

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

**AND IN THE MATTER OF** the proposed acquisition of the shares of 9462287 Canada Inc. by 11715216 Canada Inc.;

**AND IN THE MATTER OF** the filing and registration of a consent preservation agreement pursuant to sections 100 and 105 of the *Competition Act*.

**B E T W E E N :**

**THE COMMISSIONER OF COMPETITION**

Applicant

– and –

**AMERICAN IRON & METAL COMPANY INC. and 11715216 CANADA INC.**

Respondents

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**CONSENT PRESERVATION AGREEMENT**

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**RECITALS:**

**A.** 11715216 Canada Inc., an affiliate of American Iron & Metal Company Inc. (“AIM” and collectively, the “Respondents”) proposes to acquire the shares of 9462287 Canada Inc., which owns Total Metal Recovery (TMR) Inc. (“TMR”) (the “Transaction”).

**B.** The Commissioner has concerns that the Transaction may result in a substantial lessening of competition in the purchase, collection and processing of scrap metal and/or the supply of processed scrap metal in Quebec.

**C.** AIM has represented to the Commissioner that it is necessary to close the Transaction immediately because TMR is in serious financial difficulty and has significantly reduced its operations.

**D.** An inquiry is being made under paragraph 10(1)(b) of the Act; in the Commissioner's opinion, more time is required to complete the inquiry; and the Commissioner has concluded that, in the absence of this Agreement Respondents are likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the Transaction on competition because that action would be difficult to reverse.

**E.** Respondents do not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusion that in the absence of this Agreement Respondents are likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the Transaction on competition because that action would be difficult to reverse.

**F.** Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 100 of the Act in respect of the Transaction.

**THEREFORE** Respondents and the Commissioner agree as follows:

## **I. DEFINITIONS**

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **"Act"** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **"Affiliate"** has the meaning given to it in subsection 2(2) of the Act;
- (c) **"Agreement"** means this Consent Preservation Agreement, including the schedules hereto, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (d) **"AIM"** means American Iron & Metal Company Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (e) **"Business Day"** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;
- (f) **"Closing"** means the completion of the Transaction;
- (g) **"Closing Date"** means the date on which Closing occurs;
- (h) **"Commissioner"** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;
- (i) **"Confidential Information"** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is

owned by or pertains to a Person or a Person's business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;

- (j) **"Interim Period"** means the period that commences at Closing and ends 60 days after Closing;
- (k) **"Person"** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (l) **"Records"** means records within the meaning of subsection 2(1) of the Act;
- (m) **"Respondents"** means AIM and 11715216 Canada Inc.;
- (n) **"TMR"** means 9462287 Canada Inc. and its subsidiaries (including Total Metal Recovery (TMR) Inc.) and their directors, officers, employees, agents, representatives, successors and assigns;
- (o) **"TMR Assets"** means the assets of TMR;
- (p) **"Transaction"** means the transaction described in the first recital to this Agreement; and
- (q) **"Tribunal"** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2<sup>nd</sup> Supp.).

## II. PRESERVATION OF TMR ASSETS

[2] In order to preserve the TMR Assets during the Interim Period, Respondents shall maintain the viability and marketability of the TMR Assets. Respondents shall:

- (a) maintain TMR and its subsidiaries as legal entities that are separate and distinct from Respondents;
- (b) maintain and hold the TMR Assets in good condition and repair, normal wear and tear excepted, and to standards that are at least equal to those that existed at Closing;
- (c) ensure that the management and operation of the TMR Assets continues in a manner that is reasonably consistent in nature, scope and magnitude with TMR's practice as of the Closing Date, taking into account the available supply of scrap material for purchase, and in compliance with all applicable laws;

- (d) ensure that the TMR Assets are not engaged in any type of business other than the type of business conducted as of the Closing Date, except with the prior approval of the Commissioner;
  - (e) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations that are advisable for the operation of the TMR Assets;
  - (f) take commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the TMR Assets that are at least equal to the standards that existed as of the Closing Date;
  - (g) not terminate or alter any employment, salary or benefit agreements, as they existed at the Closing Date, for managerial, administrative and trading personnel employed in connection with the TMR Assets, with the exception of employees who elect to resign or who are terminated for just cause;
  - (h) ensure that the TMR Assets are staffed with sufficient operational employees to ensure the operational needs of the TMR Assets are met;
  - (i) maintain payment terms consistent with the practices of TMR as of the Closing Date; and
  - (j) maintain in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to TMR.
- [3]** During the Interim Period, Respondents shall not, except as required or permitted under this Agreement, without the Commissioner's prior written approval:
- (a) create any new encumbrances on the TMR Assets, other than any encumbrances created as a part of the financing for the Transaction or ordinary course obligations that are not due or delinquent;
  - (b) enter into, withdraw from, amend or otherwise take steps to alter any obligations in material contracts relating to the TMR Assets; or
  - (c) knowingly take or allow to be taken any action that materially adversely affects the viability or marketability of the TMR Assets.
- [4]** Respondents shall provide sufficient financial resources to maintain the TMR Assets in accordance with this Part.

**III. COMPLIANCE**

- [5] Within 2 Business Days after the Closing Date, Respondents shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [6] Respondents shall provide a copy of this Agreement to each of their own and their Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Respondents shall ensure that their directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Respondents' responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.
- [7] Two weeks after the date of registration of this Agreement and every 2 weeks thereafter, and at such other times as the Commissioner may require, Respondents shall file an affidavit or certificate, substantially in the form of Schedule A to this Agreement, certifying its compliance with this Agreement and setting out the following information in detail:
- (a) the steps taken to ensure compliance;
  - (b) the controls in place to verify compliance; and
  - (c) the names and titles of employees who have oversight of compliance.
- [8] If Respondents become aware that there has been a breach or possible breach of any of the terms of this Agreement, Respondents shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, provided that notification of a possible breach is not required if Respondents determine within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this Agreement. Respondents shall provide confirmation of their compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 7 of this Agreement.
- [9] Respondents shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of a Respondent; or
  - (b) any other change in Respondents if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Respondents' incorporating statute.

[10] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Respondents shall, upon written request given at least 2 Business Days in advance to Respondents, permit any authorized representative(s) of the Commissioner, without restraint or interference:

- (a) to access, during regular office hours of Respondents on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Respondents related to compliance with this Agreement, which copying services shall be provided by Respondents at their expense; and
- (b) to interview such officers, directors or employees of Respondents as the Commissioner requests regarding such matters.

**IV. DURATION**

[11] This Agreement shall become effective on the date when it is registered, and shall remain in effect until the end of the Interim Period.

**V. NOTICES**

[12] A notice or other communication required or permitted to be given under this Agreement is valid if it is:

- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and
- (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

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

Attention: Commissioner of Competition  
Fax: (819) 953-5013  
Email address: [ic.avisdefusionmergernotification.ic@canada.ca](mailto:ic.avisdefusionmergernotification.ic@canada.ca)

with a copy to:

Executive Director and Senior General Counsel

Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Fax: (819) 953-9267  
Email address: ic.cb\_lsu\_senior\_general\_counsel-  
avocat\_general\_principal\_usj\_bc.ic@canada.ca

if to Respondents:

11715216 Canada Inc.  
and/or  
American Iron & Metal Company Inc.  
Attention: Luciana Zannella, Vice-President – Legal Affairs  
9100 Henri Bourassa East  
Montreal, Quebec H1E 2S4

Facsimile: 514-494-3008  
Email: lzannella@aim-global.com

With a copy to:

A. Neil Campbell  
McMillan LLP  
Brookfield Place, Suite 4400  
Bay Wellington Tower, 181 Bay Street  
Toronto, Ontario M5J 2T3

Facsimile: 416-865-7048  
Email address: neil.campbell@mcmillan.ca

[13] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

- [14] Notwithstanding Sections 12 and 13, a notice or other communication that is not communicated in accordance with Sections 12 and 13 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

## VI. GENERAL

- [15] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

- [16] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Respondents hereby consent to such registration.

- [17] The Commissioner may, after informing Respondents, extend any of the time periods contemplated by this Agreement other than the Interim Period, which may be extended by agreement of the Commissioner and the Respondents. If any time period is extended, the Commissioner shall promptly notify Respondents of the revised time period.

- [18] Nothing in this Agreement precludes Respondents or the Commissioner from bringing an application under section 106 of the Act. Respondents will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner’s conclusion that in the absence of this Agreement Respondents are likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the Transaction on competition because that action would be difficult to reverse.

- [19] Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.

- [20] This Agreement constitutes the entire agreement between the Commissioner and Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.



- [21] This Agreement shall be governed by and interpreted in accordance with the laws of Quebec and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [22] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Respondents may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail.
- [23] This 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.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 17<sup>th</sup> day of December, 2019

**COMMISSIONER OF COMPETITION**

\_[Original signed by Matthew Boswell]\_

Name: Matthew Boswell  
Title: Commissioner of Competition

**AMERICAN IRON & METAL COMPANY INC.**

\_[Original signed by Herbert Black]\_

I/We have authority to bind the corporation

Name: Herbert Black  
Title: President

**11715216 CANADA INC.**

\_[Original signed by Herbert Black]\_\_\_\_\_

I/We have authority to bind the corporation

Name: Herbert Black

Title: President

SCHEDULE A

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify<sup>1</sup> in accordance with the terms of the Registered Consent Preservation Agreement dated ● between American Iron & Metal Company Inc. and 11715216 Canada Inc. (“Respondents”) and the Commissioner of Competition, that:

1. I am the **[title]** of **[Respondent]**, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On **[date]**, Respondents entered into a Consent Preservation Agreement (the “Preservation Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with the proposed acquisition of the shares of 9462287 Canada Inc. by 11715216 Canada Inc. (the “Transaction”).
3. The Transaction closed on **[date]** (the “Closing Date”).<sup>2</sup>
4. Pursuant to Section 7 of the Preservation Agreement, Respondents are required to file **[bi-weekly reports/reports when requested by the Commissioner]** certifying their compliance with the Preservation Agreement.

**Oversight of Compliance**

5. **[Names/titles]** have primary responsibility for overseeing compliance with this Agreement.

**Closing Date**

6. Pursuant to Section 5 of the Preservation Agreement, Respondents are required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on **[date]**.

**Circulation of Preservation Agreement**

7. Pursuant to Section 6 of the Preservation Agreement, Respondents are required to provide a copy of the Preservation Agreement to each of their own and their Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Preservation Agreement, within 3 Business Days after the date of registration of the Preservation Agreement. The Preservation Agreement was circulated by **[whom]** to **[provide list]** on **[dates]**.

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<sup>1</sup> If this is drafted as an affidavit, the words “hereby certify” should be removed and should be replaced with “make oath and say”. An affidavit should be sworn under oath. A certification should be certified by a Commissioner for taking affidavits.

<sup>2</sup> Paragraphs 3 and 6 need only be included in the first certification/affidavit.

8. Pursuant to Section 6 of the Preservation Agreement, Respondents are required to ensure that their directors, officers, employees and agents with responsibility for any obligations under the Preservation Agreement receive sufficient training respecting Respondents' responsibilities and duties under the Preservation Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

**Preservation**

9. Part II of the Preservation Agreement requires Respondents to take steps to preserve the TMR Assets. Respondents have fully complied with those terms of the Preservation Agreement and, more particularly: **[Describe steps taken to preserve the TMR Assets.]**

**Notification of Breach**

10. Based on my personal knowledge and my inquiries of **[provide names]**, I am not aware of any breach or possible breach of any of the terms of the Preservation Agreement within the meaning of Section 8 of the Preservation Agreement.

DATED ●.

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Commissioner of Oaths

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Name and Title of Certifying Officer