

Complaint

IN THE MATTER OF

GENERAL DYNAMICS CORPORATION

CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket C-4181; File No. 061 0150

Complaint, December 27, 2006 — Decision, February 7, 2007

This consent order addresses the acquisition by respondent General Dynamics Corporation of SNC Technologies, Inc. SNC is engaged in the provision of high-explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds. General Dynamics is engaged in providing munitions to the U.S. military and participates in the provision of melt-pour load, assemble and pack services for artillery shells and mortar rounds through its 50% ownership of American Ordnance LLC, a joint venture of General Dynamics and Day & Zimmerman, Inc. The acquisition may substantially lessen competition and create a monopoly in the relevant markets because General Dynamics would own 100% of SNC and 50% of American Ordnance, two of only three competitors in the market for these specific munitions services in the United States and Canada, and because actual, direct, and substantial competition between General Dynamics and American Ordnance would be reduced. The order requires General Dynamics to divest its entire interest in American Ordnance to a buyer approved by the Commission in order to ensure the continuing, viable, and competitive operation of American Ordnance. An order to hold the American Ordnance business separate is included. The hold separate order requires that, prior to divestiture, General Dynamics keep the American Ordnance business separate and apart from its other General Dynamics businesses, and that the company refrain from involvement in the direction, oversight, or influence of American Ordnance's business.

Participants

For the *Commission*: *Christina Perez* and *Tammy L. Imhoff*.

For the *Respondent*: *Janet McDavid* and *Joseph G. Krauss*,
Hogan & Hartson.

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COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent General Dynamics Corporation, a corporation subject to the jurisdiction of the Commission, has agreed to acquire SNC Technologies Inc. and SNC Technologies Corp, corporations subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. “Commission” means the Federal Trade Commission.
2. “General Dynamics” or “Respondent” means General Dynamics Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Dynamics Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
3. “SNC” means, individually and collectively, SNC Technologies, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and SNC Technologies Corp., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies Corp., and the

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respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. “American Ordnance” means American Ordnance LLC.

5. “Day & Zimmerman” means Day & Zimmerman, Inc. a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, having its principal place of business located at 1818 Market Street, Philadelphia, Pennsylvania 19103.

II. RESPONDENT

6. Respondent General Dynamics is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2941 Fairview Park Drive, Suite 100, Falls Church, Virginia 22042. General Dynamics, among other things, is engaged in providing munitions to the U.S. military. General Dynamics participates in the provision of melt-pour load, assemble and pack services for artillery shells and mortar rounds through its ownership of American Ordnance

7. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE ACQUIRED COMPANIES

8. SNC are wholly-owned subsidiaries of SNC-Lavalin Inc. SNC are corporations organized, existing, and doing business under and by virtue of the laws of Delaware whose registered principal offices are located at 65 Sandscreen Street, Avon, Connecticut 06001. SNC is engaged in, among other things, the

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provision of high explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds.

9. SNC is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. AMERICAN ORDNANCE

10. American Ordnance is a limited liability company organized, existing, and doing business under and by virtue of the laws of Delaware whose registered principal office is located at 207 East 29th Street, Pittsburgh, Kansas 66762. American Ordnance is engaged in, among other things, the provision of high explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds, from the plants it operates in Milan, Tennessee and Burlington, Iowa.

11. American Ordnance is a joint venture of General Dynamics and Day & Zimmerman. General Dynamics and Day & Zimmerman each own fifty percent of American Ordnance.

12. American Ordnance is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

V. THE PROPOSED ACQUISITION

13. Pursuant to a purchase agreement dated February 23, 2006, two divisions of General Dynamics, General Dynamics Land Systems-Canada, Inc. and General Dynamics Ordnance and

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Tactical Systems, Inc., will acquire all of the voting securities of SNC, in a transaction valued at approximately \$275 million.

VI. THE RELEVANT MARKET

14. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the acquisition is the provision of high explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds.

15. The United States Military purchases high explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds. There is no alternative technology or method to provide artillery shells or mortar rounds.

16. For the purposes of this Complaint, North America is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

VII. THE STRUCTURE OF THE MARKET

17. The relevant markets are highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI").

18. Currently, only three firms, American Ordnance, SNC and Day & Zimmerman, provide high explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds customers in the relevant market.

19. Under the 2005 Base Closure and Realignment legislation, the Kansas Army Ammunition plant operated by Day & Zimmerman must close no later than September 15, 2011, and, it may, in fact, cease operations within the next two years. Therefore, after the closure of the Kansas facility, American Ordnance and SNC would be the only two firms providing high explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds consumers in the relevant market.

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VIII. ENTRY CONDITIONS

20. New entry into the relevant markets is costly and would not occur in a timely manner sufficient to deter or counteract the likely adverse competitive effects of the acquisition. It would take over two years and over ten million dollars for an entrant to build and equip a high explosive melt-pour load, assemble and pack facility. This investment is significant given the limited number of contracts for high explosive melt-pour load assemble and pack services for mortar rounds and artillery shells the U.S. military does each year.

IX. EFFECTS OF THE ACQUISITION

21. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. By reducing actual, direct, and substantial competition between Respondent and American Ordnance because Respondent will own all of SNC and half of American Ordnance; and
- b. By increasing the likelihood that:
 - (1) General Dynamics will be able to unilaterally exercise market power in the market;
 - (2) coordinated interaction would occur between General Dynamics and Day & Zimmerman; and
 - (3) the U.S. military would be forced to pay higher prices for the provision of high explosive melt-pour load, assemble and pack services for mortar

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rounds and artillery shells in the relevant geographic areas.

X. VIOLATIONS CHARGED

21. The Acquisition described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

22. The Acquisition described in Paragraph 6, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of December, 2006, issues its Complaint against said Respondents.

By the Commission.

ORDER TO HOLD SEPARATE

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent General Dynamics Corporation (“GD” or “Respondent”) of SNC Technologies, Inc. and SNC Technologies Corp. (collectively, “SNC”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate (“Hold Separate”):

1. Respondent GD is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2941 Fairview Park Drive, Suite 100, Falls Church, Virginia 22042.

2. SNC Technologies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 65 Sandscreen Street, Avon, Connecticut 06001. SNC Technologies Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware,

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with its offices and principal place of business located at 65 Sandscreen Street, Avon, Connecticut 06001.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

A. “GD” or “Respondent” means General Dynamics Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Dynamics Corporation (including, but not limited to, General Dynamics Ordnance and Tactical Systems, Inc. (“GD-OTS”)), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition Date, the term AGD” shall include SNC.

B. “SNC” means, individually and collectively, SNC Technologies, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and SNC Technologies Corp., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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C. “Commission” means the Federal Trade Commission.

D. “Acquisition” means the acquisition of SNC by GD.

E. “Acquisition Agreement” means the Share Purchase Agreement by and among General Dynamics Land Systems - Canada Inc., General Dynamics Ordnance and Tactical Systems, General Dynamics Corporation, SNC-Lavalin Group Inc. and The SNC-Lavalin Corporation, dated February 23, 2006, whereby GD proposes to acquire SNC.

F. “Acquisition Date” means the earlier of the following dates:

1. the date the Respondent closes on the Acquisition Agreement; or
2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing articles of merger with the Secretary of State of the State of Delaware.

G. “AO” means American Ordnance LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, a joint venture between GD-OTS and Mason & Hanger Corporation, a subsidiary of DZI.

H. “AO Agreement” means the Formation Agreement by and between GD and Mason & Hanger Corporation, a subsidiary of DZI, dated July 21, 1998, and all amendments, exhibits, attachments, agreements, and schedules thereto, including, but not limited to, the Operating Agreement. The AO Agreement is attached to this Order as non-public Appendix I.

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I. "Closing Date" means the date on which Respondent (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest GD's interest in AO.

J. "Commission-approved Acquirer" means an entity that receives the prior approval of the Commission to acquire GD's interest in AO.

K. "Confidential Business Information" means competitively sensitive, proprietary and all other business information of any kind that is not in the public domain owned by or pertaining to AO or GD, as the case may be (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technologies, processes, and other trade secrets), except for any information that the recipient demonstrates (i) was or becomes generally available to the public other than as a result of a disclosure by the recipient, or (ii) was available, or becomes available, to the recipient on a non-confidential basis, but only if, to the knowledge of the recipient, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

L. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.

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- M. "Divestiture Trustee" means a trustee appointed by the Commission pursuant to the relevant provisions of the Decision and Order.
- N. "DZI" means Day & Zimmermann, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, having its principal place of business located at 1818 Market Street, Philadelphia, Pennsylvania, 19103.
- O. "Hold Separate" means this Order to Hold Separate.
- P. "Hold Separate Period" means the time period during which the Hold Separate is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VII hereof.
- Q. "Interim Monitor" means the person appointed pursuant to Paragraph III of this Hold Separate.
- R. "Orders" means the Decision and Order and this Hold Separate.

II.**IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondent shall hold AO separate, apart, and independent as required by this Hold Separate and shall vest AO with all rights, powers, and authority necessary to conduct its business. Respondent shall not exercise direction or control over, or influence directly or indirectly, AO or any of its operations, or the Interim Monitor, except to the extent that Respondent must exercise direction and control over AO to assure compliance with this Hold Separate, the Consent Agreement, the Decision and Order, and all applicable laws.

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- B. During the Hold Separate Period, Respondent shall:
1. Take such actions (consistent with GD's rights and responsibilities under the AO Agreement) as are necessary to maintain the full economic viability, marketability and competitiveness of AO and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of AO except for ordinary wear and tear; and
 2. Not sell, transfer or encumber any interest in AO or otherwise impair the full economic viability, marketability or competitiveness of AO.
- C. From the date Respondent executes the Consent Agreement until the Hold Separate Period begins, Respondent shall take such actions as are necessary to maintain and assure the continued maintenance of the full economic viability, marketability and competitiveness of AO, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of AO, except for ordinary wear and tear.
- D. Not later than three (3) days after the Acquisition Date, Respondent shall delegate to DZI all its rights and authority to appoint the Ordnance Systems Managers pursuant to Section 5.1(a) of the Operating Agreement, with the limitation that DZI not appoint any person who is, or at any time during the year prior to the issuance of this Hold Separate has been, an officer, director, employee, agent, partner, or limited liability company member of Respondent or a person who controls, directly or indirectly, more than 1% of the outstanding capital stock of Respondent or of any affiliate of Respondent to serve as an Ordnance Systems Manager. During the Hold Separate Period, Respondent shall not permit any of its employees, officers, or directors to be involved in the operations of AO.
- E. Respondent shall only remove the Treasurer of AO for cause, and any replacement Treasurer shall be a person who is not,

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and at no time during the year prior to appointment has been, an officer, director, employee, agent, partner, or limited liability company member of Respondent or a person who controls, directly or indirectly, more than 1% of the outstanding capital stock of Respondent or of any affiliate of Respondent.

- F. Except as necessary to fulfill the requirements of the Orders, Respondent shall not provide any services to AO, including, but not limited to, any marketing services pursuant to Section 2.1 of the Ordnance Systems Services Agreement, Exhibit F to the AO Agreement.
- G. Respondent's employees shall not receive, or have access to, or use or continue to use any Confidential Business Information of AO not in the public domain except:
 - 1. as required by law; and
 - 2. to the extent that necessary information is exchanged:
 - a. in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;
 - b. in complying with the Orders;
 - c. in obtaining legal advice; or
 - d. as necessary in connection with any existing contracts between GD and AO.

Nor shall Respondent allow or permit AO employees to receive or have access to, or use or continue to use, any Confidential Business Information not in the public domain about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and

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operate AO. Respondent may receive aggregate financial and operational information relating to AO only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- H. The purpose of this Hold Separate is to: (1) preserve AO as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent and AO, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestiture and other relief; and (4) maintain the full economic viability, marketability and competitiveness of all of the business(es) associated with AO, and prevent the destruction, removal, wasting, deterioration, or impairment of any of AO's assets except for ordinary wear and tear.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a

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proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.

- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of this Order in a manner consistent with the purposes of this Order.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission.
 - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. The Interim Monitor shall serve until the day after the Closing Date. *Provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.
 - 4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's and to AO's personnel, books, documents, records kept in the normal course of business, facilities

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and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with this Order.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Commission-approved

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Acquirer with respect to the performance of Respondent's obligations under this Order. Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under this Order.

8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

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IV.**IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) Days thereafter until the end of the Hold Separate Period, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate. Respondent shall submit at the same time a copy of its report concerning compliance with this Hold Separate to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of such Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent;
- C. any proposed dissolution of AO; or
- D. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

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VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to its principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the Closing Date.

By the Commission.

Decision and Order

**APPENDIX I
NON-PUBLIC**

AO AGREEMENT

**[Redacted From Public Record But Incorporated By
Reference]**

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent General Dynamics Corporation (“GD” or “Respondent”) of SNC Technologies, Inc. and SNC Technologies Corp. (collectively, “SNC”), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent GD is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2941 Fairview Park Drive, Suite 100, Falls Church, Virginia 22042.

2. SNC Technologies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 65 Sandscreen Street, Avon, Connecticut 06001. SNC Technologies Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 65 Sandscreen Street, Avon, Connecticut 06001.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

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- A. “GD” or “Respondent” means General Dynamics Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by General Dynamics Corporation (including, but not limited to, General Dynamics Ordnance and Tactical Systems, Inc. (“GD-OTS”)), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition Date, the term “GD” shall include SNC.
- B. “SNC” means, individually and collectively, SNC Technologies, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and SNC Technologies Corp., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by SNC Technologies Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means the acquisition of SNC by GD.
- E. “Acquisition Agreement” means the Share Purchase Agreement by and among General Dynamics Land Systems - Canada Inc., General Dynamics Ordnance and Tactical Systems, General Dynamics Corporation, SNC-Lavalin Group Inc. and The SNC-Lavalin Corporation, dated February 23, 2006, whereby GD proposes to acquire SNC.

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- F. “Acquisition Date” means the earlier of the following dates:
1. the date the Respondent closes on the Acquisition Agreement; or
 2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing articles of merger with the Secretary of State of the State of Delaware.
- G. “AO” means American Ordnance LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, a joint venture between GD-OTS and Mason & Hanger Corporation, a subsidiary of DZI.
- H. “AO Agreement” means the Formation Agreement by and between GD and Mason & Hanger Corporation, a subsidiary of DZI, dated July 21, 1998, and all amendments, exhibits, attachments, agreements, and schedules thereto, including, but not limited to, the Operating Agreement.
- I. “Closing Date” means the date on which Respondent (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest GD’s interest in AO.
- J. “Commission-approved Acquirer” means an entity that receives the prior approval of the Commission to acquire GD’s interest in AO.
- K. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to the relevant provisions of this Order.

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- L. “DZI” means Day & Zimmermann, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, having its principal place of business located at 1818 Market Street, Philadelphia, Pennsylvania, 19103.
- M. “Interim Monitor” means the person appointed pursuant to Paragraph III of the Order to Hold Separate in this matter.
- N. “Iowa Facility” means the Iowa Army Ammunition Plant located in Middletown, Iowa, operated by AO, which loads, assembles, packs, demilitarizes, manufactures and tests ordnance for the United States Army and others.
- O. “Milan Facility” means the Milan Army Ammunition Plant located in Milan, Tennessee, operated by AO, which loads, assembles, packs, demilitarizes, manufactures and tests ordnance for the United States Army and others.
- P. “Operating Agreement” means the American Ordnance LLC Operating Agreement by and between GD and Mason & Hanger Corporation, a subsidiary of DZI, dated July 21, 1998, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- Q. “Remedial Agreement” means any agreement between Respondent and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, that have been

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approved by the Commission to accomplish the requirements of this Order.

- R. “Third Party(ies)” means any private entity other than the following: (1) the Respondent, or (2) the Commission-approved Acquirer.

II.**IT IS FURTHER ORDERED** that:

- A. Not later than four (4) months after the Acquisition Date, Respondent shall divest, absolutely and in good faith and at no minimum price, its entire interest in AO. Respondent shall divest only to an acquirer who receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- B. Any Remedial Agreement that has been approved by the Commission between Respondent (or a Divestiture Trustee) and a Commission-approved Acquirer shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of such Remedial Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order) shall constitute a failure to comply with this Order.
- C. Prior to the Closing Date, Respondent shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of GD’s interest in AO to the Commission-approved Acquirer, including, but not limited to, all consents and waivers from DZI pursuant to the AO Agreement.

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- D. The purpose of the divestiture of GD's interest in AO is to ensure the continuing, viable, and competitive operation of AO in the same business and in the same manner in which AO was engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

III.**IT IS FURTHER ORDERED** that:

- A. If Respondent has not fully complied with the obligation to divest its interest in AO as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to divest Respondent's interest in AO pursuant to Paragraph II of this Order in a manner that satisfies the requirements of such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the interest in AO. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise

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in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the interest in AO.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court;

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provided, however, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to Respondent's and AO's personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the

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Commission; *provided further, however*, that Respondent shall select such entity within five (5) Days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the

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preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be granted, licensed, transferred, delivered or otherwise conveyed by this Order.
 8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

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- G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Hold Separate.

IV.

IT IS FURTHER ORDERED that GD shall notify the Commission no later than five (5) days after GD submits any proposal to obtain the facilities use contract for either the Iowa Facility and/or the Milan Facility. Such notification shall include a copy of GD's proposal, and any other explanation of the terms of the proposal that GD determines to submit.

V.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) Days thereafter until Respondent has fully complied with Paragraphs II and III, and all its responsibilities to render transitional services, if any, to the Commission-approved Acquirer as provided in the Remedial Agreement(s), Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time:

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1. a full description of the efforts being made to comply with the relevant Paragraphs of this Order; and
2. a description of all technical assistance, if any, provided to the Commission-approved Acquirer during the reporting period.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of such Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent;
- C. any proposed dissolution of AO prior to the divestiture of GD's interest in AO; or
- D. any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to its principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities and access to

Analysis to Aid Public Comment

inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and

- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on February 7, 2017.

By the Commission.

**ANALYSIS OF AGREEMENT CONTAINING CONSENT
ORDERS TO AID PUBLIC COMMENT****I. Introduction**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from General Dynamics Corporation ("GD"). The purpose of the proposed Consent Agreement is to remedy the competitive harm that would otherwise result from GD's acquisition of SNC Technologies, Inc. and SNC Technologies, Corp. (collectively "SNC"). Under the terms of the proposed Consent Agreement, GD is required to divest its interest in American Ordnance LLC to a buyer approved by the Commission in a manner approved by the Commission within four months of acquiring SNC.

Analysis to Aid Public Comment

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw the proposed Consent Agreement or make it final.

On February 23, 2006, GD entered into a Share Purchase Agreement to acquire SNC from SNC-Lavalin Group for approximately \$275 million (CAN\$315 million). The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by bringing together two of only three competitors in the market for melt-pour load, assemble and pack services ("LAP services") for mortar rounds and artillery shells in the United States and Canada. The proposed Consent Agreement would remedy the alleged violations by requiring a divestiture that will replace the competition that otherwise would be lost in this market as a result of the acquisition.

II. The Parties

GD is a diversified defense company with leading market positions in aviation, information systems, shipbuilding and marine systems, and land and amphibious combat systems. General Dynamics Ordnance and Tactical Systems ("GD-OTS") is a business unit within GD that manufactures large and medium caliber ammunition and precision metal components, produces spherical propellant for small caliber ammunition used in various military applications, provides explosive LAP services for a variety of tactical missile and rocket programs, and designs and produces shaped charge warheads and control actuator systems. GD-OTS also maintains a fifty percent interest in American Ordnance, a joint venture with Day & Zimmerman, Inc. ("DZI")

Analysis to Aid Public Comment

formed to operate the Middletown, Iowa Army ammunition plant (“Iowa AAP”) and Milan, Tennessee Army ammunition plant (“Milan AAP”) under a single entity to gain certain economic efficiencies. In 2005, GD had revenues of over \$21.2 billion, and GD-OTS sold approximately \$615 million in munitions and propellant.

SNC develops and manufactures ammunition and ammunition systems for Canadian and United States military divisions and law enforcement agencies. The company’s products include large, medium, and small caliber ammunition, propellants, propelling charges and explosives, pyrotechnics, and simulated ammunition products for training applications. It also provides a wide variety of LAP services, including melt-pour. In 2005, SNC garnered approximately \$286 million in sales, including \$136 million from sales within the United States.

III. The Relevant Product Market

The relevant product market in which to evaluate the proposed acquisition is the market for melt-pour LAP services for mortar rounds and artillery shells. Mortar rounds and artillery shells are relatively inexpensive, mass-produced projectiles employed by infantry troops. Melt-pour LAP services are the critical final step in producing and delivering mortar rounds and artillery shells to the U.S. military. LAP services consist of filling (or loading) the mortar with an explosive, trinitrotoluene (“TNT”), assembling the various components to complete the munition and packing the rounds for safe shipment to various military installations around the world. LAP services other than melt-pour or using different explosives than TNT are either too expensive or cumbersome for use with mass-produced weapons such as mortar rounds and artillery shells. As a result, a five to ten percent increase in the cost of melt-pour LAP services for mortar rounds and artillery shells would not cause the U.S. military to switch to any other type of LAP services.

Analysis to Aid Public Comment

The U.S. military contracts with suppliers for its requirements of melt-pour LAP services for mortar rounds and artillery shells. Contracts for melt-pour LAP services for mortar rounds and artillery shells typically are bid out every five years — one-year firm contract with four one-year renewal options. The Army is currently in the process of awarding two contracts for LAP services — a combined 60 mm and 81 mm mortar contract and a 120 mm mortar contract. The next melt-pour LAP services contracts for mortar rounds and artillery shells will not likely be completed until 2011.

IV. Market Structure & Participants

The market for melt-pour LAP services for mortar rounds and artillery shells is highly concentrated. At present, only three companies have the ability to effectively supply these services to the United States Army: SNC, American Ordnance, and DZI. Each of these companies currently contracts with the Army to provide at least one type mortar round or artillery shell melt-pour LAP service. SNC's melt-pour operations are located in its privately-owned facility in Le Gardeur, Canada. American Ordnance and DZI both operate melt-pour facilities that are parts of Army ammunition plants ("AAPs") owned by the U.S. government and run by private companies. American Ordnance operates two such plants, the Milan AAP and the Iowa AAP. DZI currently operates the AAP located in Parsons, Kansas ("Kansas AAP").

Through its plant in Le Gardeur, Canada, SNC produces large, medium, and small caliber ammunition ranging from 155 mm artillery shells to small caliber bullets. The company currently provides various caliber mortar rounds and artillery shells for the Canadian government, as well as 120 mm mortar rounds for the U.S. military. In 2005, SNC's Le Gardeur plant produced sales revenues of approximately \$45 million in propellant, explosives and ammunition.

Analysis to Aid Public Comment

American Ordnance is a joint venture owned equally by GD and DZI. The companies share equally in the profits of the joint venture, and both have representatives on American Ordnance's board of directors. American Ordnance, however, has its own management structure, and neither GD nor DZI is involved in the day-to-day operations of the joint venture. American Ordnance has contracts with the U.S. government to operate the Iowa and Milan AAPs through December 31, 2008. The Army has recently begun the process of seeking proposals for contracts to operate those plants after that date and anticipates awarding the contracts by September of 2008, at the latest, to provide sufficient transition time if a company other than American Ordnance wins the contracts.

In addition to its fifty percent ownership interest in American Ordnance, DZI also operates the Kansas AAP. Future operations of the Kansas AAP are doubtful, however, as the plant was designated for closure as part of the 2005 Base Realignment and Closure ("BRAC") legislation. The BRAC recommendations call for operations located at the Kansas AAP to be moved to other plants beginning in 2008, with full closure of the Kansas AAP scheduled to take place by 2011. Therefore, although three market participants existed in the most recent round of contracting for the provision of melt-pour LAP services for mortar rounds and artillery shells, it appears unlikely that the Kansas facility will remain a viable alternative for the next round of contracting, leaving only SNC and American Ordnance to bid.

V. Competitive Effects

The proposed transaction raises competitive concerns in the market for melt-pour LAP services for mortar rounds and artillery shells because, post-transaction, GD would own 100% of SNC, while at the same time retaining fifty percent ownership in American Ordnance. The competitive concerns arising from GD having some level of ownership interest in two of the three companies currently in the market for melt-pour LAP services for

Analysis to Aid Public Comment

mortar rounds and artillery shells are compounded by the fact that DZI appears likely to lose access to the Kansas AAP and, thus, may be unable to compete for the next round of contracts. This raises the likelihood that GD could act unilaterally to raise prices or otherwise engage in anticompetitive behavior in the market for melt-pour LAP services for mortar rounds and artillery shells. The proposed transaction also raises competitive concerns relating to the current round of competition for melt-pour LAP services for 120 mm and 60 mm and 81 mm mortar rounds.

Absent Commission action, it appears likely that the only two potential bidders for current and future melt-pour LAP service contracts for mortar rounds or artillery shells are SNC and American Ordnance. With the proposed acquisition, GD has an incentive to act unilaterally to raise prices in the relevant product market because it will own all of SNC and receive half of the profits from American Ordnance. GD would have an incentive to submit bids with higher pricing, or other less competitive terms, than SNC would have submitted as an independent company because even if GD/SNC loses the bid, it would lose to American Ordnance, in which GD shares fifty percent of the profits. Therefore, GD would have less incentive to compete vigorously for these contracts, because it would benefit financially regardless of which company wins the contract.

The proposed transaction also increases the likelihood that GD and American Ordnance could coordinate their competing bids for contracts. Through its ownership in American Ordnance, GD would have certain contacts and access to competitively sensitive information that could facilitate reaching terms of coordination, and the detection and punishment of deviations from those terms.

Analysis to Aid Public Comment

VI. Entry Conditions

Entry into the market for the provision of melt-pour LAP services for mortar rounds and artillery shells appears unlikely to occur within the relevant time frame. Establishing a melt-pour operation to effectively enter and compete in this market is expensive and time-consuming, and is unlikely to occur in the next two years, particularly because the Army is not planning any new acquisitions before 2011. Further, even if a firm were to enter the market, it would face the difficult task of winning a bid for a critical product without a demonstrated track record of being able to produce and deliver the product.

VII. The Proposed Consent Agreement

The proposed Consent Agreement effectively remedies the competitive harm that would likely result from the acquisition by requiring GD to divest its interest in American Ordnance, at no minimum price, to a purchaser that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. The proposed Consent Agreement requires GD to divest its interest in American Ordnance within four months after it completes its acquisition of SNC. By requiring the divestiture of General Dynamic's interest in American Ordnance to a third party, the proposed Consent Agreement ensures that American Ordnance and a combined GD/SNC will remain independent competitors in the market post-acquisition.

Because the Consent Agreement contemplates a divestiture by GD of its interest in American Ordnance after acquiring SNC, an order to hold the American Ordnance business separate ("Hold Separate Order") is included. The Hold Separate Order requires that GD keep the American Ordnance business separate and apart from its other GD businesses, and that the company refrain from involvement in the direction, oversight, or influence of American Ordnance's business. The Hold Separate Order also requires that GD's members of American Ordnance's board of managers be

Analysis to Aid Public Comment

replaced with independent managers who are not affiliated with GD in any way. GD may not permit any of its employees, officers, or directors to be involved in the operations of American Ordnance while the Hold Separate Order remains in effect.

The proposed Consent Agreement also allows the Commission to appoint an interim monitor to oversee GD's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order. The interim monitor, if appointed, would be required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestiture and the efforts being made to accomplish the divestiture.

The proposed Consent Agreement includes a provision that requires GD to notify the Commission within five days of submitting a proposal to obtain the facilities use contract for either the Iowa AAP or the Milan AAP, and to provide the Commission with copies of all documents submitted as part of the proposal. This notification will allow the Commission to consult with the Department of Defense and the Army regarding possible competitive concerns that may arise in the future should GD be awarded the contracts to operate these melt-pour facilities in addition to owning SNC.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

Complaint

IN THE MATTER OF
GOEN TECHNOLOGIES CORPORATION, ET
AL.

CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4185; File No. 042 3127
Complaint, February 8, 2007 — Decision, February 8, 2007

This consent order requires respondents Goen Technologies Corporation, et al., to have competent and reliable scientific evidence substantiating any claims that TrimSpa® Completely Ephedra Free Formula X32 or any other covered product or service causes rapid and substantial weight loss or that the Hoodia gordonii, or any other appetite suppressant, in a covered product enables users to lose substantial amounts of weight by suppressing their appetite. The order provides for the payment of \$1,500,000 to the Commission and requires respondents to provide the Commission with a list of all consumers who respondents know purchased TrimSpa X32 from March 1, 2003, through the date of entry of this order. The funds paid by respondents shall be used by the Commission to provide direct redress to purchasers of Trimspa X32 and to pay any attendant costs of administration. Any funds not so used shall be paid to the United States Treasury. In addition, the order requires the respondents, for five years after the last date of dissemination of any representation covered by this order, to make available to the Commission all advertisements and promotional materials containing the representation, all materials that were relied upon in disseminating the representation, and all tests or other evidence that call into question the representation or the basis relied upon for the representation.

Participants

For the *Commission*: *Matthew Daynard, Michael Ostheimer,*
and *Brad Winter.*

For the *Respondents*: *M. Howard Morse, Drinker Biddle &*
Reath, Washington, DC; Donald A. Bashada and James M.
Fischer, Drinker Biddle, Florham Park, NJ; and Edward W.
Correia, Latham & Watkins LLP.