



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/10/443)

27.10.2017

Notice under Section 6 (2) of the Competition Act, 2002 given by Agrium Inc. and Potash Corporation of Saskatchewan, Inc.

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal Representatives of the parties: M/s Shardul Amarchand Mangaldas & Co.

Order under Section 31 (7) of the Competition Act, 2002 (“Order”)

1. On 10.10.2016, the Competition Commission of India (“**Commission**”) received a notice (“**Notice**”) under Section 6(2) of the Competition Act, 2002 (“**Act**”) given by Agrium Inc. (“**Agrium**”) and Potash Corporation of Saskatchewan, Inc. (“**PotashCorp**”) (hereinafter, Agrium and PotashCorp are collectively referred to as the “**Parties**”).
2. The Notice was filed with the Commission pursuant to a Plan of Arrangement entered into by and between the Parties on 11.09.2016 (“**Plan of Arrangement**”).



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3. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), vide letter dated 24.10.2016, the Parties were required to provide certain information / document(s) latest by 31.10.2016. The Parties filed their reply on 04.11.2016, after seeking extension of time. Letter under Regulation 14 in continuation to Parties’ reply was issued on 06.12.2016 and the Parties were directed to provide information / documents by 09.12.2016. The Parties submitted their reply on 15.12.2016. Further, the Parties made certain additional submissions on 24.12.2016.

Parties to the Proposed Combination

4. Agrium is a producer of primary crop nutrients and a direct-to-grower distributor of crop inputs, services and solutions. It is incorporated under the laws of Canada and is listed on the Toronto and New York stock exchanges. Agrium is an equal shareholder in Canpotex Limited (“**Canpotex**”) along with PotashCorp and Mosaic Canada Crop Nutrition, LP (“**Mosaic**”).
5. PotashCorp is a producer of fertilizers and related products. It is incorporated under the laws of Canada and is listed on the Toronto and New York stock exchanges. PotashCorp is also an equal shareholder in Canpotex along with Agrium and Mosaic. PotashCorp has business interests in seven countries including Canada, Chile, China, Israel, Jordan, Trinidad and Tobago, and the United States. The details of its ownership interests in producers with sales of potash in India are as under:
 - i. Arab Potash Company (“**APC**”): PotashCorp owns 28 percent of APC and has the right to appoint three of APC’s thirteen board seats as well as the President & CEO, Vice President (Finance and Support services), Vice President (Marketing and Sales) and Vice President (Operations). APC’s primary business is harvesting potash from the Dead Sea for resale;



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- ii. Sociedad Quimica y Minera (“**SQM**”): PotashCorp owns 32 percent of SQM and has the right to appoint three of SQM’s eight board seats. SQM, headquartered in Santiago, Chile, is a producer of potash, specialty plant nutrition products, lithium and iodine; and
 - iii. Israel Chemicals Limited (“**ICL**”): PotashCorp holds 14 percent interest in ICL, [...]. ICL is involved in production of bromine, potash and phosphoric acid. It is a manufacturer of specialty fertilizers, specialty phosphates and flame retardants.
6. Canpotex was formed in 1970, with each shareholder i.e. Agrium, PotashCorp and Mosaic enjoying equal control. It is the exclusive worldwide (excluding Canada and the United States) distributor of potash produced by Agrium, PotashCorp and Mosaic in Canada. Each Canpotex shareholder is entitled to supply Canpotex with a proportion of the potash volumes sold by Canpotex in any year based on the proven capacity of the member’s Canadian potash mines. In 2016, Agrium, PotashCorp and Mosaic were respectively entitled to supply [...] of Canpotex’s total sales.

Proposed Combination

7. The proposed combination envisages amalgamation of Agrium and PotashCorp (“**Proposed Combination**”). For the purposes of the Proposed Combination, the Parties will incorporate a Canadian corporation (“**New Parent**”) and pursuant to various steps agreed to be taken, PotashCorp and Agrium shareholders will hold approximately 52 percent and 48 percent, respectively of the shares in New Parent.

Investigation under Section 29 of the Act

8. The Commission, in its meeting held on 13.01.2017, considered the facts on record, details provided in the notice and the responses filed by the Parties and formed a prima facie opinion that the Proposed Combination is likely to cause an appreciable adverse effect on competition within the relevant markets in India. Accordingly, the Commission directed that a show-cause notice be issued to the Parties in terms of



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Section 29(1) of the Act. On 25.01.2017, a show cause notice was issued to the Parties under Section 29(1) of the Act (“SCN”), as per which the Parties were directed to respond, in writing, within thirty days of the receipt of the SCN, as to why investigation in respect of the Proposed Combination should not be conducted.

9. The response of the Parties to the SCN was received on 28.02.2017 (“**Response to SCN**”) along with a request for extending time to file response by one day. The Commission, in its meeting held on 07.03.2017, considered and assessed the Response to SCN and decided to issue a direction to the Parties to publish details of the Proposed Combination within ten working days of the said direction for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination, in accordance with Section 29(2) of the Act read with Regulation 22 of the Combination Regulations. The said direction was communicated to the Parties vide letter dated 08.03.2017.
10. Accordingly, the said details of the Proposed Combination were published by the Parties on 24.03.2017 in Form IV as contained in Schedule II to the Combination Regulations. Vide the said publication, the Commission invited comments / objections / suggestions in writing, in terms of the provisions of Section 29(3) of the Act, from any person(s) adversely affected or likely to be affected by the Proposed Combination, within fifteen working days from the date of publication, i.e., up to 17.04.2017.
11. Pursuant to the said publication, the Commission received comments from one stakeholder. The Commission, in its meeting held on 28.04.2017, considered the comments of the stakeholder and noted that the same have been factored in the competition assessment undertaken and therefore decided to proceed with the case in accordance with the provisions contained in Section 31 of the Act.

Competition Assessment

12. The Parties are directly or indirectly involved in sale of: (i) potash; (ii) nutritionals and adjuvants; and (iii) phosphates in India. While both Agrium and PotashCorp are



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present in the Indian potash market through Canpotex, the latter is also involved in sale of potash in India through APC, ICL and SQM. As regards presence of the Parties in nutritional and adjuvants, Agrium made some sales in 2015 but had no sales in 2016. As regards phosphates, only PotashCorp is engaged in sale of phosphates in India.

13. Based on the presence of the Parties, for the purpose of competition assessment, the Commission identified potash as an area of significant product overlaps between the Parties in India.

Potash

Relevant Product Market

14. Potash helps plants grow strong stalks, tolerate stresses such as drought and frost, and attacks from pests and diseases and to regulate transpiration and water use efficiency. In addition to its use as a fertilizer, which corresponds to 90-95 percent of total potash use, potash is also used in animal feed and in certain industrial applications. As a fertilizer, potash is primarily available as potassium chloride (or muriate of potash “**MOP**”) or potassium sulphate (sulphate of potash “**SOP**”), with MOP being the most common form.
15. As regards the MOP and SOP, the Commission observed that both MOP and SOP have different chemical compositions and different applications. Further, the Commission noted that since the Parties do not produce SOP and Canpotex does not sell SOP, the relevant product market for the purpose of assessment of the Proposed Combination may be considered as market for MOP (hereinafter MOP and potash have been used interchangeably).



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Relevant Geographic Market

16. In this regard, the Parties submitted that potash is sold to customers throughout the world and the prices for these products are typically determined as a result of competition among suppliers located throughout the world. It was further submitted that India imports nearly all of its potash requirements and based on the same, the relevant geographic market is at least India wide.
17. The Commission noted that the conditions of demand and supply cannot be considered as homogenous throughout the world. The suppliers of potash are concentrated; with three countries viz., Russia, Belarus and Canada accounting for around 64 percent of the total installed capacity of global production of potash. At the same time, it is noted that different countries are following different purchase mechanisms with India and China typically purchasing potash under long term (six months or annual) contracts. Further, there are differences in the way the suppliers are functioning, for example, the Parties along with Mosaic operate independently in Canada and the United States, and operate exclusively through Canpotex in rest of the world. Considering the aforesaid differences, the Commission considered the impact of the Proposed Combination in the relevant geographic market of India.

AAEC Concerns

18. The Parties submitted that the Proposed Combination does not impact any of the relevant markets in India as Agrium is not active in India. It was submitted that Canpotex, a pre-existing joint venture of the Parties is selling potash in India and the Proposed Combination does not, in any manner, impact Canpotex or the manner in which it operates. The Proposed Combination will only cause a change in its ownership structure with reduction in number of shareholders from three to two. The Parties made similar submissions in respect of APC, SQM and ICL stating that the Proposed Combination does not cause any change in their pre-existing interests held in these companies.



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19. In response to queries on change in control of Canpotex, Parties submitted that currently Agrium, PotashCorp and Mosaic are jointly controlling Canpotex and post Proposed Combination, New Parent and Mosaic would jointly control Canpotex. It was submitted that as of now, for most of the matters there are only three votes (one per Canpotex shareholder) and post combination, there will be only two votes (one each by New Parent and Mosaic). On the basis of the same, it was submitted that the only change in Canpotex would be reduction in number of shareholders from three to two, the basis for joint control remaining the same.
20. The Commission noted the submissions of the Parties in this regard and observed that the same cannot be agreed to. The Commission noted that while PotashCorp is present in the Indian market through companies such as Canpotex, APC, SQM and ICL, Agrium is also present in India through Canpotex; thus the Proposed Combination would lead to change in the manner the Parties are present in India. Post the Proposed Combination, APC and SQM would come under joint control of New Parent (instead of PotashCorp) thereby extending the control of APC and SQM to shareholders of Agrium. As regards ICL, the Commission noted the submissions of the Parties that [...] but was of the opinion that considering its position of being one of the global leaders in production of potash, the possibility of it having the ability to materially influence the policies of ICL cannot be ruled out. Accordingly, the Proposed Combination would lead to extension of material influence of PotashCorp to joint material influence of PotashCorp and Agrium on the management and affairs of ICL.
21. As regards Parties submission on the Proposed Combination not leading to change in control of Canpotex, the Commission noted that the entire rationale behind assessment of cases which result in change in control over the target is the change in incentives and change in competitive constraints exercised by each shareholder over the other. In this regard, there is huge significance of reduction in number of shareholders. While pre-combination, each of the shareholder of Canpotex was constrained by two shareholders, post Proposed Combination, each Canpotex shareholders would be constrained by only one shareholder, thereby leading to a greater alignment of interests and incentives.



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22. The significance of competitive constraints exercised by each member of a joint venture and its relevance on competition and change in competitive constraints can be demonstrated with the example of disintegration of Belarusian Potash Company (“BPC”), a joint venture of Russian firm Uralkali and Belarusian firm Belaruskali. Prior to 2013, there were two significant joint ventures engaged in production and sale of potash viz., Canpotex and BPC. The competitive constraints emanating from differences in incentives of Belaruskali and Uralkali lead to disintegration of the joint venture in 2013. The relevance of the same in context of impact on competition is also reflected in substantial reduction in global prices of potash.
23. Thus, considering this backdrop, the Commission observed that the Proposed Combination leads to strengthening of the exclusive joint venture of the Parties, i.e., Canpotex and therefore the view that the Proposed Combination has no impact on the competition dynamics is misplaced. Based on the aforesaid observations, the Commission considered the impact of the Proposed Combination in market for potash in India. The Commission further noted that all the aforesaid observations become more relevant considering the history of potash firms operating through exclusive joint ventures which, to some extent, has the impact of cartelization in the global potash market.
24. The Commission noted that Canpotex, APC, ICL and SQM collectively account for 45 to 50 percent of the Indian potash market. The Commission also noted that apart from aforesaid companies which are in control of or under the material influence of the Parties, the significant players in Indian market are Belaruskali and Uralkali with both having market share in the range of 20 to 25 percent each.
25. Thus, it can be observed that potash market is highly concentrated and any further increase in concentration may lead to adverse effects on competition. In this regard, the Commission considered the submissions of the Parties that because of existing arrangements, there is no change in level of concentration. The Commission noted that while it may appear that the market share of the Parties remains unchanged post the



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Proposed Combination, the fact is that the Proposed Combination strengthens structural links between the Parties vis-a-vis management and control of Canpotex by reduction in competitive constraints on each shareholder of Canpotex. Accordingly, the Proposed Combination, to a large extent, denies market an opportunity to create situations where it could have benefitted from probable disintegration of Canpotex thereby reinforcing the coordinated effects. The coordinated effects are further likely to arise because of the Parties' ability to control/materially influence other companies having operations in Indian potash market such as APC, SQM and ICL.

26. The Commission noted the submissions of the Parties that Indian Potash Limited (“IPL”) is the largest fertilizer importer and given its size and significant government ownership, it has significant buyer power. The Commission observed that the extent of buyer power anyone possesses in this market is reflected in the fact that prices in the Indian market continued to remain at more than USD 400 per tonne until the disintegration of BPC. It was the disintegration of BPC, i.e., supply side factors that lead to reduction in prices of potash to levels of around USD 230 and not the demand side factors. Thus, the Commission does not agree with the submissions of the Parties on the aspect of buyer power.
27. The Commission also considered the submissions of the Parties that IPL has historically negotiated first with suppliers other than Canpotex and the price once determined by IPL's early negotiations is presented as final to Canpotex. In this regard, it may be noted that the early negotiations and the process of price discovery is based on the state of demand/supply of potash at global level and therefore, the Proposed Combination, which has the impact of increasing the global concentration levels, is likely to impact the price negotiations adversely.
28. Considering the facts on record and the details provided in the notice given under Section 6(2) of the Act and assessment of the proposed combination on the basis of factors stated in section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is likely to have an appreciable adverse effect on competition (“AAEC”) in the market for potash in India.



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Modification to address AAEC Concerns

29. As stated above, the analysis of the Commission reveals likelihood of AAEC concerns emanating from the Proposed Combination in the market for potash in India. The Commission noted that in accordance with the provisions of the Act, it may either direct that the combination shall not take effect in accordance with Section 31(2) of the Act or may propose a modification to the combination in accordance with Section 31(3) of the Act. The modification proposed would need to be comprehensive and effective in order to eliminate the possibility of adverse appreciable effect on competition in India.
30. The Commission noted that the Parties are present in India through Canoptex and that PotashCorp is also present in India through APC, SQM and ICL. The Commission observed that if the Parties are required to divest PotashCorp's shareholding in APC, SQM and ICL, it would have the effect of creating three independent competitors in the Indian market which are likely to have ability and incentive to compete more aggressively for gaining market share in India.
31. Accordingly, the Commission proposed modification to the Proposed Combination, to the Parties in terms of Section 31(3) of the Act vide communication dated 04.05.2017 ("**Proposal for Modification**"). In the Proposal for Modification, the Commission proposed that the Parties shall divest all shares that PotashCorp holds in APC, ICL and SQM. Further, the Proposal for Modification also provided for mode, manner and conditions of implementation of modification.
32. The Parties were required to communicate their acceptance or submit amendment to the Proposal for Modification in accordance with the provisions of the Act. The Parties submitted certain amendments to the Proposal under Section 31(6) of the Act vide letters dated 14.07.2017, followed by certain clarifications and revision as regards terms of implementation of modification vide letter dated 19.07.2017 and 21.07.2017 after seeking extension of time (final amendment proposal dated 21.07.2017 is



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hereinafter called as “**Amendment Proposal**”). The Parties submitted certain further clarifications on 02.08.2017. The Amendment Proposal envisaged divestment of all of PotashCorp’s shareholding in APC and ICL as against the divestment of all of PotashCorp’s shareholding in APC, ICL and SQM envisaged in the Proposal for Modification. Apart from the amendment in the modification, the Parties also proposed certain amendments regarding mode, manner and conditions of implementation of modification.

33. The Commission, in its meeting held on 02.08.2017, considered the Amendment Proposal. The Commission (by majority) observed that the Proposed Combination is leading to competition concerns as arising from reduction in number of shareholders in Canpotex from three to two and that reduction in number of shareholders of Canpotex becomes more relevant considering history of potash firms operating through exclusive joint ventures which, to some extent, has the impact of cartelization in the global potash market. Further, the Commission, at the time of issuing the Proposal for Modification, had observed that the Proposed Combination has the impact of increasing the global concentration levels which also raise concerns of coordinated effects. Accordingly, the modification proposed was intended to eliminate complete presence of the Parties in India other than through Canpotex, apart from reducing concentration at global level. In this backdrop, the Commission (by majority) did not agree with the submissions of the Parties that the modification is disproportionate because of insignificant presence of SQM in India. Therefore, the Commission was of the opinion that the Parties shall divest 100 percent of their shareholding in APC, ICL and SQM. Member Shri Sudhir Mital was of the opinion that divestiture of shareholding of the Parties in APC and ICL would ensure creation of two independent players in the Indian market and therefore substantially alleviates competition concerns emanating from the Proposed Combination. Further, given the focus areas of operation of SQM being South and North America and its insignificant presence in India, the requirement of divestiture of shareholding in SQM may be considered as disproportionate. Direction of the Commission (by majority) in terms of Section 31(8) of the Act rejecting the Amendment Proposal was communicated to the Parties vide letter dated 03.08.2017.



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34. The Parties, *vide* letter dated 14.08.2017, sought some clarifications regarding Proposal for Modification and also requested for extension of time to respond to the Commission's directions under Section 31(8) of the Act regarding review and acceptance of the Proposal for Modification and the implementation details described in the said proposal.
35. Regarding the request of the Parties to grant another period of 30 working days to submit their acceptance to the Proposal for Modification, the Commission observed that the Parties had earlier sought extension of 4 weeks to submit response to the Proposal for Modification issued under Section 31(3) of the Act. The same was granted by the Commission with the caveat that no further request for extension would be allowed. Further considering that the Parties had sufficient time to consider the Proposal for Modification which was issued on 04.05.2017, the Commission did not accept the request for grant of further extension of 30 working days. As regards the clarification sought by the Parties, the Commission considered and issued necessary clarifications. The decision of the Commission along with detailed clarifications were communicated to the Parties *vide* letter dated 31.08.2017.
36. The Parties filed an appeal with Hon'ble National Company Law Appellate Tribunal ("NCLAT") on 01.09.2017 against the directions of the Commission issued under Section 31(8) of the Act. The NCLAT, in first hearing of the matter on 07.09.2017 extended the period for accepting or rejecting the proposal given by the Commission till 18.10.2017. The NCLAT further observed that,
- "Pendency of the appeal will not come in the way of Appellants and Respondents to engage in discussion to further modify the proposal and the Respondents may consider the same in accordance with law."*
37. Pursuant to the directions of the NCLAT, the Parties engaged with the Commission for discussion on 27.09.2017 and 28.09.2017. On 06.10.2017, the Parties submitted a proposal to divest PotashCorp's shareholding in APC, ICL and SQM. The Parties



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proposed certain changes in the mode, manner and conditions of implementation of divestiture. The Commission noted the proposal of the Parties and observed that they have accepted the divestment in SQM against which they had earlier raised objection and filed an appeal before the NCLAT. Regarding the mode, manner and conditions of implementation of modification, the Commission noted that these don't have a material effect and hence, the Commission has no objections to the same. Subsequently, the Parties, vide letter dated 11.10.2017, submitted a complete copy of the proposed modification incorporating certain changes in the mode, manner and conditions of implementation of the modification in line with the proposal submitted on 06.10.2017 (with minor changes). The same was considered by the Commission and taken on record. The position of the Commission on the proposal submitted by the Parties was informed to the NCLAT during the course of hearing on 12.10.2017. The NCLAT, in its order dated 13.10.2017, held that the proposed modified terms be treated to be the terms and conditions approved by the Appellate Tribunal and disposed of the appeal.

38. Pursuant to the above, the Commission hereby approves the Proposed Combination under Section 31(7) of the Act, subject to the Parties carrying out the modification to the Proposed Combination as approved by the NCLAT and provided below.

Modification to the Proposed Combination

39. The Parties shall divest the Divestment Assets absolutely and in good faith in accordance with the Order ("**Modification**").
40. The Modification aims to maintain the existing level of competition in the relevant market through creation of viable, effective, independent and long term competitor(s) in the relevant market.
41. The Modification shall be given effect to in accordance with the terms and conditions provided below. The Parties may close the Proposed Combination any time after issuance of the conditional approval by the Commission, including communication under Regulation 28(5) of the Combination Regulations.



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42. All capitalized terms used in this Order shall have the meaning provided in Appendix A annexed herewith if the same are not defined in the body of the Order.

Divestiture

43. The Parties shall divest, or procure the divestiture of the Divestment Assets within the First Divestiture Period.
44. The divestiture shall take place through transfer of the Divestment Assets, either through a negotiated sale to one or more buyers, or an underwritten secondary offering, or by a combination of both. The Parties shall ensure that the sale of the Divestment Assets through secondary offering shall not result in any purchaser having a greater than 5 percent interest in APC, ICL or SQM.
45. Where the negotiated sale results in the purchaser having greater than 5 percent interest in APC, ICL, or SQM, the divestiture shall take place to an Approved Purchaser in accordance with the Approved Sale and Purchase Agreement.
46. If the Closing does not take place as specified in paragraph 43 of this Order, the Commission shall appoint a Divestiture Agency to divest the Divestment Assets.
47. The appointment of the Divestiture Agency shall take effect from commencement of Second Divestiture Period or the day of its appointment, whichever is later.
48. During the Second Divestiture Period, the Combined Entity will cooperate with the Divestiture Agency to facilitate the sale of PotashCorp's interest in APC, ICL, and SQM. The Divestiture Agency shall have the sole authority to sell the Divestment Assets at no minimum price. Upon request of the Divestiture Agency, the Parties shall cause the documents required for effecting the sale and the Closing to be executed. The Parties will be entitled to continue to hold the APC, ICL, and SQM interest until



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such time as the Divestiture Agency completes the Divestiture, subject to the other provisions and obligations of this Order.

49. The transfer of Divestment Assets shall not be effected by the Divestiture Agency unless and until the Commission has approved the terms of sale and purchase agreement and the purchaser proposed by the Divestiture Agency. The Divestiture Agency shall include in the sale and purchase agreement, or other disposal arrangement (a) such terms and conditions as it considers appropriate for an expedient sale of the Divestment Assets in the Second Divestiture Period; and (b) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Agency shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Second Divestiture Period.
50. During the Second Divestiture Period, the Divestiture Agency shall provide the Commission with a comprehensive monthly (or otherwise at the Commission's request) report on the progress of the Divestiture process. The monthly reports shall be submitted within ten days after the end of every month with a simultaneous non-confidential copy to the Parties.
51. The Commission may, where appropriate, in response to a request from the Parties showing good cause, grant extension of the time periods foreseen in the Order.

Hold-separate obligations

52. The Parties shall, until Closing, procure that they do not exercise their voting rights in respect of Divestment Assets from the Effective Date until Closing.
53. During the divestment period contemplated by this Order, the Combined Entity will not acquire or offer or propose to acquire any additional ordinary shares in APC, ICL, or SQM, whether through a merger or consolidation, tender offer or otherwise (including in any respect through the ownership of any derivative securities, whether



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or not presently exercisable, with an exercise or conversion privilege or a settlement payment or other mechanism); and

54. Within 30 days of the closing of the Proposed Combination, the Combined Entity (where applicable) will (a) nominate as designees to the Board of Directors of APC or SQM, only independent directors that will not be employees of PotashCorp, the Combined Entity, or any other potash producer; (b) ensure that any current employees of APC or SQM remain subject to the ring-fencing and firewall provisions below; and (c) no longer appoint or second any employees to serve APC or SQM in executive management positions.
55. The purpose of the hold separate obligations is to: (i) ensure that there are no structural links between the Parties and APC, SQM and ICL; (ii) ensure that no competitively sensitive information is exchanged between the Parties and APC, SQM and ICL; and (iii) prevent interim harm to competition in the relevant market, pending Divestiture.

Ring-fencing

56. Within 30 days of the closing of the Proposed Combination, the Parties and their Affiliates shall ensure that Confidential Information obtained by the Parties and/or their Affiliates in respect of APC, SQM and ICL is eliminated and is not used by the Parties or their Affiliates. For this purpose, the Parties shall implement or procure implementation of necessary and adequate measures.
57. The Parties may obtain or keep information relating to the Divestment Assets which is reasonably necessary for the Divestiture or the disclosure of which to the Parties is required by law or which is reasonably required by the Parties to comply with their financial reporting or other legal obligations (including in relation to tax filings).



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No acquisition of influence

58. The Parties shall, for a period of 10 (ten) years from the Closing Date, not acquire any stake or any direct or indirect influence over APC, SQM and ICL.

Purchaser Requirements

59. The purchaser(s) proposed by the Parties, in order to be approved by the Commission, must, *inter alia*:

- i. be independent of and have no connection whatsoever with the Parties to the extent that it should not be a subsidiary, affiliate, or associate company of PotashCorp, Agrium, or the Combined Entity; and
- ii. not create or give rise to a risk that the implementation of the Order will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Assets.

(The aforementioned criteria for the purchaser(s) hereafter the "Purchaser Requirements")

60. Prior approval by the Commission will not be required in the following instances:

- i. Where the sale of the Divestment Assets is made through negotiated sale, not resulting in any purchaser having a greater than 5 percent interest in APC, ICL, or SQM; and
- ii. Where the sale of the Divestment Assets is made through secondary offering, not resulting in any purchaser having a greater than 5 percent interest in APC, ICL, or SQM.



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61. The Parties shall provide the Commission with an undertaking that none of Agrium, PotashCorp, the Combined Entity, nor their subsidiaries, affiliates, nor associate companies, nor any of their officers, will directly or indirectly, purchase shares, in the secondary offering immediately after the closing of the Proposed Combination.

Approval of Sale and Purchase Agreement and Purchaser

62. Where the Divestment Assets are to be transferred through a negotiated sale resulting in any purchaser having a greater than 5 percent interest in APC, ICL, or SQM respectively, the final binding sale and purchase agreement relating to the divestiture of the Divestment Assets shall be conditional on the Commission's approval. The Parties shall submit a fully documented and reasoned proposal including a copy of the final agreement(s) to the Commission, obtain prior approval of the Commission, as well as ensure that Closing takes place within the First Divestiture Period. The Parties must be able to demonstrate to the Commission that the purchaser(s) proposed by the Parties, fulfils the Purchaser Requirements and that the Divestment Assets are being divested in a manner consistent with the Order. The Commission shall endeavour to consider and provide prior approval for a proposed purchaser within one (1) month of the Parties' submission of any reasoned proposal under this paragraph.

Duties and obligations of the Parties

63. During the First Divestiture Period, the Parties shall provide the Commission with a comprehensive monthly (or otherwise at the Commission's request) report on the progress of the Divestiture process and an undertaking in respect of compliance of all terms and conditions of the Order. The monthly reports shall be submitted within ten days after the end of every month.
64. A copy of the Divestiture Agency Agreement shall be provided to the Parties and the Parties shall use their best efforts to facilitate the Divestiture Agency in performance of its duties and obligations provided in the Divestiture Agency Agreement. Any



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failure by the Parties in such facilitation may be deemed to be a contravention of the Order.

65. Upon receipt of the notice of the Commission regarding the appointment of Divestiture Agency, the Parties must, within the period prescribed by the Commission, execute a comprehensive power of attorney in favour of the Divestiture Agency to effect the sale of Divestment Assets and all actions and declarations which the Divestiture Agency considers necessary or appropriate for achieving the sale of Divestment Assets, including the power to appoint advisors to assist with the sale process. The power of attorney shall include the authority to grant sub-powers.
66. The Parties shall indemnify the Divestiture Agency and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against any liabilities arising directly out of the performance of the Divestiture Agency's duties under the Order, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Indemnified Party.
67. The Commission may share confidential information proprietary to the Parties with the Divestiture Agency, without seeking any approval from the Parties.
68. The Commission may, at any time, request information from the Parties that is reasonably necessary for the effective implementation of the Order.
69. The Parties shall notify the Commission at least thirty days prior to any proposed change in the corporate structure of the Parties that may adversely affect the compliance obligations of the Parties.
70. In carrying out the aforesaid modification, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.



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71. The Order shall stand revoked, if any time, the information provided by the Parties is found to be incorrect.
72. The Secretary is directed to communicate to the Parties accordingly.



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Appendix A

Terms used in the Order

<i>Affiliates</i>	Enterprises controlled by the Parties and/or by the ultimate parents of the Parties, including the ultimate parents, whereby the term "Enterprises" and "Control" shall bear the meaning provided in the Act.
<i>Approved Purchaser</i>	The entity approved by the Commission as acquirer of the Divestment Assets (or remaining Divestment Assets) in accordance with the criteria set out in paragraph 59.
<i>Approved Sale and Purchase Agreement</i>	The sale and purchase agreement for sale of Divestment Assets which has been duly approved by the Commission.
<i>Closing</i>	The transfer of the legal title of the Divestment Assets to the Approved Purchaser or to members of public in case of sale via placing of Divestment Assets on stock exchanges where Divestment Assets are listed.
<i>Closing Date</i>	The date on which Closing takes place.
<i>Confidential Information</i>	Any business secrets, know-how, commercial information, or any other Information of a proprietary nature relating to the Divestment Assets that is not available in public domain.
<i>Divestment Assets</i>	PotashCorp's equity interest in APC, ICL, and SQM.
<i>Divestiture</i>	Shall mean the sale and transfer of the Divestment Asset s. The words, "divest", "divested", "divesting" and "divestment" shall be interpreted accordingly.
<i>Divestiture Agency</i>	One or more natural or legal per son(s), independent from the Parties, which is appointed by the Commission, and which has the duty to Divest the Divestment Assets during the Second Divestiture Period.
<i>Divestiture Agency Agreement</i>	The agreement executed by and between the Commission and the Divestiture Agency.
<i>Effective Date</i>	The date of receipt of the Order by the Parties.
<i>First Divestiture Period</i>	The period of eighteen months from the Effective Date.
<i>Second Divestiture Period</i>	The period of 4 (four) months from the end of the First Divestiture Period.