

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.)	

**COMPLAINT FOR PERMANENT INJUNCTION
AND FOR OTHER RELIEF**

PLAINTIFF, State of Alaska (hereafter “State”), by and through its Attorney General, Michael C. Geraghty, brings this civil action to obtain a permanent injunction and other relief against defendants to enjoin and prevent defendants from violating the antitrust laws of the State of Alaska through the proposed acquisition by Lynden Incorporated, sole owner of Alaska Marine Lines (as defined below), of the capital stock of Northland Transportation Co. (the “Acquisition”), and for its cause of action alleges as follows:

I. PARTIES

1. Plaintiff is the State of Alaska, by its Attorney General, Michael C. Geraghty, who brings this action in his official capacity pursuant to AS 45.50.580.
2. Defendant LYNDEN INCORPORATED (Lynden), is a Washington

corporation organized under the laws of Washington, with its office and principal place of business located at 6400 S. Airpark Place, Suite 1, Anchorage, AK 99502. Lynden operates a marine transportation and trucking business in Alaska.

3. Defendant ALASKA MARINE LINES, INC. (AML) is a subsidiary corporation of Lynden, and operates a marine transportation business in Alaska.

4. Defendant NORTHLAND TRANSPORTATION COMPANY (NTC) is the corporate parent of NORTHLAND SERVICES INC., and is a Washington corporation with its principal place of business at: 4025 Delridge Way SW, Suite 100, Seattle, WA 98106.

5. Defendant NORTHLAND SERVICES INC. (NSI) is a Washington corporation with its principal place of business at: 4025 Delridge Way SW, Suite 100, Seattle, WA 98106. NSI operates a marine transportation business in Alaska.

II. JURISDICTION AND VENUE

6. Jurisdiction is conferred upon this Court by AS 45.50.582. Venue is proper because each defendant maintains an office, transacts business, has an agent, or is found within the Third Judicial District at Anchorage, wherein this claim arises.

III. DEFINITIONS

A. “Defendants” means the entities 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.

- 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.

IV. BACKGROUND

7. Alaska imports most of its consumables from suppliers in the lower 48 states. Most of these consumables reach Alaska via marine deck cargo transportation.¹ Marine deck cargo can be transported on ships, which can navigate open water efficiently, and barges, which take longer but are generally less expensive. Totem Ocean Trailer Express (TOTE) and Horizon Lines (Horizon) operate vessels that deliver

¹ Deck cargo is cargo loaded and lashed to the deck of a ship or barge, typically in containers or trailers, as opposed to bulk commodities, such as grain, that may be moved loose in bulk in specialized hopper ships or barges below decks.

cargo from Tacoma, Washington to ports in Anchorage, Dutch Harbor, and Kodiak. About 80% of all deck cargo that arrives in Anchorage is transported on either a TOTE or Horizon ship. The transit time from Tacoma to Anchorage is about 72 hours. Because of their size and other logistics, these ships do not deliver cargo to Western Alaska or Southeast Alaska.

8. Defendants are common carrier marine transportation operators that deliver marine deck cargo via barge and tug into ports around Alaska, including Anchorage, Kodiak, Valdez, Whittier, Cordova, the Aleutians, Western Alaska, and most ports in Southeast Alaska. In all areas except Southeast Alaska, either (1) the defendants do not compete, or (2) there is sufficient other competition by third parties. In Southeast Alaska, however, defendants compete almost exclusively with each other for delivery of marine deck cargo.

9. In addition to common carriers, who publish tariff rates, contract carriers also deliver marine deck cargo to markets in Alaska. These marine transportation companies typically deliver a specific load of cargo for a single customer under terms of a contract for a specific voyage or series of voyages. For example, if a customer has a sufficient volume or product (i.e. building or construction supplies or equipment) to justify a dedicated barge, the customer has the option of contracting for a single barge to make this delivery. There are some contract carriers that currently provide marine transportation to areas of Alaska, and other companies in the Northwest who could easily do so. Contract carriers with excess capacity on a chartered barge typically offer that space into the market.

10. Delivery of goods to a customer involves more than just marine transportation. Different customers have different needs depending on the volume and type of cargo to be delivered. Some cargo is delivered in a full container such that the container can be delivered to the dock via a truck and chassis, then loaded on a ship or barge, then picked up by a truck at the receiving port and delivered directly to the customer. These “full load” customers need the least amount of ancillary transportation services including consolidation. Other customers do not have sufficient volume to fill a container (containers can be 20’, 40’, or 53’ in length), referred to as “less than truckload” or “LTL” deliveries. These customers may have a “consolidator” handle the delivery. A consolidator will receive the goods at a facility, combine the goods with goods from other customers to fill a container, deliver the container to the marine carrier, contract for a shipping rate with the marine carrier, then receive and segregate the cargo on the receiving end and deliver the goods to the customer. The marine transportation carriers also provide consolidator services, either directly, or by contracting with third parties.

11. Some customers require refrigerated containers for transportation and storage of their goods as part of the delivery process. This may require special refrigerated containers, and storage facilities capable of powering these containers until the product can be delivered.

12. All of the barge companies currently offering marine transportation to Alaska have facilities on the Duwamish River in the Port of Seattle. Access to facilities in Puget Sound (Ports of Seattle, Tacoma, Olympia, Bellingham, Everett and others) is

critical for successful operation of a marine barge transportation company. In addition, access to terminal facilities, storage areas, and wharfage in ports of delivery is essential for effective marine barge operations.

13. Customers arrange and pay for marine deck cargo service in two primary ways: (1) by contacting a carrier, arranging for delivery of goods, and paying the published tariff rate of the carrier, or (2) by contracting for the delivery of goods directly with the carrier. The majority of all goods delivered to Alaska via marine transportation are done through a contract.

14. AML and NSI are the only two companies that currently provide significant marine deck cargo transportation in Southeast Alaska. No other company has the assets, terminals, storage, or wharfage to compete effectively with AML and NSI in Southeast Alaska at present. AML and NSI compete with each other for many of the same customers, and bid on some of the same contracts.

15. Lynden has notified the State of its intent to purchase NSI.

IV. TRADE AND COMMERCE

16. The relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition described herein is the marine delivery of deck cargo.

17. The relevant section of the state (*i.e.* geographic market) in which to analyze the acquisition described herein includes all areas from which economic and profitable deliveries of deck cargo can be made to Southeast Alaska.

18. The Relevant Market is highly concentrated. The acquisition would substantially increase concentration in Southeast Alaska, where AML and NSI directly compete for marine delivery of deck cargo.

19. Entry by other potential competitors would not be timely, likely, or sufficient to prevent anticompetitive effects in Southeast Alaska.

20. AML and NSI are actual and direct competitors in the Relevant Market.

21. All of the conduct described herein constitutes trade or commerce for purposes of AS 45.50.471 and AS 45.50.562.

COUNT I
UNLAWFUL ACQUISITION UNDER AS 45.50.568.

22. Paragraphs 1 – 21 are incorporated herein.

23. The proposed acquisition of NSI's assets by Lynden will combine into one entity control and ownership of nearly all the assets used for the marine delivery of deck cargo into Southeast Alaska which are useful or necessary to compete in the Relevant Market.

24. There are constraints on the availability of equipment and facilities necessary for marine delivery of deck cargo to customers in Southeast Alaska.

25. Continued, new or expanded competition in the Relevant Market for marine delivery of deck cargo will be impeded by the limited availability of assets and/or facilities.

26. The effect of the proposed acquisition will be to give Lynden ownership and control of nearly all the assets in Southeast Alaska used for providing the Relevant

Product in the Relevant Market, completely eliminating competition between AML and NSI, the two primary competitors for the Relevant Product in Southeast Alaska.

27. The proposed acquisition will result in Lynden, through its subsidiary AML (and NSI if the acquisition is allowed) obtaining market power, and will substantially lessen competition in the relevant line of commerce in the relevant sections of the state in violation of AS 45.50.568 by (a) eliminating NSI as a substantial and independent competitor in Southeast Alaska; and (b) increasing the likelihood that Lynden, through its subsidiary AML (and NSI if the acquisition is allowed) will unilaterally exercise market power.

COUNT II
MONOPOLIZATION OR ATTEMPTED MONOPOLIZATION, AS 45.50.564.

28. Paragraphs 1 – 27 are incorporated herein.

29. The acquisition of NSI by Lynden will eliminate Lynden’s only significant competitor for delivery of deck cargo in the Relevant Market.

30. As a result of the acquisition, Lynden will obtain control in the Relevant Market such that it will be in a position to exercise monopoly power for the Relevant Product in violation of AS 45.50.564.

COUNT III
UNFAIR TRADE PRACTICE, AS 45.50.471.

31. Paragraphs 1 – 31 are incorporated herein.

32. The conduct described in this complaint constitutes an unfair method of competition in violation of AS 45.50.471 in that the acquisition will, among other

things, result in Lynden obtaining monopoly power and potentially increasing prices for the Relevant Product above competitive levels.

V. PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that this Court:

1. Enter an order finding that the effect of the proposed Acquisition may be substantially to lessen competition for marine delivered deck cargo in Southeast Alaska, in violation of AS 45.50.568 and .564;

2. Issue an injunction under AS 45.50.580, permanently barring the Defendants from consummating the proposed acquisition; or alternatively, order a divestiture of assets under AS 45.50.568(b) to eliminate the lessening of competition resulting from the Acquisition;

3. Order an award of Plaintiff's costs and attorney's fees incurred in bringing this action; and

4. Grant such other relief that this Court deems just and equitable.

DATED this 29th day of July, 2013, at Anchorage, Alaska.

MICHAEL C.GERAGHTY
ATTORNEY GENERAL

By:

Clyde E. Sniffen, Jr.
Senior Assistant Attorney General
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