

Complaint

116 F.T.C.

IN THE MATTER OF

B &amp; J SCHOOL BUS SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3425. Complaint, April 22, 1993--Decision, April 22, 1993*

This consent order prohibits, among other things, three school bus transportation companies (B & J, Ryder, and Mayflower) that provide bus service in the Kansas City Missouri School District from entering into agreements with each other or with any other school bus transportation provider or potential provider -- with respect to school bus transportation services in the Kansas City area -- to submit jointly determined bids; to refrain from bidding; to allocate or divide jobs, markets, customers, contacts, or territories; or to set prices or other terms and conditions. In addition, the order prohibits the companies, for three years, from communicating to each other or to past, present or likely future providers of bus service to the Kansas City School District their plans to bid, or not to bid, for those services.

*Appearances*

For the Commission: *Thomas J. Russell* and *Catherine R. Fuller*.

For the respondents: *Ken Joyce*, in-house counsel for B & J School Bus Service, Kansas City, MO. *E. Perry Johnson*, in-house counsel for Ryder Student Transportation Services, Inc., Miami, FL. *Larry Rouse, Rouse, Hendricks, German, May & Schni, PC*, Kansas City, MO.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc., corporations, hereinafter sometimes collectively referred to as "respondents," have violated

the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent B & J School Bus Service, Inc. ("B & J") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principal place of business located at 3707 Beacon, Kansas City, Missouri.

PAR. 2. Respondent Ryder Student Transportation Services, Inc. ("Ryder") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office located at 3600 N.W. 82nd Avenue, Miami, Florida. Ryder is a subsidiary of Ryder System, Inc.

PAR. 3. Respondent Mayflower Contract Services, Inc. ("Mayflower") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office located at 5360 College Boulevard, Overland Park, Kansas. Mayflower is a wholly-owned subsidiary of Mayflower Group, Inc.

PAR. 4. All of the respondents are, or have been, engaged in the business of providing school bus transportation in the Kansas City, Missouri area. Except to the extent that competition has been restrained as alleged herein, the respondents have been and are now in competition among themselves and with other providers of school bus transportation services.

PAR. 5. Respondents' general businesses or activities, and the acts and practices described below, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 6. In the years prior to the 1984/1985 school year, four school bus transportation companies supplied most of the school bus transportation to the Kansas City, Missouri School District ("KCMSD"). These four companies were B & J, two companies that were purchased in 1984 and 1985, respectively, by a predeces-

sor of Mayflower -- R. W. Harmon & Sons, Inc. ("Harmon") and Pace School Bus Service ("Pace") -- and a fourth company, KAL Leasing, Inc ("KAL"), the assets of which were purchased in 1986 by a predecessor of Ryder. These companies had provided school bus transportation services for many years to discrete areas within the KCMSD pursuant to privately and individually negotiated contracts with KCMSD.

PAR. 7. For the 1984/1985 school year, KCMSD decided to purchase school bus transportation services pursuant to a competitive bidding process. KCMSD expected that by increasing the ability of school bus transportation companies to compete with one another to provide service to portions of the KCMSD, the school district would be able to receive lower rates. The KCMSD sent out a request for bids for a single contract covering the 1984/1985, 1985/1986 and 1986/1987 school years. The request sought bids for six separate areas of the school district and for three special services. Bidders were requested to bid for any or all of the areas and services.

PAR. 8. In response to KCMSD's request for bids, Harmon and Pace (which were subsequently acquired by a predecessor of Mayflower), KAL (the assets of which were subsequently acquired by a predecessor of Ryder) and B & J agreed not to compete with each other with respect to whether, and on what terms, they would submit bids to KCMSD for providing school bus transportation services. In lieu of competing with one another, the four companies agreed to submit a joint bid for all of KCMSD's service areas and special services, and to then allocate among themselves the portions of the KCMSD to which each company would provide transportation services. The four companies would, thereby, be able to continue generally to serve schools located in areas of the KCMSD that they had served in the past.

PAR. 9. B & J, Harmon, Pace and KAL implemented their agreement by forming Kansas City School Transportation ("KCST") in 1984. Although they called KCST a joint venture, B & J, Harmon and Pace (both of which were purchased in 1984 and 1985 respectively by a predecessor of Mayflower) and KAL (the assets of

which were acquired by a predecessor of Ryder in 1986) did not integrate their operations in any substantial manner, and did not make any substantial contributions of capital to KCST. Any financial risk that they faced for losses that might occur from KCST's operation was not substantial. KCST and its members did not provide significantly new or more efficient services. The principal function of KCST was to provide a vehicle for reaching collective decisions on market areas to be served.

PAR. 10. Pursuant to their agreement, B & J, Harmon, Pace and KAL submitted a single, joint bid as KCST to the KCMSD covering all of the areas and services for which bids were sought. With these four firms submitting a joint bid, and with few bids received from outside firms, KCMSD had little choice but to accept the joint bid from the four companies. KCST was awarded the contract for five of the six areas for which KCMSD had solicited bids.

PAR. 11. Pursuant to privately negotiated contracts, KCST continued to supply school transportation services to KCMSD for the 1987/1988 and 1988/1989 school years. KCST was disbanded in May 1989.

PAR. 12. By engaging in the acts and practices described in paragraphs eight through ten, B & J, Harmon, Pace and KAL have combined or conspired with each other to allocate the KCMSD among themselves, and otherwise to restrain price competition among school bus transportation companies servicing the KCMSD.

PAR. 13. The actions described in paragraphs eight through ten have had the purpose or effect or the tendency and capacity to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By allocating the market for school bus transportation services in the KCMSD;

B. By restraining trade unreasonably and thereby hindering price competition among school bus transportation companies servicing the KCMSD;

C. By depriving the KCMSD of the benefits of competition among school bus transportation companies.

PAR. 14. The conspiracy, acts and practices described in paragraphs eight through ten constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such conspiracy, acts and practices, or the effects thereof, may recur in the absence of the relief herein requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents are corporations organized, existing, and doing business under and by virtue of the laws of the States of Missouri, Florida, or Indiana, with their offices and principal places of business located at the addresses listed in the complaint.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

## ORDER

### I.

For purposes of this order, the following definitions shall apply:

(A) “*B & J*” means B & J School Bus Service, Inc., and its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective successors and assigns.

(B) “*Ryder*” means (1) Ryder Student Transportation Services, Inc.; (2) its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates and related companies engaged in school bus transportation services, now or in the future; (3) all companies or entities created in the future by any of the parent companies of Ryder Student Transportation Services, Inc., which companies or entities are engaged in school bus transportation services; and (4) the respective directors, officers, employees, agents and representatives of any of the entities described in subparagraphs (1), (2) and (3) above.

(C) “*Mayflower*” means Mayflower Contract Services, Inc., its parent, Mayflower Group, Inc., and their predecessors, including, but not limited to, R. W. Harmon and Sons, Inc., and PACE School Bus Service, Inc., successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates involved in

school bus transportation services now or in the future, and their respective directors, officers, employees, agents and representatives, successors and assigns.

(D) “*Respondents*” means B & J, Ryder and Mayflower.

(E) “*Kansas City Area*” means Clay, Platte and Jackson counties in the State of Missouri.

## II.

*It is ordered*, That respondents cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, or soliciting any combination, agreement, or understanding, either express or implied, with any other respondent or other provider or potential provider of school bus transportation services in the Kansas City Area:

1. To submit jointly determined bids or refrain from bidding for school bus transportation services in the Kansas City Area;
2. With respect to price or other terms and conditions relating to school bus transportation services in the Kansas City Area; or
3. To allocate or divide jobs, markets, customers, contracts, or territories for school bus transportation services in the Kansas City Area.

## III.

*It is further ordered*, That for a period of three (3) years after the date this order becomes final respondents cease and desist from directly, indirectly, or through any corporate or other device, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, communicating to:

1. Any other respondent,

2. Any entity that has at any time since 1982 provided school bus transportation services in the Kansas City Area,
3. Any entity that is providing school bus transportation services in the Kansas City Area,
4. Any entity that is known or reasonably should be known to have been requested to provide school bus transportation services in the Kansas City Area, or
5. Any entity that has publicly announced an intention to provide school bus transportation services in the Kansas City Area,

any intentions, decisions, or plans to bid or to refrain from bidding for school bus transportation services for the Kansas City Missouri School District.

*Provided, however,* that paragraph III shall not apply to communications to KCMSD, potential purchasers of substantially all of any respondent's stock or assets, suppliers, vendors, lenders, creditors, landlords, tenants or subcontractors that are limited to the context of the relationship.

#### IV.

*It is further ordered,* That nothing in this order shall prohibit any respondent from:

1. Forming, facilitating the formation of, or participating in any joint venture that is lawful under the antitrust laws; or
2. Subcontracting, preparing joint bids, allocating markets, communicating with respect to price or other terms and conditions, or otherwise jointly undertaking with other providers of school bus transportation services to provide such services where requested to do so in writing by any potential purchaser of those services.

#### V.

*It is further ordered,* That each respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute a copy of the complaint and order to each of its directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area;

B. For a period of three (3) years after the date on which this order becomes final, furnish a copy of the complaint and order to each of its new directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area at the time they are elected, hired, or promoted;

C. Within sixty (60) days after the date on which this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order;

D. For a period of five (5) years after the date on which this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in respondent affecting the provision of school bus transportation services in the Kansas City Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change that may affect its compliance obligations arising out of this order, so far as those obligations relate to the provision of school bus transportation services in the Kansas City Area;

E. For a period of five (5) years after the date on which this order becomes final, notify the Commission within thirty (30) days after the respondent forms or participates in the formation of, or joins any joint venture for the provision of school bus transportation services in the Kansas City Area.

Commissioner Azcuenaga concurring in part and dissenting in part.

STATEMENT OF COMMISSIONER MARY L. AZCUENAGA  
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission decision to issue a complaint against B & J School Bus Service, Inc. (“B & J”), Ryder Student Transportation Services, Inc. (“Ryder”), and Mayflower Contract Services, Inc. (“Mayflower”) for allegedly participating in a conspiracy to allocate the market for school bus services provided to the Kansas City, Missouri School District. Like price fixing conspiracies, agreements among competitors to rig bids and allocate markets are *per se* unlawful. *Addyston Pipe and Steel Co. v. United States*, 175 U.S. 211 (1899). The *per se* prohibition against market allocation and bid rigging is not a novel or exotic theory, but has been a central tenet of antitrust law for nearly a century.

I dissent from the decision to limit the effectiveness of the core prohibitions of the accompanying consent order (“Order”) to a small three-county area of Missouri, termed the “Kansas City Area” in the Order. Section II of the Order prohibits the respondents from conspiring to submit joint bids, to fix prices, or to allocate the market for school bus transportation services only in the Kansas City Area. The Order does nothing to prohibit price fixing, bid rigging, or market allocation outside this small geographic area.

Ryder Student Transportation Services, Inc. is an affiliate of Ryder Systems, Inc., and Mayflower Contract Services, Inc. is an affiliate of Mayflower Group, Inc. Complaint, paragraphs 2, 3. B & J is a local concern. *Id.* paragraph 1. The Order’s geographic limitation means that a repeat conspiracy violation by the two national companies outside the three Missouri counties would not violate the Order. In that event, the Commission could not seek civil penalties, and the only remedy would be to seek another prospective order. Indeed, if Mayflower or Ryder exits this tiny geographic market, the Order will impose no restriction on its conduct.

The conduct alleged in the complaint is plainly unlawful. To secure the benefits of competition, the Kansas City, Missouri School District solicited bids to provide school bus services in six designated areas for three school years, beginning with the 1984/1985 school year. Complaint paragraph 7. Instead of submitting competitive bids, the four local companies that had previously provided school bus service signed an agreement, styled as a joint venture, to submit a joint bid for all service areas and to divide the territory among themselves. Complaint paragraph 8. The so-called joint venture was named Kansas City School Transportation (KCST) and was awarded the contract to provide school bus service for five of the six designated areas. Complaint paragraph 10. As alleged in paragraph nine of the complaint, KCST did not involve any substantial integration of operations, nor any substantial pooling of capital, nor any substantial sharing of financial risk. It provided no new or more efficient services. In short, the joint venture can aptly be characterized as a sham or cover for an illegal conspiracy.

Mayflower and Ryder were not parties to the original agreement, but they acquired local bus companies that were participants in the conspiracy. As alleged in paragraph nine of the complaint, Mayflower or an affiliate acquired one of the local bus firms in 1984, the same year as the unlawful agreement, and acquired a second one in 1985. Ryder or an affiliate purchased a Kansas City bus company in 1986. Although the complaint makes no allegation concerning Mayflower's or Ryder's knowledge of or ratification of the original unlawful agreement, the timing of the acquisitions shortly after the formation of KCST raises a reasonable ground for suspicion that the acquiring firms would have acquainted themselves with the activities of KCST. Nonetheless, I need not base my concern about Ryder's and Mayflower's participation in KCST on mere suspicion because the complaint alleges that KCST continued to supply school bus services to the Kansas City Missouri School district until it was disbanded in May 1989, well after the acquisitions. Complaint paragraph 11. Ryder and Mayflower did

not disassociate themselves from the conspiracy, but instead continued to participate in KCST.

Regardless of whether Ryder and Mayflower expressly or implicitly ratified the original three-year agreement, extensions of the same arrangement for the school years 1987/1988 and 1988/1989 were negotiated after Ryder and Mayflower acquired the local bus companies, as alleged in paragraph eleven of the complaint. This allegation tends to confirm Ryder's and Mayflower's involvement in the conspiracy.

It is unusual for the Commission to uncover a flagrant violation of the antitrust laws, and acceptance of a narrowly circumscribed order sends the wrong signal to corporations that may be inclined to ignore these laws. The unlawfulness of conduct, such as market allocation, bid rigging and price fixing, does not depend on the structure and characteristics of a particular geographic market. Although orders in merger cases, for example, are drafted to provide relief in the particular product and geographic market in which competition is affected, the same approach to drafting a remedy does not apply in cases of *per se* illegality, because the conduct is unlawful whenever and wherever it occurs. When the Commission finds bid rigging, market allocation or price fixing, it should take strong action to prohibit the participants from repeating the violation. In a case such as this one, in which there are no special circumstances indicating that the Kansas City Area is uniquely susceptible to market allocation or bid rigging, I see no basis for limiting the Order to this area. This Order, limited to three counties in Missouri, hardly amounts to a slap on the wrist. I hope that it does not signal a new leniency to *per se* violations of the antitrust laws.

Complaint

116 F.T.C.

IN THE MATTER OF

COLLINS BUICK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
TRUTH IN LENDING ACT, THE CONSUMER LEASING ACT,  
REGULATION Z AND THE FEDERAL TRADE COMMISSION ACT

*Docket C-3426. Complaint, May 10, 1993--Decision, May 10, 1993*

This consent order prohibits, among other things, a Kentucky auto dealership and its principal operating officer from misrepresenting -- in advertising any extension of consumer credit or any consumer lease -- the financing or other terms of the advertised transaction, and from violating certain provisions of the Truth in Lending Act or the Consumer Leasing Act.

### *Appearances*

For the Commission: *David Medine, Carole L. Reynolds and Beverly R. Childs.*

For the respondents: *Randall Gardner, Barowitz & Goldsmith, Louisville, KY.*

### COMPLAINT

The Federal Trade Commission, having reason to believe that Collins Buick, Inc., a corporation, and William Kevin Collins, individually and as an officer of the corporation, hereinafter sometimes referred to as respondents, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1661, as amended, and its implementing Regulation Z, 12 CFR 226, the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and alleges: