

**PUBLIC**

CT-2008-001

**THE COMPETITION TRIBUNAL**

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by the Commissioner of Competition for an interim order pursuant to section 100 and section 105 of the Competition Act;

AND IN THE MATTER OF an inquiry pursuant to paragraph 10(1)(b) of the Competition Act into the proposed acquisition by an affiliate of American Iron & Metal Company Inc. of all of the issued and outstanding shares of S N F Inc.

**BETWEEN:**

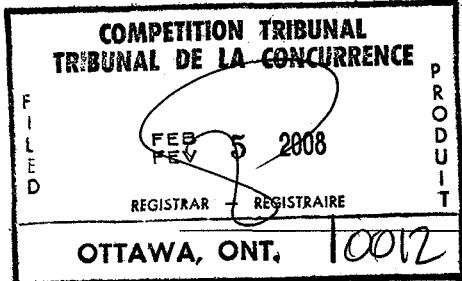
**THE COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**AMERICAN IRON & METAL COMPANY INC. and  
6876544 CANADA INC.**

**Respondents**



**CONSENT AGREEMENT**

**WHEREAS** American Iron and Metal Company Inc. ("AIM"), through 6876544 Canada Inc. intends to acquire all of the outstanding shares of S N F Inc. ("SNF") pursuant to an agreement dated November 16, 2007;

**AND WHEREAS** AIM wishes to close the transaction on February 1, 2008;

**AND WHEREAS** AIM has represented to the Commissioner of Competition ("the Commissioner") that it is necessary to close the transaction immediately following the 42 day waiting period because SNF is in serious financial difficulty;

**AND WHEREAS** the Commissioner has concerns that the transaction may lead to a substantial lessening and/or prevention of competition with respect to the collection, purchase and processing of scrap metal;

**AND WHEREAS** in the Commissioner's opinion, she has not had sufficient time to complete her inquiry into the transaction;

**AND WHEREAS** in the particular circumstances of this transaction, the Commissioner's primary concern is that the assets and operations be preserved so as to not impair the Tribunal's ability to remedy any competitive effects of the transaction through the divestiture of such assets and operations;

**AND WHEREAS** the Commissioner filed an Application pursuant to section 100 of the *Competition Act* with the Competition Tribunal on January 28, 2008 for an order preventing the closing of the transaction or, in the alternative, preserving the assets and operations of the parties as addressed herein;

**AND WHEREAS** AIM and 6876544 Canada Inc. have agreed to comply with the Commissioner's requirements to preserve the assets and operations and have represented that, given the nature of operations, such operations would be preserved and could be readily divested such that the Tribunal's ability to remedy the competitive effects of the transaction will not be impaired;

**AND WHEREAS** the terms of this Agreement are appropriate only given the limited duration of this Agreement, and will in no way limit the Commissioner's right to bring an application pursuant to section 92 and 104 of the Act seeking additional relief as may be appropriate over any extended period nor the Respondents' rights to oppose such an application;

**AND WHEREAS** the Respondents wish to address the Commissioner's concerns raised in the Application filed pursuant to section 100 of the *Competition Act*, and all parties wish to settle the issues outstanding before the Tribunal under section 100, allow for closing of the proposed transaction and permit more time for the Commissioner to complete her inquiry;

**NOW THEREFORE** AIM, 6876544 Canada Inc. and the Commissioner have agreed to the terms of this Consent Agreement as follows:

## **I. DEFINITIONS**

[1] For the purposes of this Agreement, the following capitalized terms have the following meanings:

- (a) **"Act"** means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
- (b) **"AIM"** means American Iron and Metal Company Inc.;
- (c) **"Affiliate"** has the meaning given to it in subsection 2(2) of the Act;
- (d) **"Agreement"** means this Consent Agreement entered into between AIM, 6876544 Canada Inc. and the Commissioner pursuant to section 105 of the Act;

- (e) **“Closing”** means the purchase or acquisition of a majority of the outstanding shares of SNF by AIM or 6876544 Canada Inc.;
- (f) **“Closing Date”** means the date on which AIM or 6876544 Canada Inc. purchases or acquires a majority of the outstanding shares of SNF;
- (g) **“Commissioner”** means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (h) **“Laval Shredder”** means the scrap metal shredder operated by SNF in Laval, Quebec and associated equipment, machinery, facilities and other related assets;
- (i) **“Montreal Shredder”** means the scrap metal shredder operated by AIM in Montreal, Quebec and associated equipment, machinery, facilities and other related assets;
- (j) **“Person”** means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, whether acting alone or in concert with another Person;
- (k) **“Quebec City Shredder”** means the scrap metal shredder operated by AIM in Quebec City, Quebec and associated equipment, machinery, facilities and other related assets;
- (l) **“SNF”** means S N F Inc.;
- (m) **“St. Augustin Shredder”** means the scrap metal shredder operated by SNF in St. Augustin, Quebec and associated equipment, machinery, facilities and other related assets;
- (n) **“Tribunal”** means the Competition Tribunal established by the Competition Tribunal Act, R.S.C. 1985, c.19 (2<sup>nd</sup> Supp.), as amended; and
- (o) All other terms defined in this Agreement have the meanings established elsewhere in this Agreement.

**II. APPLICATION**

[2] The provisions of this Agreement apply to:

- (a) AIM;
- (b) 6876544 Canada Inc.;
- (c) each officer, director, employee, agent or other Person acting for or on behalf of AIM or 6876544 Canada Inc. and any successors or assigns of each of them;
- (d) all other Persons acting in concert or participating with one or more of those listed in (a) or (b); and
- (e) the Commissioner.

[3] Throughout this Agreement, any reference to an obligation by AIM to do or refrain from doing anything is understood to also apply to 6876544 Canada Inc. or any affiliate of AIM or 6876544 Canada Inc., carrying on the business of purchasing, processing and selling scrap metal.

**III. HOLD SEPARATE**

[4] AIM shall maintain SNF and its subsidiaries as legal entities that are separate and distinct from AIM, 6876544 Canada Inc. or their respective Affiliates.

[5] AIM shall continue all contracts between SNF and its customers and suppliers (and any renewals thereof) in a manner such that these contracts could be readily divested pursuant to an order of the Tribunal or otherwise.

[6] AIM shall maintain, in accordance with generally accepted accounting principles, separate and complete accounts, books, financial ledgers and records of material financial information for SNF and its subsidiaries, including separate records of sales and purchases by SNF.

[7] AIM shall maintain all current financing, credit or other banking arrangements of SNF, and will not cause or contribute to any default of such arrangements. Notwithstanding the above,

the exercise of AIM's obligations under Article 8.2 of the convention d'achat d'actions or the remedy of any default shall not constitute a violation of this paragraph.

[8] AIM shall preserve lists of SNF's suppliers and customers in a format that is readily available to any prospective purchaser of all or part of SNF's operations.

#### **IV. PRESERVATION OF ASSETS**

[9] AIM shall not transfer, sell, assign, dismantle or otherwise dispose of the Laval Shredder, Quebec City Shredder and Montreal Shredder. AIM shall not make any material changes to the operations of the Laval Shredder, Quebec City Shredder and Montreal Shredder or enter into any material agreement to lease any assets or real property of these facilities that would have the effect of inhibiting or unreasonably delaying the divestiture of these facilities.

[10] Throughout the term of this Agreement, AIM shall preserve and continue to operate the Laval Shredder, Quebec City Shredder and Montreal Shredder, along with associated equipment and machinery in the ordinary course of business and in doing so shall:

- (a) operate such shredders, equipment and machinery in compliance with all applicable laws;
- (b) maintain all material licences, registrations, permits and approvals necessary for the operation of the shredders, machinery and equipment; and
- (c) maintain shredders, equipment and machinery in good working order and to standards at least equal to those maintained prior to the date of this Agreement;

[11] AIM shall preserve and maintain in good working order all equipment and machinery used for the transportation of ferrous and non-ferrous scrap metal.

[12] AIM shall continue to operate, in the ordinary course of business, all existing retail scrap collection sites of both SNF and AIM, including SNF's eight retail collection locations in Laval, Boisbriand, Saguenay (Jonquiere), Dartmouth (Halifax), Vanier (Quebec City), Levis (Quebec City), Trois-Rivières and Mont-Joli and AIM's retail collection sites in Montreal (Métaux Dépôt) and Quebec City.

[13] AIM shall continue to purchase feedstock through SNF and structure the processing of such feedstock by AIM's Quebec City shredder pursuant to a processing contract at fair market rates to be put in place between SNF and AIM, with SNF retaining ownership of the feedstock and the finished product for sale.

[14] AIM shall not remove, transfer, sell, assign or otherwise dispose of the St. Augustin Shredder and any associated equipment used in the operation of the St. Augustin Shredder. AIM shall preserve and maintain the St. Augustin Shredder in good working order and shall:

- (a) maintain all material licences, registrations, permits and approvals necessary for the operation of the St. Augustin Shredder;
- (b) maintain the shredder, associated equipment and structures to standards at least equal to those maintained prior to the date of the this Agreement; and
- (c) have appropriate technicians attend at the St. Augustin Shredder regularly to perform the appropriate maintenance to ensure that the St. Augustin Shredder, associated equipment and structures will remain in good working order.

[15] If AIM divests the St. Augustin Shredder under obligation from a subsequent agreement entered into with the Commissioner or pursuant to an order of the Tribunal (and whether on its own behalf or by trustee sale), AIM agrees to provide any assistance that a purchaser may require in commencing the operation of the St. Augustin Shredder as efficiently as possible.

[16] With the exception of employees who elect to resign or who are terminated for just cause, AIM shall not terminate or alter any current employment, salary or benefit for any personnel operating the processing facilities or shredders employed by SNF as at the date of this Agreement, with the exception that AIM may terminate or alter the employment of manual unskilled labourers at the Laval Shredder in accordance with normal industry practice.

#### **IV. NOTIFICATION**

[17] AIM shall provide a copy of this Agreement to each of its officers, employees, or agents having managerial responsibility for any obligations under this Agreement.

**[18]** Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties.

(a) If to the Commissioner:

Sheridan Scott  
Commissioner of Competition  
Competition Bureau  
Industry Canada  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Telephone: (819) 997-3301  
Facsimile: (819) 953-5013

With a copy to:

Jonathan Chaplan and Adam Fanaki  
Competition Law Division  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Telephone: (819) 953-3890  
Facsimile: (819) 953-9267

(b) If to AIM:

Denis Fraser  
American Iron & Metal Company Inc.  
9100 Henri Bourassa East  
Montreal, Quebec H1E 2S4

Telephone: 514-494-2000  
Fax: 514-494-3008

With a copy to:

Neil Campbell, David Kent and Larry Markowitz  
McMillan Binch Mendelsohn LLP

Brookfield Place, Suite 4400  
Bay Wellington Tower, 181 Bay Street  
Toronto, Ontario M5J 2T3

Telephone: 416-865-7000  
Fax: 416-865-7048

**V. DURATION**

[19] This Agreement shall have duration of 60 days from the date of Closing, unless otherwise agreed to by the Parties in writing.

**VI. GENERAL**

[20] The Commissioner and AIM may mutually agree to amend the Consent Agreement in any manner pursuant to subsection 106(1) of the Act.

[21] Nothing in this agreement shall prevent or limit the Commissioner's right to bring an application pursuant to section 92 and 104 of the Act, or limit the relief claimed under such an application nor the Respondents' rights to oppose such an application.

[22] The Commissioner has the right, on 48 hours notice to AIM:

- (a) to access all records of AIM relating to compliance with this Agreement;
- (b) to interview employees of AIM on matters relating to compliance with this Agreement; and
- (c) to have her employees or agents inspect the scrap metal purchase or processing facilities of AIM or SNF.

[23] Computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall be deemed to include Saturday.

[24] This Agreement constitutes the entire agreement between the Commissioner and AIM and supersedes all prior agreements with respect to the subject matter hereof.



[25] Any dispute as to the interpretation, application or implementation of this Agreement may be resolved by application to the Tribunal.

[26] This Agreement may be executed in counterparts, each of which shall constitute an original and all which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

[27] AIM, 6876544 Canada Inc. and the Commissioner consent to the registration of this Agreement pursuant to section 105 of the Act.

DATED at Gatineau, Quebec, this 29<sup>th</sup> day of January, 2008

**AMERICAN IRON & METAL COMPANY INC.**

\_\_\_\_\_  
Per:

**6876544 CANADA INC.**

\_\_\_\_\_  
Per:



**Commissioner of Competition**

FILED AND REGISTERED BY THE TRIBUNAL, THIS \_\_\_\_\_ DAY OF JANUARY, 2008.

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DATED at Gatineau, Quebec, this 29<sup>th</sup> day of January, 2008

**AMERICAN IRON & METAL COMPANY INC.**

Per:

**6876544 CANADA INC.**

Per:

\_\_\_\_\_  
**Commissioner of Competition**

FILED AND REGISTERED BY THE TRIBUNAL, THIS \_\_\_\_ DAY OF JANUARY, 2008.