

Reference: *Commissioner of Competition v. American Iron & Metal Company Inc. et al.*, 2008
Comp. Trib. 1
File No.: CT-2008-001
Registry Document No.: 0013

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 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.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

American Iron & Metal Company Inc.
6876544 Canada Inc.
S N F Inc.
Hametal Canada Inc.
Fonds de solidarité des travailleurs du Québec (F.T.Q.)
(respondents)

Decided on the basis of the written record
Presiding Judicial Member: Simpson J. (Chairperson)
Date of order: February 6, 2008
Order signed by: Madam Justice S. Simpson

CONFIDENTIALITY ORDER – ON CONSENT OF THE PARTIES

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the “Commissioner”) for an interim order pursuant to section 100 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”) forbidding the Respondents from completing or implementing or taking steps toward completing or implementing the proposed acquisition by American Iron & Metal Company Inc. (“AIM”), through 6876544 Canada Inc. (“AcquisitionCo”) or an affiliate, of the shares of S N F Inc. (“SNF”) from Hametal Canada Inc. (“Hametal”) and Fonds de solidarité des travailleurs du Québec (F.T.Q.) (“FTQ”) (the “Proposed Transaction”);

[2] **AND FURTHER TO** the Commissioner’s request for a confidentiality order;

[3] **AND FURTHER TO** the draft confidentiality order filed on consent by the parties on January 29, 2008;

THE TRIBUNAL ORDERS THAT:

[4] For the purposes of this Order:

- (a) “Document” means any document whatsoever, including the things defined as “records” in subsection 2(1) of the *Act*;
- (b) “Independent Expert” means an expert retained by a Party who (i) is not a current employee of the Respondent or its affiliates, (ii) has not been an employee of the Respondent or its affiliates within 5 years prior to the date of this Order, and, (iii) is not a current employee of a competitor, supplier, or customer of the Respondent or its affiliates;
- (c) “Proceeding” means the application filed by the Commissioner for an interim order pursuant to section 100 of the *Act* forbidding the Respondents from completing or implementing or taking steps toward completing or implementing the Proposed Transaction;
- (d) “Protected Documents” means any document produced in the Proceeding, including documents listed in expert reports, pleadings, affidavits or submissions and information contained in those documents, that a Party claims is confidential or that the Tribunal has determined is confidential;
- (e) “Parties” means the Commissioner and the Respondents, and “Party” means the Commissioner or a Respondent.

[5] Disclosure of Documents containing any of the following types of information could cause specific and direct harm:

- (a) Information relating to prices (to the extent that such prices have not been

published or made generally known to competitors and customers), capacity, specific output or revenue data or market shares, or negotiations relating to prices, rates and incentives;

- (b) Lists of existing, prospective, and former customers and/or suppliers;
- (c) Confidential contractual arrangements between the Respondents or third parties and their customers and/or suppliers;
- (d) Financial data and reports;
- (e) Business plans, marketing and strategic plans, budgets, forecasts, and other similar information;
- (f) Internal market studies and analyses;
- (g) Confidential financial information relating to the Respondents or third parties; and,
- (h) Other competitively sensitive and/or proprietary information of the Parties or third parties.

[6] If information from a Protected Document is incorporated into any other document, that document shall be a Protected Document.

[7] Subject to a further order of the Tribunal, the consent of the Parties or as required by law, Protected Documents may only be disclosed to the following people: (i) external counsel for the Parties and their staff; (ii) Independent Experts retained by the Parties who have executed Confidentiality Undertakings in the form attached as Schedule “A”; and, (iii) the Commissioner and the Commissioner’s staff directly involved in the Proceeding.

[8] If a Party is required by law to disclose a Protected Document, or if a Party receives written notice from a person who has signed a Confidentiality Undertaking pursuant to this Order that they are required by law to disclose a Protected Document, that Party shall give prompt written notice to the Party that claimed confidentiality over the Protected Document so that the Party that claimed confidentiality may seek a protective order or other appropriate remedy.

[9] External counsel for a Party and his or her staff, and the Commissioner and her staff may make copies of the Protected Documents as they require in connection with the Proceeding.

[10] Nothing in this Order prevents a Party from having full access to Protected Documents that originated from that Party.

[11] For greater certainty, all persons who obtain access to documents through the Proceeding are subject to an implied undertaking to use the documents and information solely for the purposes of this Proceeding (including any application or proceedings to enforce any order made

by the Tribunal in connection with this Proceeding and any application under section 106 of the Act to vary or rescind any order made by the Tribunal in connection with this Proceeding) and any related appeals.

[12] In the Proceeding:

- (a) Protected Documents referred to in the Proceeding shall be identified as such and clearly marked as confidential;
- (b) Protected Documents, including information contained in those documents and references to testimony made *in-camera*, shall not form part of the public record, subject to the consent of the Parties or further order of the Tribunal.

[13] Any filings of documents or compendia with the Tribunal which include Protected Documents shall be filed with redacted versions which may be distributed to the public.

[14] The termination of the Proceeding shall not relieve any person to whom Protected Documents were disclosed pursuant to this Order from the obligation of maintaining the confidentiality of such Protected Documents in accordance with the provisions of this Order and any confidentiality agreement.

[15] This Order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

DATED at Ottawa, this 6th day of February, 2008.

SIGNED on behalf of the Tribunal by the Chairperson of the Tribunal.

(s) Sandra J. Simpson

SCHEDULE "A"

Confidentiality Undertaking

IN CONSIDERATION of being provided with information or documentation in connection with the proceeding in the Competition Tribunal (the "Tribunal"), File Number CT-2008-____ (the "Proceeding"), between the Commissioner of Competition and American Iron & Metal Company Inc., 6876544 Canada Inc., S N F Inc., Hametal Canada Inc. and Fonds de solidarité des travailleurs du Québec (F.T.Q.), over which claims for confidentiality have been advanced ("Protected Documents"), I, _____, of the Province of _____, hereby undertake and agree to maintain the confidentiality of any Protected Document that I obtain, and in particular:

1. I will not copy or disclose a Protected Document to any other person, except to a person permitted to receive it under the Confidentiality Order of the Tribunal dated January ____, 2008, or such further order as the Tribunal may make.
2. I will not use the information or documentation so obtained for any purpose other than in connection with the Proceeding (including any application or proceedings to enforce any Order made by the Tribunal in connection with the Proceeding and any application under section 106 of the Act to vary or rescind any order made by the Tribunal in connection with this Proceeding), and any related appeals.
3. Upon completion of this application and any related appeals, I agree that all Protected Documents in my possession shall be dealt with in accordance with instructions from counsel for the party I am retained by or as prescribed by order of the Tribunal. I may retain in my confidential files, subject to the requirements of confidentiality imposed by this undertaking, materials prepared by me, such as my expert report, as well as study results and materials of a general nature which do not replicate any confidential information from a Protected Document.
4. I have read the Confidentiality Order, a copy of which is attached to this agreement, and agree to be bound by it. I acknowledge that any breach of this undertaking by me will be considered to be a breach of the said order of the Tribunal.
5. I acknowledge and agree that the owner of a Protected Document may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this undertaking are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that the owner of a Protected Document shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.
6. In the event that I am required by law to disclose any Protected Document that is subject to this undertaking, I will provide [*insert name of retaining or employing party*] with prompt written notice so that the person that claimed confidentiality over such information or documentation may seek a protective order or other appropriate remedy. In any event, I will

furnish only that portion of the Protected Document that is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded it.

7. I will promptly, upon the request of the person providing a Protected Document, advise where it is kept by me.

8. I hereby attorn to the jurisdiction of the Federal Court of Canada and/or the Tribunal to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this ___day of _____, 2008

(Witness Signature)

(Signature)

(Print Name)

(Print Name)

COUNSEL

For the applicant:

The Commissioner of Competition:

Fanaki, Adam
Chaplan, Jonathan
Sansom, Steve
Leblanc, Marilyn

For the respondents:

American Iron & Metal Company Inc. and 6876544 Canada Inc.:

Kent, David
Hood, Jonathan
Campbell, Neil
Markowitz, Larry

S N F Inc., Hametal Canada Inc. and Fonds de solidarité des travailleurs du Québec
(F.T.Q.)

Hourigan, William
New, Douglas
Di Padova, Angela