UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. NIAGARA FRONTIER TARIFF BUREAU, INC., BONDY CARTAGE LIMITED, DOMINION-CONSOLIDATED TRUCK LINES LIMITED, ICL INTERNATIONAL CARRIERS, LTD., INTER-CITY TRUCK LINES, (CANADA), INC., TNT CANADA, INC., Defendants.	COMPLAINT 15 U.S.C. §1 Conspiracy in Restraint of Trade Civil No.: 83-1313C Filed: 11/18/83

COMPLAINT

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants by the United States of America under Section 4 of the Act of Congress of July 2, 1890, as amended

(15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain violations, as hereinafter alleged, by the defendants of Section 1 of the Sherman Act, as amended (15 U.S.C. §1).

2. Each defendant is found or transacts business in the Western District of New York as described more specifically in paragraphs III. 5, 6, 7, 8 and 9, infra. 15 U.S.C. §22; 28 U.S.C. §1391.

II.

DEFINITIONS

3. As used herein, the term:

a) "Person" means any natural person, firm, partnership, association or corporation;

b) "Motor carrier" means a person providing motor vehicle transportation of freight for compensation;

c) "Common carrier authority" means operating authority granted to a motor carrier by the Interstate Commerce Commission ("ICC");

d) "Ontario Highway Transport Board" means the Ontario governmental agency that regulates motor carrier transportation in, to or from Ontario, Canada;

e) "Extra-provincial authority" means authority granted to a motor carrier by the Ontario Highway Transport Board ("OHTB") to transport freight across the United States/Ontario border;

f) "Rate bureau" means an organization established or continued under an agreement approved by the ICC under 49 U.S.C. §5b, currently codified at 49 U.S.C. §10706(b)(2);

g) "Tariff" means rates, fares and charges filed with a governmental agency by a motor carrier or rate bureau for the transportation and handling of freight.

III.

DEFENDANTS

4. Niagara Frontier Tariff Bureau, Inc. ("NFTB" or "Bureau") is made a defendant herein. NFTB is a non-profit, no share incorporated rate bureau organized and existing under the laws of the State of New York with offices in Williamsville, New York. NFTB's permissible activities are described in a rate bureau agreement approved by the ICC.

5. Bondy Cartage Limited ("Bondy") is made a defendant herein. Bondy is a corporation organized and existing under the laws of the Province of Ontario, Canada with its headquarters in Windsor, Ontario. It is a motor carrier which holds extra-provincial and common carrier authority, and it engages in the transportation of freight between the United States and Canada. Bondy representatives have periodically attended business meetings in the Buffalo, New York area, including meetings of co-defendant NFTB.

6. Dominion-Consolidated Truck Lines Limited ("Dominion Consolidated") is made a defendant herein. Dominion-

Consolidated is a corporation organized and existing under the laws of the province of Ontario, Canada with headquarters in Toronto, Ontario. It is a wholly-owned subsidiary of Dominion-Consolidated Holdings Limited, also an Ontario corporation, headquartered in Toronto, Ontario. Dominion-Consolidated was formed in 1970 by the merger of two Ontario-based motor carriers, Dominion Freightways Limited and Consolidated Truck Lines. Dominion-Consolidated is a motor carrier which holds extra-provincial and common carrier authority, and it engages in the transportation of freight between the United States and Canada. Dominion-Consolidated's agent, Interline Cartage, Inc., owns and operates terminals in Buffalo, New York.

7. ICL International Carriers, Ltd. ("ICL") is made a defendant herein. ICL is a corporation organized and existing under the laws of the province of Ontario, Canada with a head office in Windsor, Ontario. It is a subsidiary of Industrial Cartage Co., Inc., a Michigan corporation, which in turn is wholly-owned by Piggy Pack Services, Inc., a Michigan corporation headquartered in Detroit, Michigan. ICL is a motor carrier which holds extra-provincial and common carrier authority, and it engages in the transportation of freight between the United States and Canada. All of ICL's traffic between points in the United States and points in Ontario, Canada, move through the U.S.-Canada gateways at Detroit, Michigan, Niagara Falls, New York, and Port Huron, Michigan.

8. Inter-City Truck Lines (Canada), Inc. ("Inter-City") is made a defendant herein. Inter-City is a corporation organized

and existing under the laws of the province of Ontario, Canada with headquarters in Toronto, Ontario. It is a wholly-owned subsidiary of N.M. Davis Corporation Limited, an Ontario corporation. Inter-City is a motor carrier which holds extra-provincial and common carrier authority, and it engages in the transportation of freight between the United States and Canada. Inter-City has maintained a leased terminal in Buffalo, New York, for many years at which it currently employs 34 employees and at which it regularly maintains 9 tractors, 35 trailers and 3 tow motors.

9. TNT Canada, Inc. ("TNT") is made a defendant herein. TNT is a corporation organized and existing under the federal laws of Canada with headquarters in Mississauga, Ontario. TNT is a subsidiary of All Trans Canada, Inc., an Ontario corporation which in turn is owned by Thomas Nationwide Transport, Ltd. of Sydney, Australia. TNT was formed in March 1980 through the amalgamation of several companies including Overland Western Limited ("Overland Western"), a motor carrier holding extra-provincial and common carrier authority. Subsequent to the amalgamation, Overland Western's operations were subsumed in the Overland Express Division of TNT. TNT is a motor carrier which holds extra-provincial and common carrier authority, and it engages in the transportation of freight between the United States and Canada. TNT owns and operates a freight terminal at Buffalo, in the Western District of New York. Approximately 45 persons are employed at this terminal and TNT maintains approximately 54 trailers there.

IV.

CO-CONSPIRATORS

10. Various persons not made defendants participated as co-conspirators with the defendants in the violation alleged herein and performed acts and made statements in furtherance thereof.

V.

TRADE AND COMMERCE

11. Motor carrier transportation is the primary means of transporting freight between the United States and Canada. A substantial portion of United States/Canadian freight traffic flows into, from or through the Province of Ontario.

12. To transport freight across the U.S./Canadian border, a motor carrier must have the requisite governmental authority. To engage in the transportation of interstate or foreign commerce of the United States, a motor carrier must obtain operating authority from the ICC (49 U.S.C. §303(c), currently codified at 49 U.S.C. §10921). To operate into or from the Province of Ontario, it must also obtain extra-provincial authority from the OHTB.

13. During all or part of the time pertinent to this complaint, the defendant motor carriers held extra-provincial and common carrier authority.

14. In addition to regulating operating authority, both the ICC and the OHTB regulate some other, but not all, aspects

of motor carrier transportation. The ICC requires motor carriers transporting freight pursuant to common carrier operating authority to file with the ICC in Washington, D.C. tariffs which contain all rates for transportation, to make the tariffs available for public inspection, and to implement changes in rates only after thirty days notice to the ICC and the public, unless the ICC specifically grants permission for a shorter notice period (49 U.S.C. §317, currently codified at 49 U.S.C. §10762). The ICC is empowered in certain circumstances to determine and prescribe just and reasonable rates for motor carriers; it does not, however, dictate motor carriers' rates in the first instance (49 U.S.C. §316, currently codified at 49 U.S.C. §10704). The OHTB similarly requires motor carriers to file tariffs, to adhere to the rates in the tariffs and to implement changes only after 30 days notice; it does not prescribe rates.

15. The Reed-Bulwinkle Act, which was passed in 1948, authorizes two or more motor carriers subject to the jurisdiction of the ICC to apply to it for approval of an agreement to establish a rate bureau to set rates collectively 49 U.S.C. §5b, currently codified at 49 U.S.C. §10706(b)(2). Upon ICC approval, parties to such an agreement are relieved from the operation of the antitrust laws, provided their actions conform to the procedural requirements set forth in the approved agreement. Every such agreement must reserve to each of its members the right to take a rate action independent of

the rates set collectively by the rate bureau (49 U.S.C. §5b(6), currently codified at 49 U.S.C. §10706(b)(2)(B)(ii)). Relief from the antitrust laws under the Reed-Bulwinkle Act is strictly limited to the terms of the approved agreement, and it does not extend to conduct that the ICC is not empowered to authorize, or if empowered, has not authorized.

16. During all or part of the time covered by this complaint, each of the motor carriers named as defendants herein was a party to the collective ratemaking agreement approved by the ICC for the NFTB. Niagara Frontier Tariff Bureau--Agreement, 297 I.C.C. 494 (1955) (hereinafter "NFTB agreement"). The NFTB agreement remained in effect for all times pertinent to this complaint. The NFTB agreement authorized the members of the NFTB to set rates collectively for motor carrier freight traffic between the United States and Canada, through authorized committees, provided the carriers adhered to the procedures set forth in the NFTB agreement and ICC regulations, including a variety of notice, publication and public hearing procedures. At all times pertinent to this complaint, the NFTB agreement preserved each carrier's right to take independent action.

17. The international traffic revenues of NFTB carriers with the requisite authority to transport freight across the United States/Canadian border were at least $330.3 million in 1980 and $344.8 million in 1979. For the period 1970 through approximately 1980, international traffic revenues of such NFTB carriers were $2.8 billion. The defendant motor carriers and

their co-conspirators accounted for most of the cross-border traffic among NFTE motor carriers.

18. The transportation of freight between the United States and the Province of Ontario, Canada is in the interstate and foreign commerce of the United States and affects the interstate and foreign commerce of the United States.

VI.

VIOLATION ALLEGED

19. Beginning at least as early as 1966 and continuing at least into 1981, the exact dates being unknown to the plaintiff, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate and foreign trade and commerce of the United States in violation of Section 1 of the Sherman Act (15 U.S.C. §1). The aforesaid unlawful combination and conspiracy may be renewed unless the relief hereinafter prayed for is granted.

20. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were to fix, raise and maintain prices and to inhibit or eliminate competition for the transportation of freight by motor carrier between the United States and the Province of Ontario, Canada without complying with the terms of the

NFTB agreement and by otherwise engaging in conduct that either was not or could not be approved by the ICC.

21. In furtherance of the aforesaid combination and conspiracy the defendants and co-conspirators have done these things that they combined and conspired to do, including among others:

a) Participated in a Principals Committee which was comprised of the senior management officials of NFTB carriers that had extra-provincial authority. The Principals Committee was not authorized or approved by the ICC to engage in ratemaking conduct. Through the Principals Committee, the defendants and co-conspirators engaged in the joint setting of rates and related policies and also agreed upon methods by which to inhibit competition for the transportation of freight by motor carrier between the United States and the Province of Ontario, Canada;

b) Set and controlled NFTB rate levels without complying with the notice, publication, public hearing or record keeping requirements of the NFTB agreement and ICC regulations;

c) Held Principals Committee and other meetings to plan threats, coercion and retaliation against an NFTB member carrier for exercising its right of independent action;

d) Through pressure, coercion, threats of retaliatory rate reductions, taking retaliatory rate reductions, internal NFTB practices, and other means, interfered with, restrained and restricted the right of NFTB member carriers and non-member carriers to make rates independent of the NFTB agreed-upon rates;

e) Filed tariffs with the ICC in Washington, D.C. that were in furtherance of the conspiracy.

VII.

23. The combination and conspiracy has had the following effects:

a) Rates for the transportation of freight by motor carrier between the United States and the Province of Ontario, Canada have been fixed, raised or maintained at artificial and non-competitive levels;

b) Competition between and among the defendant motor carriers, their co-conspirators and other persons engaged in the transportation of freight by motor carrier in the United States-Ontario, Canada trade has been restrained;

c) Competition generally in trade and commerce in the transportation of freight by motor carrier between the United States and the Province of Ontario, Canada has been suppressed.

VIII.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the conduct of each defendant as described in paragraph 21 of this complaint did not comply with the terms of the NFTB agreement and was not immune from the operation of the antitrust laws under the Interstate Commerce Act (49 U.S.C. §10706(b)(2)), and that each defendant has engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate and foreign trade and commerce of the United States in violation of Section 1 of the Sherman Act.

2. That each defendant, its successors, assignees, and transferees, and its officers, directors, agents and employees, and all persons acting in concert therewith, be permanently enjoined and restrained from continuing, maintaining or renewing, directly or indirectly, the combination and conspiracy hereinbefore alleged or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having a similar purpose or effect.

3. That the defendant NFTB be ordered to establish and follow such rules and procedures as may be necessary to ensure that the conspiracy alleged herein is not continued, maintained or renewed, including rules and procedures to ensure that the

NFTB does not interfere with the right of NFTB member carriers and non-member carriers to make rates independent of the NFTB agreed-upon rates.

4. That the plaintiff have such other relief as the Court may deem just and proper.

5. That the plaintiff recover the cost of this action.

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