

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

)
The COMMONWEALTH of MASSACHUSETTS,)
and the STATES of ALASKA, CALIFORNIA,)
CONNECTICUT, ILLINOIS, MAINE, MINNESOTA)
MISSOURI, NEW JERSEY, RHODE ISLAND)
and WASHINGTON,)
)
Plaintiffs)
)
v.)
)
FIRSTGROUP plc)
)
and)
)
LIDLAW INTERNATIONAL, INC.,)
)
Defendants)
)

COMPLAINT FOR INJUNCTIVE RELIEF

I. NATURE OF THE CASE

1. This civil antitrust action challenges the merger of the two largest providers of School Bus Services in the United States. Plaintiffs, the Commonwealth of Massachusetts and the States of Alaska, California, Connecticut, Illinois, Maine, Minnesota, Missouri, New Jersey, Rhode Island and Washington (“the States”), allege that the proposed Acquisition of Laidlaw International, Inc. by FirstGroup, plc would substantially lessen competition in numerous markets for the procurement of School Bus Services within the Plaintiff States in violation of Section 7 of the Clayton Act, 15 U.S.C. §18 and in violation of each State’s respective state laws.

2. The States seek permanent injunctive relief to prevent, restrain and/or remedy the adverse effects on competition and consequent harm to the public interest that would result from the Acquisition.

II. PARTIES

3. Each Plaintiff is a sovereign state of the United States. This action is filed on behalf of the States by their respective Attorneys General, each of whom is accorded the requisite authority under Section 16 of the Clayton Act, 15 U.S.C. §26. This authority is variously buttressed by equitable and/or common law powers vested in the Attorneys General, and/or other powers conferred on them by state law.

4. FirstGroup, plc is a public limited company incorporated in Scotland, with headquarters at 395 King Street, Aberdeen AB24 5RP, United Kingdom. FirstGroup acts as a holding company for enterprises operated by subsidiaries in Britain, the United States and elsewhere, including First Student, Inc., a Florida corporation with headquarters at 705 Central Avenue, Suite 300, Cincinnati, Ohio 45202, and operations throughout the United States. Through its subsidiaries, FirstGroup is the second largest provider of School Bus Services in the United States.

5. Laidlaw International, Inc. is a Delaware corporation with headquarters at 55 Shuman Boulevard, Suite 400, Naperville, Illinois 60563, and operations throughout the United States. Through its Education Services division, Laidlaw is the largest provider of School Bus Services in the United States.

III. JURISDICTION AND VENUE

6. Both FirstGroup and Laidlaw provide School Bus Services and perform related

tasks in each of the Plaintiff States and in interstate commerce, and engage in activities substantially affecting interstate commerce.

7. Plaintiffs bring this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. §26, to prevent, restrain and/or remedy violations of Section 7 of the Clayton Act, 15 U.S.C. §18.

8. The Court has jurisdiction over the subject matter of and the parties to this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. §22, and 28 U.S.C. §§1331 and 1337.

9. The Court has jurisdiction over Plaintiffs' state law claims under 28 U.S.C. §1367(a), and the doctrine of pendent or supplemental jurisdiction.

10. Venue is proper in the District of Massachusetts pursuant to Section 12 of the Clayton Act, 15 U.S.C. §22 and 28 U.S.C. §1391(c) because each Defendant resides, transacts business or is found in the District of Massachusetts and a substantial part of the events giving rise to this Complaint occurred in the District of Massachusetts.

IV. DEFINITIONS

- (A) "School Bus Services" means transportation of students between home and school for profit and any related services customarily provided in connection with such transportation, including, as examples and without limitation, transportation for field trips and other extracurricular activities. "School Bus Services," for purposes of this Complaint, does not include transportation provided by a District itself.
- (B) "FirstGroup" refers collectively to FirstGroup, plc and its subsidiaries.
- (C) "Laidlaw" refers to Laidlaw International, Inc.
- (D) The term "District" refers to local school districts, school unions, consolidated school districts and any and all other local school authorities, units and public entities representing any of the foregoing for purposes of School Bus Services procurement.

- (E) “RFP” means “Request for Proposals,” or “Request for Bids.”
- (F) “Incumbent” means the party holding a particular contract at any given point in time.
- (G) The conjunctive “and” includes the disjunctive “or” and *vice versa*; *i.e.*, “and” and “or” mean “and/or.”
- (H) “Acquisition” means the acquisition or beneficial acquisition by FirstGroup of Laidlaw by means of various stock purchases resulting in the merger of Laidlaw into FirstGroup, pursuant to an agreement executed on or about February 8, 2007.

V. STUDENT TRANSPORTATION SECTOR

11. Districts customarily arrange transportation for their students. While many Districts still organize and operate student transportation systems themselves, the practice of contracting with private providers for School Bus Services is increasingly prevalent. Contracts for such services are generally let by means of a public bid process advertised by an RFP for a fixed term whose duration varies from state to state and from District to District. Some States require that contracts go out to bid upon expiration; others permit negotiated renewal under some circumstances.

12. Defendants Laidlaw and FirstGroup provide School Bus Services in all of the Plaintiff States. By a variety of measures, *e.g.*, numbers of buses, students and contracts, Laidlaw and FirstGroup are now respectively the largest and second-largest providers of School Bus Services in the United States.

13. Laidlaw and FirstGroup are each other’s closest competitor. In many instances, they hold the two largest market shares, or are positioned as each other’s strongest potential challenger. They often compete head-to-head for contracts. As the two largest competitors by a wide margin, they often have cost advantages over smaller rivals.

14. Only a handful of other companies have a nationwide presence; a few more have a regional or statewide presence. Otherwise, the large majority of school bus contractors are local enterprises that hold very few contracts, and lack the capacity or are unwilling to compete outside a narrowly circumscribed area.

15. To compete for a contract for School Bus Services, a prospective bidder must have, among other things, the means to acquire or lease buses; the means to purchase insurance or self-insure; the ability to hire drivers and other personnel in a closely regulated environment; and convenient access to maintenance and parking facilities. Each of these elements must be obtained at a competitive cost, *i.e.*, a cost that permits the company to bid competitively against other private contractors. There are also less tangible requirements such as experience and reliability in providing transportation services for children ranging from kindergarteners to high school students.

16. For every contract, there is a distance or radius from the center of operations beyond which it is not economically feasible to locate or utilize depot and/or maintenance facilities. In each individual case, the maximum viable distance will depend on factors such as terrain, population density and traffic.

17. The companies most likely to bid on a given contract with any prospect of winning are the incumbent on that contract, or an incumbent on a contract for a nearby District that lies within or partially within the area defined by the applicable maximum viable radius described in the foregoing paragraph. Other companies wishing to enter the market for this contract are likely to move toward acquiring one of these incumbents.

18. In recent years, FirstGroup has acquired significant numbers of contracts for

School Bus Services and related assets by acquiring incumbents in a number of the Plaintiff States, thereby expanding both its national presence and its local market share.

VI. RELEVANT MARKETS

19. Currently, FirstGroup and Laidlaw compete with each other and with other companies for the sale of School Bus Services in numerous Districts in each Plaintiff State.

20. The relevant product with respect to which the Acquisition should be analyzed is School Bus Services rendered pursuant to contracts with Districts. The School Bus Services contract for each District is a separate product market.

21. The geographic market for the School Bus Services required by a District is limited by the locations of the firms with access to depot and maintenance facilities that are close enough and large enough to provide the product to the District at a competitive price. This region is often limited by the location of the incumbent School Bus Services provider under the existing contract and the locations of the incumbents in adjacent or nearby Districts with the capacity to provide the required School Bus Services.

22. In circumstances where the contract for the District requires a quantity of buses that only the largest companies can provide, smaller companies in adjacent or nearby Districts are not included as competitors within the relevant market.

23. The sale and provision of School Bus Services to Districts in each of the Districts or geographic areas identified in paragraph 28 constitutes a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act, 15 U.S.C. §18.

VII. ENTRY AND MARKET CONDITIONS

24. Following the Acquisition, sufficient timely entry into the relevant markets is unlikely, in that:

- (a) As a company builds a strong position in a given area, it may develop the ability to exclude prospective entrants by, among other things, making it difficult for a rival to secure access to convenient maintenance facilities.
- (b) After the Acquisition, FirstGroup's extensive resources, as well as the significant cost advantages it enjoys, will deter private contractors from attempting to compete with it.
- (c) Aspiring competitors may be unable to enter a relevant market where land suitable for a maintenance facility or depot cannot be secured for lease or purchase.

25. Exercise of market power achieved by Defendants as a result of the Acquisition will not be constrained by the prospect that Districts may revert to providing their own school bus services, in that:

- (a) Having switched from operating their own transportation systems to contract procurement of School Bus Services, Districts are unlikely to switch back, even in response to a small but significant, non-transitory increase in price, except under extreme conditions, such as the failure of any contractor to bid on the District's RFP.
- (b) In the event a District desires to reestablish its own transportation system, it is unlikely that such a decision can be made and implemented within a timeframe less than two years in duration.

26. Districts in the State of New Jersey are, subject to a few exceptions, required to put each route out for a separate bid and Districts have the right, with the incumbent's consent, to renew a contract at a price that reflects the increase in the consumer price index ("CPI"). Prior to the Acquisition, FirstGroup and Laidlaw each had contracts that Districts could renew at a price pegged to the increase in the CPI. Because rising fuel costs have driven the cost of providing School Bus Services to exceed the increase in the CPI, FirstGroup is likely to force most of its contracts (those it and Laidlaw had previously renewed at the increase in the CPI) out to bid. When FirstGroup and Laidlaw were competitors, each had the resources to bid on most of the contracts that the other forced out to bid. After the Acquisition, the remaining competitors will not have the resources to bid on all of the contracts FirstGroup may force out to bid for the 2008-2009 school year. As a result, FirstGroup may, especially in Districts where it has a strong presence, be able to force contracts out to bid and retain them, in many cases, at significantly higher prices.

VIII. HARM TO COMPETITION

27. Currently, FirstGroup and Laidlaw compete actively with each other as well as with other companies for the sale of School Bus Services throughout the United States, including numerous local markets in each Plaintiff State.

28. The Acquisition will increase FirstGroup's capacity to and the likelihood that it will unilaterally exercise market power, will increase the likelihood of collusion, and is likely to have the effect of increasing prices paid by Districts for School Bus Services in numerous relevant markets in the Plaintiff States, including each of the Districts identified below:

- (a) Massachusetts: All Districts within Barnstable, Plymouth, and Bristol Counties, North Central Worcester County, and the City of Boston.

- (b) Alaska: Districts in Anchorage, Fairbanks, Mat-Su, and Kenai-Soldotna.
- (c) California: Districts in Los Angeles & Riverside Counties.
- (d) Connecticut: All Districts with contracts requiring 100 buses or more.
- (e) Illinois: All Districts with contracts requiring 150 buses or more, and all Districts in Alexander, Ford, Madison, Pulaski, St. Clair, Union and Vermilion Counties.
- (f) Maine: All Districts within or comprised of any part of Hancock County; the eastern most municipalities of Waldo County, namely Winterport, Frankfort, Prospect, Stockton Springs and Searsport; the Washington County municipality of Steuben; southern Penobscot County, namely an area bounded on the north by, and including, the municipalities of Stetson, Corinth, Bradford, Alton, Greenbush, Greenfield Twp, and Grand Falls Twp; on the west by and including the municipalities of Carmel and Newburgh; and including all parts of Penobscot County south and east of these municipalities.
- (g) Minnesota: Districts located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.
- (h) Missouri: Districts whose territory includes any part of St. Louis City, St. Louis County, Jefferson County, St. Charles County, or Franklin County.
- (i) New Jersey: Districts where, prior to the Acquisition, FirstGroup and Laidlaw had been each other's main competitor for contracts for School Bus Services, including: (1) Paramus Boro in Bergen County; (2) Fair Lawn Boro in Bergen County; (3) Hunterdon Central Regional in Hunterdon County; and (4) North Hunterdon/Voorhees Regional in Hunterdon County, as well as Districts,

where upon completion of the Acquisition, First Group will have at least 66% of the regular education home to school bus routes that are put out to bid, including Districts in Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union and Warren Counties.

(j) Rhode Island: All Districts in Providence, Kent, Newport, Washington and Bristol Counties.

(k) Washington: Districts in King, Pierce, Thurston, Clark and Spokane Counties.

IX. VIOLATIONS ALLEGED

FIRST CAUSE OF ACTION

29. The Acquisition will tend to substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

SECOND CAUSE OF ACTION

30. The Acquisition will create the following conditions, in violation of the state statutes cited in each subparagraph below:

(a) Massachusetts: will constitute a contract, combination or conspiracy in restraint of trade or commerce, and/or an illegal monopoly in the Commonwealth of Massachusetts in violation of the Massachusetts Antitrust Act, M.G.L. c. 93, §§4 and 5, and constitute an unfair method of competition in the Commonwealth of Massachusetts in violation of the Massachusetts Consumer Protection Act, c. 93A, §2.

(b) Alaska: will substantially lessen competition and tend to create a monopoly in relevant Alaska markets, in violation of Alaska's Monopolies and Restraint of Trade Act, AS 45.50.562 *et seq.*, and constitute an unfair method of competition under Alaska's Consumer Protection Act, AS 45.50.471 *et seq.*

(c) California: will lessen competition and tend to create a monopoly in the relevant California markets, in particular, Los Angeles County and Riverside County, in violation of the California Business & Professions Code section 17200 *et seq.*

(d) Connecticut: will constitute a contract, combination or conspiracy in restraint of trade or commerce and/or an illegal monopoly in violation of the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-26 and 35-27.

(e) Illinois: will establish, maintain, use, or attempt to acquire monopoly power over the Illinois relevant markets alleged herein, in violation of the Illinois Antitrust Act, 740 ILCS 10/3(3).

(f) Maine: will substantially lessen competition and tend to create a monopoly in relevant Maine markets in violation of the Maine Monopolies & Profiteering Law, 10 MRSA §1102-A.

(g) Minnesota: will constitute a contract, combination or conspiracy in restraint of trade or commerce and/or an illegal monopoly and/or attempted monopolization in the State of Minnesota in violation of the Minnesota Antitrust Law of 1971, Minn. Stat. §§ 325D.51, 325D.52, 325D.53 (2006).

(h) Missouri: will constitute a contract, combination or conspiracy in restraint of trade or commerce and/or an illegal monopoly in the State of Missouri in

violation of the Missouri Antitrust Act, RSMo §§ 416.011 through 416.160, and will constitute an unfair practice in the State of Missouri in violation of the Missouri Merchandising Practices Act, RSMo §§ 407.010 through 407.145.

(i) New Jersey: will substantially lessen competition for School Bus Services and tend to create a monopoly in the relevant New Jersey markets in violation of Section 4 of the New Jersey Antitrust Act, N.J.S.A. 56: 9-4.

(j) Rhode Island: will constitute a contract, combination, or conspiracy in restraint of, or to monopolize, trade or commerce in the State of Rhode Island in violation of the Rhode Island Antitrust Act, Rhode Island Gen. Laws Sections 6-36-4, 5 and 6 and also constitute an unfair method of competition and unfair or deceptive act or practice in the State of Rhode Island in violation of the Rhode Island Deceptive Trade Practices Act, Rhode Island Gen. Laws Sections 6-13.1(5) and 6-13.1-2.

(k) Washington: may substantially lessen competition or tend to create a monopoly in the relevant Washington markets in violation of RCW 19.86.060.

X. REQUESTED RELIEF

The Plaintiff States request that this Court:

- (A) Adjudicate that the Acquisition by FirstGroup of Laidlaw violates Section 7 of the Clayton Act, 15 U.S.C. §18, and the laws of the States;
- (B) Preliminarily and permanently enjoin FirstGroup from carrying out the Acquisition, or from combining its own and Laidlaw's assets and operations in any other manner;

(C) Award the States their reasonable costs and attorneys' fees; and

(D) Award such other and further relief as the Court may deem just and proper.

Dated: September 26, 2007

Respectfully submitted,

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