



# Negotiating Remedies in Trans-Atlantic Mergers: The Inco Experience

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# Complex Transaction

Teck Cominco

Xstrata

HOSTILE

HOSTILE

CVRD



UNSOLICITED

INCO



Falconbridge



FRIENDLY



Phelps Dodge

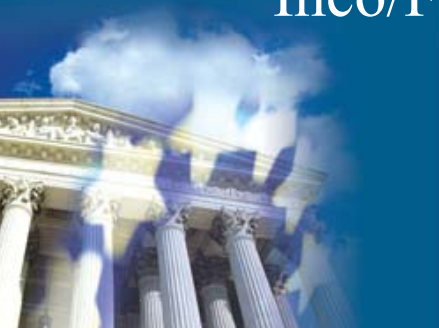
**Goal:** Maintain level playing field in battle for corporate control, maximize S/H value

# Key Remedy Considerations

- Merger notifications in nine jurisdictions
  - Which will exercise jurisdictional authority?
- Early prediction by parties: will a remedy be required?
- Degree of merger's impact in US/EC/other countries
  - Provide remedy only where required; avoid unnecessary involvement
  - Encourage inter-agency coordination if remedy required
- Careful planning re: implementation of remedy
  - US/EC Remedy Policy Statements Are Clear
  - US/EC Remedy Practice Is Case Specific

# Agency Coordination on Remedies

- Significant US/EC experience in coordinating on substantive analysis
- Limited US/EC history in coordinating on remedies
- Only nine cases since GE/Honeywell with remedies in both US and EC, *BUT*
- Only two with identical remedies (GE/Instrumentarium and Inco/Falconbridge)



# Value of Level Playing Field



Inco's 1 year Share Price

\$38 ► \$77



Falconbridge's 1 year Share Price

\$29 ► \$60





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