Imlay City store is 17 miles northeast of Agrium's Melvin store, and 13 miles northeast of Agrium's Brown City store. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores, and the area north and east of Melvin.

15. In Standish, UAP's Standish store is 16 miles north of Agrium's store in Linwood, and eight miles north of an Agrium satellite location at Pinconning. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores, and the area north of Standish.

16. In Vestaburg, UAP's Vestaburg store is located 22 miles west of Agrium's store in Breckenridge. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores.

17. In Girdletree and Pocomoke, Agrium's Snow Hill store is 12 miles northeast of UAP's store in Pocomoke City, and six miles north of UAP's Girdletree location. Agrium and UAP together account for the largest share of the sales of bulk fertilizer in the highly concentrated market composed primarily of the area broadly between the respondents' stores, extending a few miles south of UAP's locations and a few miles north of Agrium's location.

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Conditions of Entry

18. New entry would not prevent or counteract the anticompetitive effects of this acquisition in these relevant 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.

Effects of the Acquisition

19. In the areas identified in paragraphs 11 through 17, above, UAP and Agrium compete directly with each other in the retail sales of bulk fertilizer. 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.

20. The effects of the merger, if consummated, may be to substantially lessen competition or tend to create a monopoly in each of the relevant retail farm store markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the merger would:

- a. eliminate actual, direct, and substantial competition between Agrium and UAP in the relevant markets;
- b. increase Respondents' ability to exercise market power unilaterally in the relevant markets; and
- c. substantially increase the level of concentration in the relevant markets and enhance the probability of coordination.

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21. The merger agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

22. The merger described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of May, 2008, issues its Complaint against said Respondents.

By the Commission.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
(Public Record Version)

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Agrium Inc. (“Agrium”) of the outstanding voting securities of Respondent UAP Holding Corporation (“UAP”), hereinafter referred to collectively as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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 amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of

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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 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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order 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.P.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets ("Hold Separate"):

1. Respondent Agrium 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 S.E., Calgary, Alberta, Canada T2J 7E8. Agrium's principal subsidiary in the United States is located at 4582 South Ulster Street, Suite 1700, Denver, Colorado 80237.

2. Respondent UAP 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 7251 W. 4th Street, Greeley, Colorado 80634.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

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ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

- A. “Additional Hold Separate Business” means all business activities and related assets conducted by UAP, prior to the Acquisition, at the locations identified in Appendix C of this Hold Separate.
- B. “Agrium Assets & Business” means all business activities and related assets conducted by Agrium at or based out of (i) 308 Timmons St., Snow Hill, Maryland, and (ii) 18432 Wachapreague Road, Melfa, Virginia, prior to the Acquisition.
- C. “Decision and Order” means (i) the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and (ii) the Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- D. “Divestiture Date” means, with regard to any of the Farm Supply Assets, the date on which Respondents (or a Divestiture Trustee) close on the divestiture of those assets completely and as required by Paragraph II (or Paragraph V) of the Decision and Order to an Acquirer approved by the Commission.
- E. “Hold Separate Business” means the Farm Supply Assets, Farm Supply Business, each Farm Supply Employee, and the Additional Hold Separate Business, but shall not include the

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Agrium Assets & Business.

- F. “Hold Separate” means this Order to Hold Separate and Maintain Assets.
- G. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph V hereof.
- H. “Interim Monitor” means the Person appointed pursuant to Paragraph IT.C. of this Hold Separate.
- I. “Orders” means the Decision and Order and this Hold Separate.

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

- A. During the Hold Separate Period, Respondents shall hold the Hold Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business. Respondents shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, or the Interim Monitor, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate, the Consent Agreement, the Decision and Order, and all applicable laws.
- B. From the date Respondents execute the Consent Agreement and during the Hold Separate Period, Respondents shall take such actions as are necessary to maintain and assure the continued maintenance of the viability, marketability and competitiveness of the Hold Separate Business, and to

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prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber or otherwise impair the Hold Separate Business.

- C. Respondents shall hold the Hold Separate Business separate, apart, and independent of Agrum and UAP on the following terms and conditions:
1. Richard Gilmore shall serve as Interim Monitor, pursuant to the agreement executed by the Interim Monitor and Respondents and attached as Confidential Appendix A (“Monitor Agreement”).
 - (a) Respondents shall, no later than one (1) day after the Acquisition Date, pursuant to the Monitor Agreement, transfer to and confer upon the Interim Monitor all rights, powers, and authority necessary to permit the Interim Monitor to perform his duties and responsibilities pursuant to this Hold Separate, in a manner consistent with the purposes of the Decision and Order and in consultation with Commission staff, and shall include in the Monitor Agreement all provisions necessary to effectuate this requirement.
 - (b) The Monitor Agreement shall require that the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - (c) The Interim Monitor shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Manager; maintaining the independence of the Hold Separate Business; and monitoring Respondents’ compliance with their obligations pursuant to the Orders, including maintaining the viability, marketability and

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competitiveness of the Hold Separate Business pending divestiture.

- (d) Subject to all applicable laws and regulations, the Interim Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Hold Separate Business, and to any other relevant information as the Interim Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Interim Monitor may reasonably request and shall cooperate with the Interim Monitor. Respondents shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with this Hold Separate, the Consent Agreement or the Decision and Order or otherwise to perform his duties and responsibilities consistent with the terms of this Hold Separate.
- (e) The Interim Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- (f) The Commission may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Interim Monitor's duties.

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- (g) Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however*, such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- (h) Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate terminates, the Interim Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate and Respondents' compliance with their obligations under the Hold Separate and the Decision and Order. Included within that report shall be the Interim Monitor's assessment of the extent to which the businesses comprising the Hold Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- (i) If the Interim Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Interim Monitor consistent with the terms of this Hold Separate, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any substitute Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Interim Monitor. Respondents and the substitute Interim Monitor shall execute a

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Monitor Agreement, subject to the approval of the Commission, consistent with this paragraph.

- (j) The Interim Monitor shall serve until the day after the Divestiture Date pertaining to the last divestiture of the Farm Supply Assets and Farm Supply Business in the Hold Separate Business; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
2. No later than one (1) day after the Acquisition Date, Respondents shall enter into a management agreement with, and shall transfer all rights, powers, and authority necessary to manage and maintain the Hold Separate Business, to David McClain ("Manager").
- (a) In the event that the aforementioned individual declines an offer to act as a Manager, or accepts the position of Manager and subsequently ceases to act as a Manager, then Respondents shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate.
 - (b) The Manager shall report directly and exclusively to the Interim Monitor and shall manage the Hold Separate Business independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate.
 - (c) The management agreement between Respondents

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and the Manager shall provide that:

- (1) Respondents shall provide the individual who agrees to serve as Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability and competitiveness until the applicable Divestiture Date(s) have occurred, and as may otherwise be necessary to achieve the purposes of this Hold Separate; and
 - (2) Respondents shall, at the option of the Manager, offer to continue the Manager's employment for a period of no less than one (1) year following the Manager's acceptable completion of service as a Manager at terms no less favorable than those pursuant to which the Manager was employed prior to the Acquisition; *provided, however*, this requirement shall not apply if the Manager was removed from service for cause.
- (d) The Manager shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Interim Monitor, in consultation with the Commission staff.
- (e) The Manager shall have the authority, with the approval of the Interim Monitor, to remove Hold Separate Business employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent

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with the purposes of this Hold Separate, the Manager, in consultation with the Interim Monitor, may request Respondents to, and Respondents shall, appoint a substitute Person, which Person the Manager shall have the right to approve.

- (f) In addition to Hold Separate Business employees, the Manager may, with the approval of the Interim Monitor, employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business.
 - (g) The Interim Monitor shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondents shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in this paragraph.
- 3. The Interim Monitor and the Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
 - 4. Respondents shall indemnify the Interim Monitor and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's or the Manager'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 gross negligence or willful misconduct by the Interim Monitor or the Manager.

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5. The Hold Separate Business shall be staffed with sufficient employees (including any full-time, part-time, or contract employee of the Farm Supply Business) to maintain the viability and competitiveness of the Hold Separate Business. To the extent that such employees leave or have left the Hold Separate Business prior to the Divestiture Date, the Manager, with the approval of the Interim Monitor, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
6. In connection with support services or products not included within the Hold Separate Business, Respondents shall continue to provide, or offer to provide, the same support services to the Hold Separate Business as customarily have been or were being provided to such businesses by Respondent UAP prior to the date the Consent Agreement is signed by Respondent UAP. For any services or products that Respondents may provide to the Hold Separate Business, Respondents may charge no more than the same price they charge others for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Hold Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Hold Separate Business.

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- (a) Respondents shall offer to the Hold Separate Business any services and products that Respondents provide, in the ordinary course of their businesses, to their other businesses directly or through third party contracts, or that they have provided in the ordinary course of their businesses directly or through third party contracts to the businesses constituting the Hold Separate Business at any time since September 1, 2007. The Hold Separate Business may, at the option of the Manager with the approval of the Interim Monitor, obtain such services and products from Respondents. Subject to the foregoing, the services and products that Respondents shall offer the Hold Separate Business shall include, but shall not be limited to, the following:
- (1) human resources and administrative services, including but not limited to payroll processing, labor relations support, pension administration, and procurement and administration of employee benefits, including health benefits;
 - (2) federal and state regulatory compliance and policy development services;
 - (3) environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - (4) financial accounting services;
 - (5) preparation of tax returns;
 - (6) audit services;
 - (7) information technology support services;

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- (8) processing of accounts payable and accounts receivable;
 - (9) technical support;
 - (10) procurement of supplies;
 - (11) maintenance and repair of facilities;
 - (12) procurement of goods and services utilized in the ordinary course of business by the Hold Separate Business; and
 - (13) legal services.
- (b) The Hold Separate Business shall have, at the option of the Manager with the approval of the Interim Monitor, the ability to acquire services and products from third parties unaffiliated with Respondents.
7. Respondents shall provide the Hold Separate Business with sufficient financial and other resources:
- (a) as are appropriate in the judgment of the Interim Monitor to operate the Hold Separate Business as it is currently operated;
 - (b) to perform all maintenance to, and replacements of, the assets of the Hold Separate Business;
 - (c) to carry on existing and planned capital projects and business plans; and
 - (d) to maintain the viability, competitiveness, and marketability of the Hold Separate Business.

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Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order and in consultation with the Interim Monitor, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

8. Respondents shall cause the Interim Monitor, the Manager, and each of Respondents' employees having access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves any of Respondents' businesses or activities other than the Hold Separate Business.
9. Except for the Manager, Hold Separate Business employees, and support services employees involved in providing services to the Hold Separate Business pursuant to this Hold Separate, and except to the extent provided in this Hold Separate, Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.

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10. Respondents' employees (excluding the Hold Separate Business employees and employees involved in providing support services to the Hold Separate Business pursuant to Paragraph II.C.6.) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except:

- (a) as required by law; and
- (b) to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition;
 - (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - (3) in complying with this Hold Separate or the Consent Agreement;
 - (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;
 - (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Hold Separate Business;
or
 - (6) in obtaining legal advice.

Nor shall the Manager or any Hold Separate Business

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employees receive or have access to, or use or continue to use, any Confidential Business Information about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Hold Separate Business. Respondents may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

11. Respondents and the Hold Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Interim Monitor, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Interim Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate.
12. No later than five (5) days after the Acquisition Date, Respondents shall establish written procedures, subject to the approval of the Interim Monitor, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate.
13. No later than five (5) days after the date this Hold Separate becomes final, Respondents shall circulate to employees of the Hold Separate Business, and to persons

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who are employed in Respondents' businesses that compete with the Hold Separate Business, a notice of this Hold Separate and the Consent Agreement, in the form attached hereto as Appendix B.

- D. From the date Respondents execute the Consent Agreement and during the Hold Separate Period, Respondent shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Agrium Assets & Business. Among other things that may be necessary, Respondent shall:
1. Maintain the operations of the Agrium Assets & Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance);
 2. Provide sufficient working capital to operate the Agrium Assets & Business at least at current rates of operation, to meet all capital calls with respect to the Agrium Assets & Business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities;
 3. Make available for use by the Agrium Assets & Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Agrium Assets & Business;
 4. Continue, at least at their scheduled pace, any additional expenditures relating to the Agrium Assets & Business authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all marketing expenditures;
 5. Use best efforts to maintain and increase sales of the Agrium Assets & Business, and to maintain at budgeted

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levels for the year 2007 or the current year, whichever are higher, all administrative, technical, and marketing support for the Agrium Assets & Business;

6. Provide such support services to the Agrium Assets & Business as were being provided to these businesses as of the date the Consent Agreement was signed by Respondents;
 7. Maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Agrium Assets & Business prior to the Acquisition;
 8. Assure that Respondents' employees with primary responsibility for managing and operating the Agrium Assets & Business are not transferred or reassigned to other areas within Respondents' organizations except for transfer bids initiated by employees pursuant to Respondents' regular, established job posting policy; and
 9. Use best efforts to preserve and maintain the existing relationships with customers, suppliers, vendors, private and governmental entities, and others having business relations with the Agrium Assets & Business.
- E. Until the respective Divestiture Date for each of the Farm Supply Assets and Farm Supply Business in the Hold Separate Business has occurred, Respondents shall provide each Farm Supply Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the relevant Farm Supply Assets and Farm Supply Business pending divestiture. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the

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continuation and prevent any diminution of the viability, marketability and competitiveness of the Farm Supply Assets and Farm Supply Business until the applicable Divestiture Date(s) occur(s), and as may otherwise be necessary to achieve the purposes of this Hold Separate.

- F. From the date Respondents execute the Consent Agreement until this Hold Separate terminates, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Farm Supply Employee for a position of employment with Respondents. The Acquirer shall have the option of offering employment to any Farm Supply Employee. Respondents shall not interfere with the employment by the Acquirer of such employee; shall not offer any incentive to such employee to decline employment with the Acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employee from accepting employment with the Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employee to be employed by the Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employee would otherwise have been entitled had he or she remained in the employment of the Respondents.
- G. Respondents shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Farm Supply Employee who has accepted an offer of employment with the Acquirer, or who is employed by the Acquirer, to terminate his or her employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the person's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not targeted

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specifically at the employees, or (3) Respondents hire an employee who applies for employment with Respondents, so long as such employee was not solicited by Respondents in violation of this paragraph.

- H. The purpose of this Hold Separate is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Confidential Business Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) maintain the full economic viability, marketability and competitiveness of the relevant Farm Supply Assets and Farm Supply Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the relevant Farm Supply Assets and Farm Supply Business except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in Respondents that may affect compliance obligations arising out of this Hold Separate, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, relating to compliance with

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this Hold Separate, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present.

V.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the Divestiture Date of the last of the Farm Supply Assets required to be, divested pursuant to the Decision and Order; *provided, however*, that (1) the Farm Supply Assets relating to each Farm Supply Business identified in Appendix A of the Decision and Order shall be included in the Hold Separate Business only until such assets are divested pursuant to Paragraph II.A. of the Decision and Order and (2) each business identified in Appendix C of this Hold Separate shall be included in the Hold Separate Business only until Respondents have divested the corresponding Agrium Assets & Business in the relevant market pursuant to Paragraph II.A. of the Decision and Order.

By the Commission.

AGRIUM, INC.

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Appendix A

[Redacted From The Public Record Version But Incorporated By Reference]

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Appendix B

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Agrium Inc. ("Agrium") and UAP Holding Corporation ("UAP"), referred to as "Respondents," have entered into an Agreement Containing Consent Orders ("Consent Agreement") with the Federal Trade Commission ("Commission") providing for divestiture of certain businesses and assets and other relief, in connection with the acquisition of UAP by Agrium. Under the terms of the Consent Agreement, Agrium must divest the businesses and assets, at the locations identified in Attachment A, to persons approved by the Commission and in a manner acceptable to the Commission, within 180 days of the consummation of Agrium's acquisition of UAP.

As used in the Consent Agreement, the term "Hold Separate Business" means the businesses and assets identified in Attachment A, and all full-time, part-time or contract employees of those businesses. During the Hold Separate Period, which begins on the date Agrium acquires UAP and ends after Agrium has completed the required divestitures, Agrium must hold the Hold Separate Business separate, apart, and independent from Agrium's other businesses. The businesses within the Hold Separate Business must be maintained as ongoing, competitive businesses until Agrium has completed the required divestitures.

All competitive information relating to the businesses within the Hold Separate Business must be retained and maintained on a confidential basis by the persons who have been and continue to be involved in the operations or sale of any of the businesses within the Hold Separate Business. Except as provided in the Decision and Order or the Order to Hold Separate and Maintain Assets, all such persons are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person employed by Agrium or whose employment relates to any of Agrium's businesses other than the Hold Separate Business, and may be required to sign a statement agreeing to keep such information confidential. Similarly, persons involved in similar activities with respect to Agrium's businesses are prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any similar Agrium information to or with any other person whose employment involves the Hold Separate Business, except as otherwise provided in the Consent Agreement.

In addition, until divestiture occurs, Respondents must take such actions as are necessary to maintain the economic viability, marketability, and competitiveness of each of the businesses and assets identified in Attachment A, and must prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of these businesses and assets except for ordinary wear and tear.

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The Commission has appointed [Name] to serve as Interim Monitor until the divestitures are completed to oversee compliance with the hold separate and asset maintenance requirements of the Consent Agreement. [Name] can be contacted at: [toll free number; e-mail address]. Because any violation of the Consent Agreement may subject Respondents to civil penalties and other relief as provided by law, it is important that the letter and spirit of the Consent Agreement be honored.

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Appendix C

Additional Hold Separate Business

Relevant Area	Business Name & Address
Pocomoke City, MD	UAP 7311 Ocean Hwy. Pocomoke City, MD 21851
Pocomoke City, MD	UAP 5708 Onley Rd. Girdletree, MD 21829

Decision and Order

DECISION AND ORDER
(Public Record Version)

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Agrium Inc. (“Agrium”) of the outstanding voting securities of Respondent UAP Holding Corporation (“UAP”), hereinafter referred to collectively as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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 amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent 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 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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets 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.P.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision

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and Order (“Order”):

1. Respondent Agrium 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 S.E., Calgary, Alberta, Canada T2J 7E8. Agrium’s principal subsidiary in the United States is located at 4582 South Ulster Street, Suite 1700, Denver, Colorado 80237.

2. Respondent UAP 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 7251 W. 4th Street, Greeley, Colorado 80634.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

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

- A. “Agrium” means Agrium Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Agrium (including, after the Acquisition Date, UAP) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “UAP” means UAP Holding Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by UAP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.

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- D. “Acquirer” means any Person that receives the prior approval of the Commission to acquire all or any of the Farm Supply Assets pursuant to Paragraphs II or V of this Order.
- E. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger, dated December 2, 2007, between Agrium Inc., Utah Acquisition, Inc., and UAP Holding Corporation.
- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to the Farm Supply Business, Farm Supply Assets, or Respondents, as the case may be (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technologies, processes, and other trade secrets), except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- H. “Direct Cost” means the cost of direct material and direct labor used to provide the relevant goods or service.

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- I. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph V of this Order) and an Acquirer to purchase all or any of the Farm Supply Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- J. “Divestiture Date” means, with regard to any of the Farm Supply Assets, the date on which Respondents (or a Divestiture Trustee) close on the divestiture of those assets completely and as required by Paragraph II (or Paragraph V) of this Order.
- K. “Farm Supply Assets” means all of Respondents’ right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the Farm Supply Business, including but not limited to:
 - 1. All real property interests (including fee simple interests and real property lease- hold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
 - 2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the Farm Supply Business since the date of the announcement of the Acquisition;
 - 3. All inventories;
 - 4. All accounts receivable;
 - 5. All agreements, contracts, and leases and all rights

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thereunder and related thereto;

6. All consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records, subject to legal requirements, and copies of all personnel Records;
9. All insurance benefits, including rights and proceeds; and
10. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Farm Supply Assets need not include:

- (i) assets not located at the facilities identified in Appendix A whose use is shared with or among other facilities unless such assets are primarily related to the operation of the Farm Supply Business;
- (ii) commercial names, trade names, “doing business as”

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(d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Agrium,” “Crop Production Services,” “CPS,” “Loveland,” “Royster Clark,” “UAP,” “United Agri Products,” or any trade names, trademarks, or registered product names used in any product manufactured, blended, or sold by Respondents; and

(iii) any part of the Farm Supply Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.

L. “Farm Supply Business” means all business activities conducted by either Agrium or UAP, prior to the Acquisition, at or based out of the locations identified in Appendix A of this Order (or applicable locations if Respondents propose to divest the Farm Supply Assets to more than one Acquirer).

M. “Farm Supply Employee” means, as of the date the Acquisition was announced, (i) any full-time, part-time, or contract employee of the Farm Supply Business (at the applicable locations of the Farm Supply Business if Respondents propose to divest the Farm Supply Assets to more than one Acquirer) and (ii) any other person employed by Respondents whose work primarily relates to the Farm Supply Business.

N. “Farm Supply License” means:

1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property relating to operation of the Farm Supply Business (other than Intellectual Property already included in the Farm Supply Assets); and

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2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable each Acquirer to use the rights.

Provided, however, that the Farm Supply License need not include rights to (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words “Agrium,” “Crop Production Services,” “CPS,” “Loveland,” “Royster Clark,” “UAP,” “United Agri Products,” or any trade names, trademarks, or registered product names used in any product manufactured, blended, or sold by Respondents, (ii) Intellectual Property relating to the manufacture and blending of any products sold by Respondents, except to the extent such Intellectual Property is necessary for the Acquirer to blend products at any of the locations of the Farm Supply Business in substantially the same manner as Respondents blended products at those locations prior to the divestiture, and (iii) Intellectual Property if not needed by the Acquirer and the Commission approves the divestiture without it.

- O. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Respondents, in which Respondents have a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all knowhow, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints; (v) and all rights in internet web sites and internet domain names

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presently used by Respondents.

- P. “Key Employee” means any Farm Supply Employee (i) whose job title is location manager or sales representative or any other Farm Supply Employee with responsibilities similar to those of location manager or sales representative or (ii) whose responsibilities include field application services.
- Q. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- R. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- S. “Respondents” means Agrium and UAP, individually and collectively.
- T. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondents, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- U. “Transitional Assistance” means any (i) administrative services (including, but not limited to, order processing, warehousing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to product application services.

I.

IT IS FURTHER ORDERED that:

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- A. Respondents shall divest the Farm Supply Assets at no minimum price, absolutely and in good faith, as on-going businesses, no later than 180 days from the Acquisition Date, to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner (including execution of a Divestiture Agreement with each Acquirer) that receives the prior approval of the Commission.
- B. Respondents shall comply with all provisions of any Divestiture Agreement approved by the Commission, and failure by Respondents to comply with any provision of a Divestiture Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall divest the Farm Supply Assets relating to the Farm Supply Business located at 308 Timmons Street, Snow Hill, Maryland, and 18432 Wachapreague Road, Melfa, Virginia 23410, to no more than one Acquirer.
- D. No later than the date of divestiture of the Farm Supply Assets relating to any location of the Farm Supply Business, Respondents shall:
 - 1. Secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of such business or assets to an Acquirer.
 - 2. Grant to each Acquirer a Farm Supply License for any use in any business selling agricultural products and related services, and shall take all actions necessary to facilitate the unrestricted use of the license.

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- E. At the request of any Acquirer, within sixty (60) days of consummating the divestiture of any of the Farm Supply Assets, for a period not to exceed twelve (12) months from the date Respondents divest the assets, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:
1. Respondents shall provide Transitional Assistance to such Acquirer sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner that Respondents conducted the divested assets and business prior to the divestiture; and
 2. Respondents shall provide the Transitional Assistance required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with its operation of the divested assets and business prior to the divestiture.

Provided, however, that Respondents shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Assistance because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which any Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide Transitional Assistance.

- F. At the request of any Acquirer prior to the divestiture of any of the Farm Supply Assets, for a period not to exceed twelve (12) months from the date Respondents divest the assets, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission, Respondents shall provide a supply of any product manufactured or blended by Respondents sufficient to enable the Acquirer to

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operate the divested assets and business in substantially the same manner as Respondents prior to the divestiture; *provided, however*, that Respondents shall not (i) require the Acquirer to pay compensation for the products that exceeds the price paid by any other purchaser, including any Agrium purchaser, for like volumes on like terms, or (ii) terminate its obligation to provide products because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which any Acquirer would be entitled to receive in the event of Respondents' breach of any agreement to provide products.

- G. Respondents shall allow each Acquirer an opportunity to recruit and employ any Farm Supply Employee under the following terms and conditions:
1. Prior to the execution of a Divestiture Agreement, Respondents shall (i) identify each Farm Supply Employee, (ii) allow the Acquirer an opportunity to interview any such employee, and (iii) allow the Acquirer to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws.
 2. Respondents shall (i) not offer any incentive to any Farm Supply Employee to decline employment with the Acquirer, (ii) remove any contractual impediments with Respondents that may deter any Farm Supply Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment of any Farm Supply Employee by the Acquirer.

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3. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Farm Supply Employee who accepts an offer of employment from the Acquirer no later than thirty (30) days from the date Respondents divest the relevant assets and (ii) provide any Farm Supply Employee to whom an Acquirer has made a written offer of employment with reasonable financial incentives to accept a position with the Acquirer at the time of divestiture of the relevant assets and business, pursuant to the terms set forth in Confidential Appendix B attached to this Order.
 4. For a period of two (2) years after the date of each divestiture of the Farm Supply Assets, Respondents shall not, directly or indirectly, solicit, induce or attempt to solicit or induce any Farm Supply Employee who has accepted an offer of employment with the Acquirer, or who is employed by the Acquirer, to terminate his or her employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the individual's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- H. The purpose of the divestiture of the Farm Supply Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

II.

Decision and Order

IT IS FURTHER ORDERED that:

- A. Except in the course of performing obligations under any Divestiture Agreement, this Order, or as permitted by the Order to Hold Separate and Maintain Assets, Respondents shall not (i) provide, disclose or otherwise make available Confidential Business Information relating to any Farm Supply Assets or Farm Supply Business to any Person or (ii) use Confidential Business Information relating to any Farm Supply Assets or Farm Supply Business for any reason or purpose.
- B. Respondents shall disclose Confidential Business Information relating to any Farm Supply Assets or Farm Supply Business (i) only to those Persons who require such information for the purposes permitted under Paragraph III.A., (i) only to the extent such Confidential Business Information is required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph ill as to any Person other than the Acquirers of the Farm Supply Assets and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph ill, including training of Respondents' employees and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

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

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission, with respect to any of the areas listed in Appendix C of this Order,

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acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any concern, corporate or non-corporate, or in any assets engaged in the sale of agricultural products or related services.

- B. The prior notification required by this Paragraph IV 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 “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, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of the 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 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.P.R. § 803.20), the acquiring party shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph IV 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.

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

- A. If Respondents have not divested all of the Farm Supply Assets as required by Paragraph II.A. of this Order, the Commission may appoint one or more Persons as Divestiture Trustee to divest the Farm Supply Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the

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identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents 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 relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents 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 assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or

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otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture 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 Divestiture Trustee shall divest to the acquiring entity 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 notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants,

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accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture 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 Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60)

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days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

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

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs IT and V of this 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 this Order, and the Order to Hold Separate and Maintain Assets. 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 this Order and with the

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Order to Hold Separate and Maintain Assets, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that the divestiture(s) approved by the Commission have been accomplished, including a description of the manner in which Respondents completed such divestitures and the date the divestiture was accomplished.

- B. One (1) year after the date this Order becomes final, annually thereafter for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may request, 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 the Order and any Divestiture Agreement.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with

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reasonable notice to Respondents, with respect to any matter contained in this Order, 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; 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.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on June 10, 2018.

By the Commission.

Decision and Order

Appendix A

Farm Supply Business As To Which Assets Are To Be Divested

Relevant Market	Business Name & Address
Croswell, MI	UAP 41 Ward St. Croswell, MI 48422
Imlay City, MI	UAP 7245 Imlay City Rd. Imlay City, MI 48444
Richmond, MI	UAP 68790 Oak St. Richmond, MI 48062
Standish, MI	UAP 4250 S. Huron Rd. Standish, MI 48658
Vestaburg, MI	UAP 7460 N. Crystal Rd. Vestaburg, MI 48891
Snow Hill, MD	Agrium 308 Timmons St. Snow Hill, MD 21863 Agrium 18432 Wachapreague Rd. Melfa, VA 23410

Decision and Order

Appendix B

[Redacted From the Public Version But Incorporated By Reference]

Decision and Order

Appendix C

Prior Notice

Area	Area Definition
Croswell, MI	Within a 40 mile radius of 41 Ward St., Croswell, MI 48422
Imlay City, MI	Within a 40 mile radius of 7245 Imlay City Rd., Imlay City, MI 48444
Richmond, MI	Within a 40 mile radius of 68790 Oak St., Richmond, MI 48062
Standish, MI	Within a 40 mile radius of 4250 S. Huron Rd., Standish, MI 48658
Vestaburg, MI	Within a 40 mile radius of 7460 N. Crystal Rd., Vestaburg, MI 48891
Snow Hill, MD	Within a 40 mile radius of 308 Timmons St., Snow Hill, MD 21863

Analysis to Aid Public Comment

**ANALYSIS OF THE CONSENT ORDER TO AID PUBLIC
COMMENT****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 -

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

**MISSOURI BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**

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

*Docket C-4223; File No. 061 0026
Complaint, June 19, 2008 – Decision, June 19, 2008*

This consent order addresses a regulation issued by the Missouri Board of Embalmers and Funeral Directors, the sole licensing authority for the practices of embalming and funeral directing in Missouri, that limited the selling of funeral merchandise to duly licensed and registered funeral directors. This regulation deterred competitive entry into the retail sale of funeral caskets by discouraging non-licensed persons from selling funeral caskets to the public. The order prevents the Board from prohibiting, restricting, impeding, or discouraging any person from engaging in the sale or rental to the public of funeral merchandise, directly or indirectly, or through any rule, regulation, policy, or conduct. The order requires the Board to publish information that its rules do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles, or other funeral merchandise to the public in the State of Missouri, in its newsletter, on its website, and in professional publications. The Board must notify the Commission prior to any filing with the Missouri Secretary of State of any Proposed Order of Rulemaking concerning the Board's rules or regulations, or prior to proposing any change that may affect compliance obligations. The order also contains standard provisions requiring the filing of regular written reports of the Board's compliance with terms of the order.

Participants

For the Commission: *Joel Christie, Patrick J. Roach, and
Melanie Sabo.*

For the Respondent: *Jane A. Rackers, Missouri Attorney
General's Office.*