

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 pursuant to sections 77 and 79 of the *Competition Act*;

AND IN THE MATTER OF certain practices by Canada Pipe Company Ltd./Tuyauteries Canada Ltée through its Bibby Ste-Croix Division.

B E T W E E N:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
FILED / PRODUIT
REGISTERED / ENREGISTRÉ
December 19, 2007

Chantal Fortin
for / pour
REGISTRAR / REGISTRAIRE

THE COMMISSIONER OF COMPETITION

Applicant

AND

OTTAWA, ONT.

0130

CANADA PIPE COMPANY LTD./TUYAUTERIES CANADA LTÉE

Respondent

CONSENT AGREEMENT

FURTHER TO the application filed by the Commissioner of Competition (the "Commissioner") for an Order pursuant to sections 77 and 79 of the *Competition Act* (the "Act") against Canada Pipe Company Ltd./Tuyauteries Canada Ltée ("Canada Pipe");

AND FURTHER TO the decision of the Competition Tribunal (the "Tribunal") dated February 3, 2005 and the decision of the Federal Court of Appeal dated June 23, 2006, referring the matter back to the Tribunal for a redetermination;

AND WHEREAS the Commissioner and Canada Pipe have reached an agreement to resolve the matters at issue regarding certain of Canada Pipe's marketing practices under sections 77 and 79 of the Act on the basis of this Consent Agreement (the "Agreement");

AND WHEREAS the Commissioner and Canada Pipe agree that upon the signing of this Agreement, the Parties shall file the Agreement with the Tribunal for immediate registration.

AND IT BEING UNDERSTOOD THAT nothing in this Agreement will be taken as an admission by the Parties either now or in the future of any facts, submissions or legal arguments for any other purposes, nor will it derogate from any rights or defences available to the Parties under the Act or otherwise.

NOW THEREFORE the Commissioner and Canada Pipe have agreed to the terms of the Agreement as follows:

I. Interpretation

1. For the purpose of the Agreement, the following definitions shall apply:

- (a) “**Act**” means the *Competition Act*, R.S.C. 1985, c.C-34, as amended;
- (b) “**Affiliate**” shall have the meaning given to it in subsection 2(2) of the Act;
- (c) “**Agreement**” means this Consent Agreement entered into by Canada Pipe and the Commissioner;
- (d) “**Canada Pipe**” means Canada Pipe Company Ltd./Tuyauteries Canada Ltée, its subsidiaries, divisions, groups, successors, assigns and Affiliates;
- (e) “**Commissioner**” means the Commissioner of Competition, appointed pursuant to section 7 of the Act;
- (f) “**Parties**” means the Commissioner of Competition and Canada Pipe;
- (g) “**Relevant Product**” means cast iron pipe for use in drain, waste and vent (“DWV”) applications, cast iron fittings for use in DWV applications or mechanical joint couplings (“MJ Couplings”) (collectively referred to as “**Relevant Products**”);
- (h) “**Senior Officers**” shall have the meaning given to it in section 2 of the *Notifiable Transaction Regulations*, SOR 87-348, as amended; and
- (i) “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. Application

2. The provisions of the Agreement shall apply to:

- (a) Canada Pipe; and,
- (b) The Commissioner.

III. Implementation of Modified Rebate Program by Canada Pipe

3. On or before January 30, 2008, Canada Pipe shall implement a modified rebate program (the “Modified Rebate Program”) in Canada as described in Confidential Schedule “A” hereto. The Modified Rebate Program will be offered to Canada Pipe’s distributors and potential distributors in Canada as an alternative to Canada Pipe’s existing rebate program (which is known as the Stocking Distributor Program or “SDP”).
4. For these purposes, a “distributor” means a reseller in Canada that: (i) purchases a minimum of 40,000 pounds of the Relevant Products (equivalent to one truckload) per quarter; and (ii) meets Canada Pipe’s credit and payment terms as they exist from time to time.
5. The key components of the Modified Rebate Program include: (1) multiplier discounts off list-price; (2) quarterly rebates; (3) annual rebates; and (4) yearly head office rebates.
6. The payment or amount of any quarterly rebate or annual rebate (as described in Confidential Schedule “A” hereto) available under the Modified Rebate Program for the purchase of a Relevant Product from Canada Pipe shall not be conditioned on the acquisition of any other Relevant Product or other product from Canada Pipe or from any nominee designated by Canada Pipe.
7. Subject to paragraph 8 below and the conditions listed in Confidential Schedule “A” hereto, the rebates and discounts for the Modified Rebate Program may differ between provinces and may be adjusted by Canada Pipe on a periodic basis.
8. The total annual, quarterly or head office rebates available to a distributor under the Stocking Distributor Program or any other rebate program applicable to purchases of the Relevant Products will not exceed the total annual, quarterly or head office rebates available to a distributor under the Modified Rebate Program. The multiplier discount for any Relevant Product under the Stocking Distributor Program or any other rebate program applicable to purchases of the Relevant Products will not exceed the multiplier discount for that same Relevant Product under the Modified Rebate Program.
9. For greater certainty, Canada Pipe retains the right to offer additional price concessions or discounts to distributors participating in the Modified Rebate Program or Stocking Distributor Program on an as needed basis in order to match what Canada Pipe believes to be legitimate competing offers from suppliers of any Relevant Product.
10. The Modified Rebate Program shall not include any requirement that distributors deal only in the Relevant Products supplied by Canada Pipe or refrain from purchasing Relevant Products from suppliers other than Canada Pipe.
11. Throughout the term of the Agreement, Canada Pipe shall promote and offer the Modified Rebate Program to all of its existing or potential distributors in Canada for any

Relevant Product in the same manner as any other rebate or discount program offered by Canada Pipe in respect of the Relevant Products.

12. Canada Pipe shall not refuse to supply, delay shipments of products or otherwise discriminate, directly or indirectly, against any distributor solely because that distributor has elected to participate in the Modified Rebate Program. However, and for greater certainty, nothing else in this Agreement creates an obligation upon Canada Pipe to offer to sell or sell any of the Relevant Products to a distributor or customer in Canada.
13. Throughout the term of the Agreement, Canada Pipe retains the right to eliminate all rebate programs in Canada (including the Stocking Distributor Program and Modified Rebate Program) in respect of the Relevant Products.

IV. Notification

14. Canada Pipe shall provide a copy of this Agreement to each of its Senior Officers and any other officers, employees or agents that have managerial responsibility for the negotiation or administration of rebates, discounts, allowances or price concessions for customers of the Relevant Products in Canada, no later than fifteen (15) days from the date this Agreement is registered.

V. Monitoring

15. Canada Pipe shall provide the Commissioner with copies of all versions of the Modified Rebate Program and any other rebate program applicable to purchases of Relevant Products at least four (4) weeks prior to the implementation of such program.
16. Canada Pipe shall, no later than the same time as such information is provided to purchasers or potential purchasers of Relevant Products, provide the Commissioner with the following documents or information:
 - (a) copies of any announcement to purchasers or potential purchasers of Relevant Products of the implementation, or amendments to, the Modified Rebate Program or any other rebate program applicable to purchases of Relevant Products; and
 - (b) copies of price lists and multiplier discounts for the Relevant Products as at the date of this Agreement and any amended price lists and multiplier discounts implemented following the date of this Agreement.

VI. Term Of Agreement

17. Unless otherwise agreed upon by the Parties, this Agreement shall be binding upon Canada Pipe for a period of five (5) years following the date of registration of this Agreement.

VII. Notices

18. Notices pursuant to the Agreement shall be given to the Parties at the following addresses or facsimile numbers:

(a) The Commissioner

Sheridan Scott
Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau (QC) K1A 0C9

Telephone: (819) 997-3301

Facsimile: (819) 953-5013

With copies to:

Adam Fanaki
Special Counsel to the Commissioner
Department of Justice
Competition Law Division
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau (QC) K1A 0C9

Telephone: (819) 953-3890

Facsimile: (819) 953-9267

(b) Canada Pipe Company Ltd./Tuyauteries Canada Ltée

Jim Proctor
Vice-President and Senior Counsel
c/o McWane Inc.
P.O. Box 43327
2900 Highway 280
Suite 300
Birmingham, Alabama
35243

Telephone: (205) 414-3100

Facsimile: (205) 414-3170

With copies to:

George Addy and Anita Banicevic
Davies Ward Phillips & Vineberg LLP
1 First Canadian Place
44th Floor
Toronto, Ontario
M5X 1B1

Telephone: (416) 863-0900

Facsimile: (416) 863-0871

VIII. General

19. The Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
20. The Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
21. Confidential Schedules “A” and “B” appended hereto form part of this Agreement.
22. For greater certainty, the Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or Canada Pipe to rescind or vary any of the provisions of the Agreement in the event of a change of circumstances from the date of this Agreement or otherwise pursuant to section 106 of the Act.
23. For the purpose of determining or securing compliance with the Agreement, the Commissioner shall allow Canada Pipe three (3) weeks in which to clarify any objections raised by the Commissioner with regard to compliance with this Agreement prior to commencement of any proceedings by the Commissioner before the Tribunal.
24. The Commissioner and Canada Pipe may mutually agree to amend this Agreement in any manner pursuant to subsection 106(1) of the Act.
25. This Agreement constitutes the entire agreement between the Commissioner and Canada Pipe with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.
26. In the event of a dispute as to the interpretation or application of the Agreement, either the Commissioner or Canada Pipe shall be at liberty to apply to the Tribunal for an order interpreting any of the provisions of the Agreement. In the event of a dispute in relation to the English and French version of the Agreement, the English version shall govern.

The undersigned hereby agree to the registration of this Consent Agreement.

DATED this 19th day of December, 2007.

Canada Pipe Company Ltd./Tuyauteries Canada Ltée

(signed) "Tom Leonard"

Per: Tom Leonard
Vice President

(signed) "Sheridan Scott"

Sheridan Scott
Commissioner of Competition

SCHEDULE "A"

CONFIDENTIAL

Schedule "B"

CONFIDENTIAL