

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
v.)	
)	
LYNDEN INCORPORATED;)	
ALASKA MARINE LINES, INC.;)	
NORTHLAND TRANSPORTATION)	
COMPANY; and)	
NORTHLAND SERVICES, INC.)	
)	Case No.: 3AN-13- _____ CIV
Defendants.)	

CONSENT DECREE

PREAMBLE

Plaintiff State of Alaska (“State”) filed a Complaint in this matter alleging violations of Alaska’s Restraint of Trade Act, AS 45.50.562 *et seq.* which complaint is incorporated herein. Defendants, LYNDEN INCORPORATED (“Lynden”), its wholly-owned subsidiary ALASKA MARINE LINES, INC. (“AML”); NORTHLAND TRANSPORTATION COMPANY (“NTC”) and its wholly-owned subsidiary NORTHLAND SERVICES, INC. (“NSI”); were served with the Summons and Complaint. To resolve the allegations made in the Complaint, Defendants, through their undersigned attorneys or authorized officials, have consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein. This

Consent Decree does not constitute any evidence against or admission by any party with respect to any issue of law or fact herein or alleged in the Complaint.

RECITALS

WHEREAS, Lynden, through its subsidiary AML owns and operates a business providing deck cargo marine service between Seattle and Alaska, and between points in Alaska, employing various barges, tug boats, containers, terminals, loading and transportation equipment, and other assets to this end;

WHEREAS, NSI operates a similar business providing deck cargo marine service between Seattle and Alaska, and between points in Alaska, employing various barges, tug boats, containers, terminals, loading and transportation equipment, and other assets to this end;

WHEREAS, AML and NSI compete with each other to provide deck cargo marine service in Alaska, employing similar assets, and delivering and selling services into some of the same locales, directly competing with each other for some of the same customers;

WHEREAS, AML and NSI are the primary providers of services to certain communities in Southeast Alaska, including Juneau, Sitka, Petersburg, Wrangell, Prince of Wales Island, and Ketchikan (referred to as the “Southeast” in this Consent Decree);

WHEREAS, Lynden, NTC, and NTC’s shareholders executed agreements (together, the “Lynden/NSI Purchase Agreement”), a copy of which has been provided to the Attorney General, pursuant to which NTC’s shareholders have agreed to sell, and Lynden has agreed to purchase, all of the capital stock of NTC (the “Acquisition”),

subject to certain conditions set forth therein, including that the Court enter an order approving this Consent Decree;

WHEREAS, the Acquisition will combine under Lynden's sole ultimate ownership all of NSI's assets used for providing deck cargo marine service in Alaska, and specifically in the Southeast, and the Attorney General believes that the combined AML and NSI assets will constitute a significant portion of all assets and facilities currently located and available in Southeast Alaska that are necessary to compete in the Relevant Market for deck cargo marine service;

WHEREAS, sufficient competition for deck cargo marine service exists in most areas of Alaska, and particularly in Central Alaska where the overwhelming majority of all deck cargo is delivered by ship;

WHEREAS, the Attorney General has thoroughly investigated and analyzed the potential impacts of this transaction in all areas of the state where AML and NSI provide competing service, including Central and Western Alaska, and has determined that the Acquisition will have no material anticompetitive impacts except in Southeast Alaska where AML and NSI account for nearly all of the market for deck cargo marine service;

WHEREAS, the Defendants understand that the Acquisition will materially reduce competition for deck cargo marine service in the Southeast, and that Lynden must divest to a viable competitor that portion of NSI's assets needed to provide service to the Southeast to preserve competition in this market;

WHEREAS, prompt divestiture of certain assets is an essential element of the agreement among the parties to resolve the competition concerns alleged in this matter, and within 60 calendar days of the Court approval of this Consent Decree, AML and NSI (after closing of the Acquisition) and Samson Tug and Barge Company, Inc. (“Samson”) will execute agreements (collectively the “AML/Samson Agreements”), copies of which have been provided to the Attorney General, pursuant to which AML and NSI will agree to divest to Samson, and Samson will agree to acquire from AML and NSI, assets described in those agreements, subject to the Court's approval of this Consent Decree;

WHEREAS, Samson is a Sitka, Alaska based barge company that has been operating a barge business for over 50 years, delivering marine deck cargo between Alaska and Seattle. Samson currently provides deck cargo service to Sitka, various locations in Western and Central Alaska, Fairbanks, and Prudhoe Bay. Samson has considerable expertise and experience in this business, and has demonstrated the requisite knowledge and skill to expand its business to provide deck cargo service to the Southeast;

WHEREAS, the State has determined that Samson is qualified to acquire and operate the assets described in this Consent Decree, and to provide effective competition in the marine delivery of deck cargo in the Relevant Market, and that the terms of this Consent Decree will provide Samson with the assets and resources needed for effective and sustainable competition in the Southeast;

WHEREAS, the State believes any anticompetitive effects of this Acquisition will be substantially and sufficiently mitigated through the terms of this Consent Decree, and that the Acquisition will result in beneficial effects for the State;

WHEREAS, neither the execution or entry of this Consent Decree nor the terms hereof are intended to alter, modify, supplement, or rescind in any way the respective rights or obligations of the Defendants related to the Acquisition;

WHEREAS, the Court has made no determination of any violation of law;

WHEREAS, the Defendants have agreed to be bound by the provisions of this Consent Decree; and

WHEREAS, the Attorney General believes the terms of this Consent Decree are fair and reasonable and in the public's interest.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to AS 45.50.582 and over each of the parties hereto, and defendants waive any challenge to the jurisdiction of this Court. Venue is proper in this Judicial District pursuant to Alaska Civil Rule 3. The Complaint states a claim upon which relief may be granted against the Defendants under Alaska antitrust law. The Attorney General of the State of Alaska, Michael C. Geraghty, has authority to bring this action pursuant to AS 45.50.580.

II. DEFINITIONS

As used in this Consent Decree:

- A. **“Defendants”** means the defendants listed in the State’s complaint filed in this matter.
- B. **“Samson”** means Samson Tug and Barge Company, Inc. and all affiliates.
- C. **“Lynden”** means Lynden Incorporated and all affiliates.
- D. **“AML”** means Alaska Marine Lines, Inc., a wholly-owned subsidiary of Lynden.
- E. **“NSI”** means Northland Services, Inc.
- F. **“Attorney General”** means the Alaska Attorney General.
- G. **“Southeast Alaska” or “Southeast”** means the coastal regions of Alaska from Yakutat south to Metlakatla, and specifically including the communities in that geographic region served by both AML and NSI, which include Juneau, Sitka, Petersburg, Wrangell, Prince of Wales Island, and Ketchikan.
- H. **“Relevant Market”** means the market for providing marine deck cargo service in the relevant geographic area, which for purposes of this Consent Decree is Southeast Alaska.
- I. **“Relevant Product”** means the marine delivery of deck cargo.

- J. “TEU” means a container, platform or trailer unit equivalent to twenty (20) feet in length by eight (8) feet wide by eight and one-half (8 ½) feet high.
- K. “Peak Season” means the period between May 1 and September 30 each year.
- L. “Consumer Pricing Index” or “CPI” means the annual average Consumer Price Index reported for Anchorage, Alaska by the United States Bureau of Labor Statistics, found at <http://www.bls.gov/ro9/cpianch.htm>.

III. APPLICABILITY

A. After Court approval, the provisions of this Consent Decree apply to Defendants, their successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Decree by personal service or otherwise.

B. Nothing herein shall be deemed to have been created for the benefit of any third party and nothing herein shall be construed to provide any rights to third parties.

IV. DIVESTITURE OF ASSETS

A. Lynden is hereby ordered and directed, following the consummation of the Acquisition to cause NSI to divest, absolutely and in good faith, the assets identified on Schedule A of the Equipment Lease Purchase Agreement attached as Confidential Exhibit 1. These assets shall be in good condition, immediately available for use when needed by Samson, and have all applicable government approvals and/or certificates

necessary for the immediate use of the equipment in Alaska and Seattle. These assets shall be divested according to terms of the Equipment Lease Purchase Agreement, which shall be executed in substantially the same form as Confidential Exhibit 1 within 60 day of Court approval of this Consent Decree.

B. The intent and purpose of divesting these assets is to ensure their continued use in Southeast Alaska for providing marine deck cargo service and to remedy the lessening of competition that might otherwise result from the proposed Acquisition as alleged in the State's Complaint. An important component of this divestiture is the sponsorship of effective and successful entry by Samson into the Relevant Market. This Consent Decree shall be interpreted and construed broadly to accomplish this intent to the fullest extent possible.

V. SPACE SHARING AGREEMENT

AML is ordered and directed, within 60 days following Court approval of this Consent Decree, to execute a Master Space Sharing Agreement with Samson that provides Samson with commercially reasonable rates for space on barges operated by AML under the terms and conditions substantially the same as Confidential Exhibit 2. This Space Sharing Agreement shall be effective for no more than four (4) years.

VI. CARGO HANDLING, STORAGE, AND WHARFAGE

A. Within 60 days after court approval of this Consent Decree, AML and Samson shall execute a Cargo Handling, Storage, and Wharfage Agreement that includes terms and conditions substantially the same as Confidential Exhibit 3. The Agreement shall require AML to make certain of its terminal facilities available to

Samson to the greatest extent possible, and at commercially reasonable rates, consistent with Samson's needs and at Samson's election to be made within sixty (60) days after court approval of this Consent Decree. Lynden shall also make terminal facilities in Southeast Alaska owned or leased by NSI available to Samson to the greatest extent possible and subject to the availability of landlord consent, and at commercially reasonable rates, consistent with Samson's needs and at Samson's election to be made within sixty (60) days after court approval of this Consent Decree.

B. AML agrees to make storage space available to Samson in Juneau, Petersburg, and Seattle consistent with Confidential Exhibit 3. In making this storage space available, AML will not restrict the space available to Samson so that only the least desirable space is available. AML will work in good faith with Samson to identify space that will accommodate both parties' needs fairly.

C. If Samson elects to lease space from AML in Southeast Alaska where AML also operates a dock, AML and Samson will use their best good faith efforts to coordinate schedules to avoid conflicts with use of the dock by barges arriving at the dock at the same time. If a conflict cannot be avoided despite the best efforts of the parties, then the scheduled party shall have preferential berthing, but will pay the other party \$500 for each hour of standby time incurred. Berthing issues, including the timely clearing of the dock, will be in accordance with the attached Confidential Exhibit 3.

D. AML shall provide cargo handling services to Samson at AML's Juneau, Petersburg, and Seattle terminals if requested by Samson consistent with the attached Confidential Exhibit 3. The rate for these services will be substantially the same as

provided in Confidential Exhibit 3. These services shall include loading and unloading, lashing and unlashng, staging, and other typical cargo handling services required by Samson.

E. The term of Confidential Exhibit 3, and obligations imposed under this section are equivalent to each other so that if the agreement terminates, the obligations imposed in the section terminate.

VII. PEAK SEASON CHARTER AND EXCESS SPACE BUYBACK

A. AML currently operates two barges weekly between Seattle and Southeast Alaska, and requires capacity on a third barge during the Peak Season. To encourage Samson to provide this marine service, AML will charter all space on a Samson barge that Samson designates to AML so that AML will pay for the space as provided in the attached Confidential Exhibit 4.

B. The rates charged to AML for the space will be based on a prorated TEU basis that will cover Samson's actual cost to make the space available, including costs for towage, fuel and lube, tug assist, and barge time charter rates as specified in the attached Confidential Exhibit 4. Other terms and conditions for this peak season charter will be substantially the same as set out in the attached Confidential Exhibit 4. This agreement will be executed by the parties within 60 days after court approval of this Consent Decree, and shall be effective for no more than four (4) years.

C. The intent and purpose of this section is to facilitate competition in Southeast Alaska by encouraging successful, rapid, and sustainable entry of Samson into the Southeast market for marine delivery of deck cargo. The Attorney General, for

good cause, may require an adjustment of the terms and conditions of the Peak Season Charter and Excess Space Buyback Agreement to accomplish this purpose, but may not extend the duration of such agreement without AML's agreement.

VIII. ATTORNEY GENERAL REVIEW

A. The intent and purpose of this consent decree is to facilitate competition for marine delivery of deck cargo in Southeast Alaska. The Space Sharing Agreement; Cargo Handling, Storage and Wharfage Agreement; and Peak Season Charter and Excess Space Buyback Agreement (collectively the "Sharing Agreements") are to ensure rapid and effective entry by Samson into the Relevant Market. If, after careful review and for good cause, the Attorney General reasonably determines that Samson has completed substantial and effective entry into the market such that continuing any or all of the Sharing Agreements is no longer needed, the Attorney General may require an early termination of any or all of the Sharing Agreements, or require an adjustment of the terms provided in the agreement(s). The Attorney General may apply to the Court and upon a finding of good cause, the Court may require an extension of the Sharing Agreements beyond the expiration date of each agreement. Any such extension of the agreements will not exceed the term of this Consent Decree, including any extensions, as described in Section XX, nor may any of the agreements be renewed or extended after they expire.

B. To determine if early termination or adjustment to one or more of the Sharing Agreements is appropriate, Samson will provide the Attorney General with a confidential financial report by January 31 of each year any of the Sharing Agreements

remains in effect, with the first report due on January 31, 2015. The report shall include a summary of Samson's debts and revenues, projected profits and losses, a current profit and loss statement, and any other information requested by the Attorney General to assist in the review contemplated by this section.

IX. SHUTTLE BARGE SPACE SHARING AGREEMENT

Samson intends to operate a shuttle barge out of Ketchikan to provide marine service to Prince of Wales Island (Craig, Klawock) via Thorne Bay, Wrangell, and Metlakatla. Samson agrees to charter space on the shuttle barge to AML under terms and conditions substantially similar to Confidential Exhibit 5, which shall be executed by the parties within 60 days after court approval of this Consent Decree.

X. PROHIBITION ON RATE INCREASES BY AML IN THE EVENT OF DEFAULT BY SAMSON

A. In the event Samson is unable to provide marine deck cargo service to Southeast Alaska, and exits the Relevant Market within the term of the Consent Decree so that AML and NSI are the only remaining providers of marine deck cargo service to Southeast Alaska, or ceases to be a viable competitor as determined by the Attorney General, then AML and NSI shall freeze their tariff and contract rates in effect in Southeast Alaska upon notice by the Attorney General. Notwithstanding this rate freeze, AML and NSI may increase their rates by the same rate of increase as any increase in the annual average Consumer Pricing Index (CPI) plus the actual cost of fuel and lube as reflected in their standard published fuel surcharges for Southeast Alaska. This freeze shall remain in effect for a period of 36 months, but may be removed earlier

by the Attorney General if the Attorney General determines that effective competition exists in the Relevant Market.

B. Notwithstanding the termination of this Consent Decree as set out in section XX below, the rate freeze described in the section will continue for the full 36 months regardless of whether this Consent Decree terminates earlier, unless the freeze is removed by the Attorney General.

XI. PROHIBITION ON ACQUIRING DIVESTED ASSETS

For a period of six (6) years from the date this Consent Decree is approved by the court, Lynden shall not acquire any of the assets or the right to utilize the assets divested pursuant to this Consent Decree without the prior approval of the Attorney General, except for assets deemed excess by Samson in its sole discretion. In the event Samson exits the Relevant Market or defaults under the Equipment Lease Purchase Agreement attached as Confidential Exhibit 1, Lynden may acquire or utilize the assets until directed by the Attorney General to divest the assets to another party.

XII. COMPLIANCE INSPECTION

A. For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, authorized representatives of the State, including consultants and other persons, shall, upon the written request of the Attorney General, and on reasonable notice to Lynden, be permitted, at the State's expense:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and

documents in the possession or under the control of Lynden, including its subsidiaries AML and NSI, which may have counsel present, relating to this Consent Decree; and

2. Subject to the reasonable convenience of Lynden and without restraint or interference from them, to interview directors, officers, employees, and agents of Lynden, AML, and NSI, who may have counsel present, regarding any such matters.

B. Upon written request by the Attorney General, AML and NSI shall submit written reports concerning the matters contained in this Consent Decree.

XIII. INFORMATION CONFIDENTIAL

No information or documents obtained by the Alaska Attorney General in connection with its investigation and this Consent Decree (including the Lynden/NSI Purchase and Sale Agreement and the AML/Samson Agreements or any Confidential Exhibits) may be disclosed by any representative of the State to any person other than a duly authorized representative of the Alaska Attorney General, except for the purpose of enforcing compliance with this Consent Decree, or as otherwise required by law or directed by the Court.

XIV. NOTICES

Any notices required by this Consent Decree shall be delivered to the parties at the following addresses:

A. For the State of Alaska:

Attorney General's Office
Attn: Clyde E. Sniffen, Jr.
Senior Assistant Attorney General
1031 W. 4th Avenue, #200
Anchorage, AK 99501
(907) 269-5200
(907) 276-8554 (fax)

B. For Defendants Lynden and AML:

Lynden Incorporated
Everett H. Billingslea
Sr. Vice President and Chief Legal Officer
18000 International Blvd., Suite 800
Seattle, WA 98199
(206) 439-4790 (fax)

C. For Defendants NTC and NSI:

c/o Lynden Incorporated
Everett H. Billingslea
Sr. Vice President and Chief Legal Officer
18000 International Blvd., Suite 800
Seattle, WA 98199
(206) 439-4790 (fax)

XV. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XVI. OTHER RELIEF

A. If Defendants fail to comply with the terms of this Consent Decree, the Court may order appropriate relief pursuant to AS 45.50.580 on motion of the State for cause.

B. The State is awarded its expert fees of \$50,000. Defendants shall pay this sum to the State within thirty (30) days of Court approval of this Consent Decree.

XVII. VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree.

XVIII. PUBLIC COMMENT

This Consent Decree is being submitted by the parties to the court for approval pursuant to AS 45.50.584. In accordance with this procedure, the Consent Decree does not become final until 60 days after its filing. During this 60-day period, interested persons may file verified exceptions to the form or substance of the Consent Decree, and after a hearing on such exceptions, the court may approve or refuse to enter the Consent Decree. Copies of all such verified exceptions shall be served by the submitting person on the parties to the Consent Decree for their review, and each party may respond to such exceptions at the hearing as each party deems appropriate or as directed by the Court. Defendants agree to publish, at Defendants' expense, notice, the form and contents of which are subject to the State's approval, of the execution and terms of the Consent Decree, the place or places at which members of the public may

obtain copies of the Consent Decree and/or any summaries thereof or comments thereon prepared by the parties, and the procedure for submitting verified exceptions thereto. Such notice shall be published in the **Anchorage Daily News, Alaska Journal of Commerce, Fairbanks Daily News-Miner, Juneau Empire, Nome Nugget, Tundra Drums, Petersburg Pilot, Wrangell Sentinel, and the Ketchikan Daily News** on two occasions, the first being within ten (10) days after the lodging of this Consent Decree with the court (or as soon thereafter as each is published), and the second between ten (10) and twenty (20) days after the lodging of this Consent Decree with the court (or as soon thereafter as each is published). Other notice as necessary to inform affected persons may also be required by the court.

XIX. CONSUMMATION OF MERGER

The Acquisition may not be consummated prior to entry of an order by the Court approving this Consent Decree.

XX. TERMINATION

This Consent Decree will expire on the 6th anniversary of the date of its approval, or upon order of this court for good cause. This Consent Decree will automatically terminate upon any termination of the Lynden/NSI Purchase Agreement without the consummation of the Acquisition. The parties agree that, upon a finding of good cause as determined by the Attorney General, the terms of this Consent Decree can be extended for a reasonable additional time to effectuate the purpose of this Consent Decree to promote and encourage competition in the Relevant Market. Any

determination to extend this Consent Decree, however, must be made by the Attorney General before the expiration of this Consent Decree.

XXI.—PUBLIC INTEREST

The terms of this Consent Decree are fair and reasonable and the entry thereof is in the public’s interest.

STATE OF ALASKA
MICHAEL C. GERAGHTY
ATTORNEY GENERAL

DATED: _____

By: _____
Clyde E. Sniffen Jr.
Alaska Bar # 8906036
Senior Assistant Attorney General

LYNDEN INCORPORATED

DATED: _____

By: _____
Jon Burdick
CEO and President

DATED: _____

By: _____
Everett H. Billingslea
Chief Legal Officer

ALASKA MARINE LINES, INC.

DATED: _____

By: _____
Kevin Anderson
President

NORTHLAND TRANSPORTATION CO.

DATED: _____

By: _____
Larry Stauffer
President

NORTHLAND SERVICES, INC.

DATED: _____

By: _____
Larry Stauffer
President

SAMSON TUG AND BARGE COMPANY

DATED: _____

By: _____
George Baggen
President

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____

Alaska Superior Court Judge