

Federal Court



Cour fédérale

Date: 20090218

Docket: T-185-09

Ottawa, Ontario, February 18, 2009

PRESENT: The Honourable Madam Justice Hansen

IN THE MATTER OF an application by the Director of Public Prosecutions on behalf of the Attorney General of Canada for a Prohibition Order pursuant to subsection 34(2) and para. 34(2.1)(b) of the Competition Act, R.S.C. 1985, c. C-34

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

and

ATC ENTERPRISES LTD., AARON THOMAS CAREY, CAREY'S BUS SERVICE LIMITED, THOMAS CAREY, CRAWLEY'S BUS SERVICE LIMITED, JAMES P. CRAWLEY, D & D BUSLINES LTD., GOLDIE HALLEY, EASTERN BUS LINES LIMITED, JOHN EVANS, FLEETLINE BUSES LIMITED, WILBERT F. FUREY, GARRY MAHON SERVICES INC., GARRY MAHON, JOSEPH GLADNEY LIMITED, JOSEPH GLADNEY, DIANE GLADNEY, KELLOWAY INVESTMENTS LIMITED, JAMES KELLOWAY, PARSONS AND SONS TRANSPORTATION LIMITED, SCOTT PARSONS, TERRENCE PARSONS, PAUL CUMMINGS operating as PAUL CUMMINGS ISLAND BUS SERVICE, S. & D. TRANSPORT LIMITED, DONALD ASH, STREAMLINE BUS COMPANY LIMITED, DONALD TAPPER and WILLIAM THORNE

Respondents

PROHIBITION ORDER

UPON APPLICATION of the Director of Public Prosecutions on behalf of the Attorney General of Canada for an Order prohibiting certain conduct of the Respondents, pursuant to Rule 369 of the *Federal Court Rules*, subsection 34(2) and para. 34(2.1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act");

AND UPON the laying of an Information by the Director of Public Prosecutions alleging that the Respondents have done an act or thing constituting, or directed toward the commission of an offence under paras. 45(1)(c) and 47(1)(a) and (b) of the *Competition Act*;

AND UPON reading the Statement of Admitted Facts filed on consent herein;

AND UPON reading the Consent of the parties to the issuance of this Order;

1. **THIS COURT DOES PROHIBIT** each of the Respondents:

- ATC Enterprises Ltd. and its director Aaron Thomas Carey;
- Carey's Bus Service Limited and its director Thomas Carey;
- Crawley's Bus Service Limited and its director James P. Crawley;
- D & D Buslines Ltd. and its director Goldie Halley;
- Eastern Bus Lines Limited and its director John Evans;
- Fleetline Buses Limited and its director Wilbert F. Furey;
- Garry Mahon Services Inc. and its director Garry Mahon;
- Joseph Gladney Limited and its directors Joseph Gladney and Diane Gladney;
- Kelloway Investments Limited and its director James Kelloway;

- Parsons and Sons Transportation Limited and its directors Scott Parsons and Terrence Parsons;
- Paul Cummings operating as Paul Cummings Island Bus Service;
- S.& D. Transport Limited and its director Donald Ash; and
- Streamline Bus Company Limited and its directors Donald Tapper and William Thorne; (hereinafter collectively referred to as "the Respondents")

from committing or doing or continuing to do any act or thing constituting or directed toward the commission of an offence under paras. 45(1)(c) and 47(1)(a) and (b) of the Act.

2. **AND THIS COURT DOES ORDER THAT** for a period of seven (7) years after the date of this Order, each of the Respondents shall:

- (a) notify the Commissioner of Competition (the "Commissioner") immediately should any of the Respondents form or participate in a business or association, with the purpose of providing school bus transportation services, with any other school bus transportation service providers located in the Eastern School District;
- (b) describe to the Commissioner the nature of the activities and the purpose of any company or association referred to in paragraph 2(a);
- (c) in the case of the Respondent companies, cause their directors, officers, affiliates and employees to not, directly or indirectly, engage in any communication or exchange of information relating to pricing of products or services with any other Respondent companies that results in an undue lessening of competition; and in the case of individual Respondents, with any or among any of the Respondents outside of the company;

- (d) in the case of the Respondent companies, cause their directors, officers, affiliates and employees to not enter into any agreement or arrangement of any kind relating to pricing of products or services with any other Respondent companies, their representatives or with any other person engaged in the sale and supply of school bus transportation services located in the Eastern School District of Newfoundland and Labrador, unless such agreement or arrangement is notified in writing to the Eastern School District of Newfoundland and Labrador; and
 - (e) upon becoming aware of any unauthorized communication referred to in subparagraph 2(c) or (d) of this Order, immediately advise the Commissioner in writing of such communication and the circumstances surrounding the communication.
3. **AND THIS COURT DOES ORDER** each of the Respondents to:
- (a) provide, within 60 days of the date of this Order, to the extent that they have not already done so, to each of the Respondent company's directors, officers, affiliates and employees:
 - (i) a copy of this Order,
 - (ii) a current copy of the relevant provisions of the Act, which is attached hereto as Appendix A; and
 - (iii) a written statement that
 - it is company policy to require compliance with the Act and this Order;

- failure to comply will result in appropriate disciplinary action which may include termination of employment;
 - failure to comply with or contravention of this Order is punishable under subsection 34(6) of the Act; and
 - company legal advisors are available to confer about any compliance questions;
- (b) for the period of seven (7) years after the date of this Order, provide a copy of each of the materials described in paragraph 3(a) to everyone who attains the status described in that paragraph within 60 days of attaining such status; and
- (c) provide to the Commissioner, for a period of seven (7) years after the date of this Order and within 60 days of receipt of a written request from the Commissioner, such information as he/she may reasonably request for the purpose of monitoring compliance with this Order.
4. **AND THIS COURT DOES ORDER** each of the Respondent companies to develop a compliance policy and provide annual training to their directors, officers, affiliates and employees on or before May 1 of each year for a period of seven (7) years after the date of this Order.
5. **AND THIS COURT DOES ORDER** each of the Respondent companies, for the period of seven (7) years after the date of this Order, to submit to the Commissioner on or before December 31st of each year, if requested, a written statement setting out the facts and the manner of compliance with paragraphs 3(a) and 3(b), and also paragraph 4, including confirmation that each person referred to in paragraphs 3(a), 3(b) and 4 has acknowledged their awareness of the materials set out in paragraph 3(a) and that the acknowledgment is recorded on the personnel file of each such person.

6. **AND THIS COURT DOES ORDER** the Respondents to pay collectively \$19,500.00 to the Receiver General for Canada, within one year of the date of this Order, towards the costs incurred by the Commissioner with respect to the Commissioner's investigation into this matter.
7. **AND THIS COURT DOES FURTHER ORDER** that every paragraph of this Order that applies to the Respondents shall be binding on the Respondents for a period of seven (7) years from the date of this Order and on the Respondent companies' directors, officers, employees, and to any of their successors, affiliates, assigns and their agents or employees.
8. **AND THIS COURT DOES FURTHER ORDER** that any notice required to be delivered pursuant to this Order shall be deemed to be validly delivered by facsimile transmission or registered mail to:
- (i) The Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
20th Floor - 50 Victoria Street
Gatineau, QC K1A 0C9
Facsimile: (819) 953-5013
Attention: Senior Deputy Commissioner, Criminal Matters Branch
- (ii) Director of Public Prosecutions
Competition Law Section
Place du Portage, Phase I
22nd Floor - 50 Victoria Street
Gatineau, QC K1A 0C9
Facsimile: (819) 997-5747
Attention: Director, Competition Law Section

- (iii) Counsel for ATC Enterprises Ltd., Aaron Thomas Carcy, Carey's Bus Service Limited, Thomas Carey, Crawley's Bus Service Limited, James P. Crawley, D & D Buslines Ltd., Goldie Halley, Eastern Bus Lines Limited, John Evans, Fleetline Buses Limited, Wilbert F. Furey, Garry Mahon Services Inc., Garry Mahon, Joseph Gladney Limited, Joseph Gladney, Diane Gladney, Kelloway Investments Limited, James Kelloway, Parsons and Sons Transportation Limited, Scott Parsons, Terrence Parsons, Paul Cummings operating as Paul Cummings Island Bus Service, S. & D. Transport Limited, Donald Ash and Streamline Bus Company Limited, Donald Tapper and William Thorne:

French, Noseworthy and Associates
Barristers, Solicitors & Notaries
Suite 122, Elizabeth Towers
100 Elizabeth Avenue
St. John's, NL A1B 1S1
Facsimile: (709) 754-2701
Attention: J. Vernon French, Q.C.

"Dolores M. Hansen"

Judge