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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

NATIONAL EXPRESS GROUP PLC

Defendant.

COMPLAINT FOR INJUNCTIVE
RELIEF

I. NATURE OF COMPLAINT

1. Plaintiff, State of Washington, by and through its Attorney General, and Jonathan A. Mark, Assistant Attorney General, brings this action to enjoin the proposed acquisition of Petermann Partners, Inc. by National Express Group PLC.

2. Pursuant to a stock acquisition agreement dated September 12, 2011, Defendant National Express Group PLC intends to merge Petermann Partners Inc., and its various subsidiaries, into its business. The resulting combination may substantially lessen competition for the procurement of School Bus Services within the state of Washington or tend to create a monopoly therein, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as well as Wash. Rev. Code § 19.86.060 of Washington’s Unfair Business Practices-Consumer Protection Act.

1 3. The Plaintiff seeks permanent injunctive relief to prevent, restrain, and/or
2 remedy the adverse effects on competition that would result from the Acquisition.

3 **II. SUMMARY OF PARTIES**

4 4. Plaintiff is the State of Washington, by and through its Attorney General.
5 Plaintiff brings this action under the authority of Section 16 of the Clayton Act, 15 U.S.C. §
6 26 and Wash. Rev. Code 19.86.080.

7 5. Defendant National Express Group PLC is a company registered in England
8 and Wales, whose registered office is National Express House, Birmingham Coach Station,
9 Mill Lane, Digbeth Birmingham, B5 6DD. Through its various subsidiaries, National
10 Express operates Durham School Services LP., a Delaware Corporation with its principle
11 place of business at 4300 Weaver Parkway, Warrenville, IL, 60555, and which provides
12 School Bus Services in the United States and in Washington State.

13 **III. JURISDICTION AND VENUE**

14 6. The state of Washington brings this action under Section 16 of the Clayton
15 Act, 15 U.S.C. § 26, and Wash. Rev. Code § 19.86.080 of Washington’s Unfair Business
16 Practices-Consumer Protection Act, to prevent and restrain defendants from violating
17 Section 7 of the Clayton Act, 15 U.S.C. § 18, and Wash. Rev. Code § 19.86.060.

18 7. National Express, through its subsidiaries, provides School Bus Services
19 and performs related tasks in the state of Washington and in interstate commerce, and
20 engages in activities substantially affecting interstate commerce. This Court has subject
21 matter jurisdiction under Sections 16 of the Clayton Act, 15 U.S.C. § 26, and under 28
22 U.S.C. §§ 1331, 1337.

23 8. This Court has jurisdiction of the non-federal claims for alleged violations
24 of state antitrust statutes based on 28 U.S.C. § 1367(a) as well as under the principles of
25 supplemental jurisdiction.
26

1 9. Defendant, through its subsidiaries, transacts business in the Western
2 District of Washington. Venue is proper pursuant to Section 12 of the Clayton Act, 15
3 U.S.C. § 22, and 28 U.S.C. § 1391.

4 **IV. DEFINITIONS**

5 10. "Acquisition" means the acquisition by National Express of Petermann,
6 resulting in the acquisition of Petermann by National Express pursuant to a Stock Purchase
7 Agreement executed on or about September 21, 2011.

8 11. "District" refers to local school districts, school unions, consolidated school
9 districts and any and all other local school authorities, units and public entities representing
10 any of the foregoing, located in the state of Washington, for purposes of School Bus Services
11 procurement.

12 12. "National Express" refers collectively to Defendant National Express PLC and
13 its subsidiaries including, Durham School Services LP.

14 13. "Petermann" refers to Petermann Partners, Inc. a Delaware corporation with its
15 headquarters in Cincinnati, OH, and which, through its various subsidiaries, including
16 Petermann Northwest LLC, provides School Bus Services in the United States and Washington
17 State.

18 14. "RFP" means "Requests for Proposals."

19 15. "School Bus Services" means transportation of students between home and
20 school for profit and any related services customarily provided in connection with such
21 transportation, including, as examples and without limitation, transportation for field trips and
22 other extracurricular activities. "School Bus Services," for purposes of this Complaint, does
23 not include transportation provided by a District itself.

24 16. The conjunctive "and" includes the disjunctive "or" and *vice versa; i.e.*, "and"
25 and "or" mean "and/or."
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V. TRADE AND COMMERCE

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2 17. Student transportation in Washington is typically provided in-house by
3 individual Districts to the students situated in each respective District. However, a variety
4 of Districts have elected to contract with private providers of School Bus Services.
5 Contracts for School Bus Services are awarded through a competitive bidding process
6 where a District advertises a RFP for a fixed term, which varies from District to District.

7 18. In order to compete for School Bus Services, a provider must have, among
8 other things, the means to acquire or lease buses, the means to purchase insurance or self-
9 insure, the ability to hire drivers and other personnel in a closely regulated environment,
10 and convenient access to maintenance and parking facilities. These requirements must be
11 obtained at a competitive cost that permits the company to bid competitively against other
12 private contractors. There are also less tangible requirements such as experience and
13 reliability in providing transportation services for children ranging from kindergarteners to
14 high school students.

15 19. National Express and Petermann, through their various subsidiaries, provide
16 School Bus Services in states nationwide and in various Districts in the state of
17 Washington.

18 20. Only a handful of other companies have a nationwide presence; a few more
19 have a regional or statewide presence. Otherwise, the large majority of school bus
20 contractors are local enterprises that hold very few contracts, and lack the capacity, are
21 unwilling, or unable to compete outside a narrowly circumscribed area. Particularly in
22 Washington State, the number of firms providing School Bus Services has historically been
23 very few.
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VI. RELEVANT MARKETS

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2 21. National Express and Petermann compete with each other and with other
3 companies to secure contracts for the sale of School Bus Services in Districts within the
4 state of Washington. Accordingly, the relevant market in which to analyze the Acquisition
5 is School Bus Services rendered pursuant to contracts with Districts.

6 22. For every contract, there is a distance or radius from the center of operations
7 beyond which it is not economically feasible to locate or utilize depot and/or maintenance
8 facilities, and in each individual case, the maximum viable distance will depend on factors
9 such as terrain, population density and traffic. The ability to provide School Bus Services
10 is limited by the locations of the providers with access to depot and maintenance facilities
11 that are close enough to provide School Bus Services to the District at a competitive price.

12 23. This ability to provide School Bus Services is further limited by the location
13 of the incumbent School Bus Services provider under the existing contract and the
14 locations of the incumbents in adjacent or nearby Districts with the capacity to provide the
15 required School Bus Services.

16 24. The sale and provision of School Bus Services rendered pursuant to
17 contracts with Districts is a line of commerce within the meaning of Section 7 of the
18 Clayton Act, 15 U.S.C. § 18, and Wash. Rev. Code § 19.86.060.

19 **VII. HARM TO COMPETITION**

20 25. National Express and Petermann are among the most significant providers
21 of School Bus Services nationwide and in the state of the Washington, and compete for the
22 sale of School Bus Services to Districts.

23 26. Petermann's position in the Washington market is such that, but for the
24 acquisition by National Express, it would have continued to compete with National Express
25 in public bids to secure contracts for School Bus Services in Washington.
26

1 27. The Acquisition would eliminate actual competition and potential
2 competition between National Express and Petermann, substantially lessening competition
3 for the sale and provision of School Bus Services.

4 28. The Acquisition will increase National Express's capacity to and the
5 likelihood that it will unilaterally exercise market power, and is like to enhance the ability
6 of the merged firm to raise prices for the sale of School Bus Services to Districts. This
7 exercise of market power will not be constrained by the prospect of Districts reverting to
8 their own in-house school bus services because a District that has switched from operating
9 its own transportation system to contract School Bus Services is unlikely to switch back,
10 even in response to a small but significant, non-transitory increase in price. The acquisition
11 will also likely increase the likelihood of collusion, because the number of vendors able to
12 compete for contracts in Districts statewide will be reduced from 3-2.

13 29. Following the acquisition, it is unlikely that there will be sufficiently, timely
14 entry into the relevant markets because:

- 15 a. As a company builds a strong position in a given area, it may develop the
16 ability to exclude prospective entrants by, among other things, making it
17 difficult for a rival to secure access to convenient maintenance facilities; and
18 b. Aspiring competitors may be unable to enter a relevant market where land
19 suitable for a maintenance facility or depot cannot be secured for lease or
20 purchase.

21 **VIII. FIRST CAUSE OF ACTION**

22 **Violation of Federal Clayton Act**

23 30. Washington hereby incorporates paragraphs 1 through 29.

24 31. Under an agreement and plan of merger entered into on September 13, 2011,
25 National Express intends to acquire Petermann and merge it into its businesses. The effect
26 of the proposed Acquisition may be to substantially lessen competition in interstate trade

1 and commerce for the sale of School Bus Services in the relevant markets within the state
2 of Washington, manifested by at least an increase in prices for School Bus Services above
3 levels that would exist absent the merger, thereby violating Section 7 of the Clayton Act,
4 15 U.S.C. § 18.

5 **IX. SECOND CAUSE OF ACTION**

6 **Violation of Washington State Unfair Business Practice-Consumer Protection Act**

7 32. Washington hereby incorporates paragraphs 1 through 29.

8 33. Under an agreement and plan of merger entered into September 13, 2011,
9 National Express intends to acquire Petermann and merge it into its businesses. The effect
10 of the proposed merger may be to substantially lessen competition in interstate trade and
11 commerce for the sale of School Bus Services in the relevant geographic market within the
12 state of Washington, manifested by at least an increase in prices for School Bus Services
13 above levels that would exist absent the merger, thereby violating RCW 19.86.060.

14 **X. PRAYER FOR RELIEF**

15 34. Accordingly, the plaintiff State of Washington prays that this Court:

- 16 a. Adjudge and decree that the proposed merger would violate Section 7 of the
17 Clayton Act, 15 U.S.C. § 18 and RCW 19.86.060.
- 18 b. Permanently enjoin and restrain, pursuant to federal and state law, the
19 defendants from consummating the proposed merger.
- 20 c. Award to plaintiff State of Washington such other equitable relief as the
21 Court finds appropriate to redress the defendants' threatened violations of
22 state law.
- 23 d. Award to plaintiff State of Washington its costs in this action, including
24 reasonable attorneys' fees; and
- 25 e. Direct such other and further relief as the Court deems just and proper.
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1 Dated this 30th day April, 2012.
2

3 Respectfully submitted,
4 ROBERT M. MCKENNA
Attorney General

5 TINA E. KONDO
6 Deputy Attorney General,
Antitrust Division Chief

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