

STATE OF MAINE

BUSINESS & CONSUMER COURT

Cumberland, ss.

BO-CO, INC., d/b/a MAINE-LY
ACTION SPORTS



Plaintiff

v.

Docket No. BCD-CV-12-66

POLARIS SALES INC.

Defendant

POWER EQUIPMENT PLUS, INC.,

Plaintiff

v.

Docket No. BCD-CV-12-67

POLARIS SALES INC.

Defendant

TRI-SPORTS, INC.,

Plaintiff

v.

Docket No. BCD-CV-12-68

POLARIS SALES INC.,

Defendant

DECISION AND JUDGMENT

These actions are brought by three Maine dealers in sports mobile products¹ manufactured and distributed by Defendant Polaris Sales Inc. ("Polaris"), in order to prevent

¹ Sports mobile products include all-terrain vehicles (ATVs) and other off-road vehicles typically purchased and used for recreational purposes, as well as snowmobiles and personal watercraft.

Polaris from authorizing a fourth Maine dealer to sell a line of Polaris off-road vehicles known as Ranger side-by-sides.

Their claims arise under a Maine statute, the Personal Sports Mobile Business Practices Act (“the Act”), 10 M.R.S. §§ 1241-1250-K (2013), that permits existing sports mobile dealerships to challenge, by means of a court proceeding, a manufacturer’s decision to add a new dealership or, as in this case, to authorize an existing dealer to sell an additional line of products.

The three plaintiffs, Bo-Co, Inc., doing business as Maine-Ly Action Sports (MAS); Power Equipment Plus, Inc. (PEP), and Tri-Sports, Inc., have established Polaris dealerships located in Oxford, Sidney and Topsham respectively. All three currently sell Polaris Ranger side-by-sides as well as other Polaris products. The fourth dealer is Central Maine Powersports (CMP), located in Lewiston. Like the three plaintiffs, CMP is a well-established Polaris dealer, but unlike them, it is not currently authorized to market and sell Polaris Ranger side-by-sides. What precipitated these cases is that Polaris has notified the three plaintiffs that it intends to authorize CMP to sell side-by-sides along with the Polaris products it currently sells. Each of the three plaintiffs filed a timely action contesting Polaris’s plan.

The three cases were handled and tried together. During the trial, all parties presented evidence in the form of sworn testimony and exhibits. After the trial, the parties presented argument in the form of legal memoranda as well as proposed findings of fact and conclusions of law. Thereafter, counsel for the parties presented oral argument.

Based on the entire record, the court adopts the findings of fact and conclusions of law set forth in this Decision and Judgment. Except where expressly stated otherwise, all findings of fact are made by a preponderance of the evidence. This Decision and Judgment analyzes the evidence within the appropriate legal framework as follows:

- section I LEGAL FRAMEWORK discusses the Act primarily in terms of the burden of proof and the six factors that the court is directed to consider, along with any others the court deems relevant
- section II FACTS COMMON TO ALL PLAINTIFFS sets forth findings regarding Polaris, Polaris's relationship with its dealers and the various programs that Polaris offers dealers; the Ranger product, Polaris's analysis of the market for Rangers, Polaris's proposal to allow an existing dealer who competes with the three plaintiffs to sell Polaris Ranger side-by-side vehicles, and other matters common to all three plaintiffs
- sections III, IV and V each focus on one of the three plaintiff dealers, and specifically on whether that plaintiff has shown good cause not to permit Polaris proceed with its plan to allow the fourth dealer begin selling Polaris Ranger side-by-sides
- section VI summarizes the court's conclusions as to proof of cause not to permit Polaris to proceed with its plan, both as to each of the three plaintiffs individually and as to the three plaintiffs collectively.

Although the court's findings and conclusions in all three cases are consolidated into this Decision and Judgment, the court has considered and decided each case separately and independently as to each of the plaintiff dealers. However, the court has also evaluated the cases in terms of the three dealers as a group. Regardless of which approach is applied, the court's ultimate conclusion is the same.

This Decision and Judgment concludes plaintiff dealers have not met their burden to show that Polaris should not be permitted to authorize the fourth dealer to sell side-by-side vehicles.

I. LEGAL FRAMEWORK

1. In 1997, the Maine Legislature enacted the Personal Sports Mobile Business Practices Act to regulate a personal sports mobile manufacturer's ability to establish or expand dealerships in Maine. On its face, the Act balances protection of existing dealers and promotion of the public interest. Among the stated legislative goals of the Act are:

- To acknowledge "that a vast disparity of bargaining power exists between" dealers and manufacturers, and that "[d]ealers must rely solely on the manufacturer for the

right to sell and acquire” the goods they sell. Legis. Rec. H-1091 (May 23, 1997).

- To protect the investment of any Maine dealer that “invests a significant amount of resources in establishing a dealership and securing a franchise.” *Id.*
- To protect Maine dealers from the manufacturer’s power to “creat[e] □ another dealership unreasonably close to the existing dealer.” Legis. Rec S-1133 (May 23, 1997).

2. On the other hand, the Act also recognizes that the establishment of new dealerships can “increase competition and therefore be in the public interest.” 10 M.R.S. § 1244(2)(E).

3. The Maine Act is one of several around the country that regulate the establishment or expansion of dealerships by personal sports mobile manufacturers such as Defendant Polaris. See e.g., La. R.S. § 32:1270.10 (Acts 2012, No. 326, §1); Mass. Gen. Laws ch. 93B, § 6 (Amended by Acts 2012, c. 152, § 7, eff. 10/16/2012).

4. The procedure established by the Maine Act, and followed by the parties in this case, begins with the manufacturer—Polaris in this case--notifying existing dealers of its intention to establish or expand a dealership. The Act requires the manufacturer to send notice to all of its existing dealers within what the Act defines as the “relevant market area” (RMA) of the proposed new or expanded dealer. The Act defines a dealer’s RMA in terms of a circle with the dealer’s location at the circle’s center point. By definition, a dealer’s RMA has “a radius of 15 miles around an existing dealership in the following cities: Augusta, Auburn, Bangor, Biddeford, Brewer, Falmouth, Lewiston, Portland, Saco, South Portland, Waterville and Westbrook” and “a radius of 30 miles around all other existing dealerships.” 10 M.R.S. § 1244.

5. In this case, CMP’s RMA as defined by the Act overlaps with the RMAs of all three plaintiff dealers, so, as required by the Act, Polaris sent them notices of its intention to

allow CMP to begin selling Polaris Rangers. All three plaintiff dealers are currently authorized to sell side-by-sides.

6. After receiving the notice, a dealer may initiate an action to prevent the manufacturer from implementing the action described in the notice. The three plaintiffs each commenced a timely challenge to Polaris's proposal to allow CMP to sell side-by-side vehicles.

7. The Act provides that when a dealer files a complaint to prevent the manufacturer from authorizing a new dealership or, as in this case, from authorizing an existing dealership to sell a new (to that dealer) line make, "the manufacturer may not establish or relocate the proposed new personal sports mobile dealership until a hearing has been held on the merits, nor thereafter *if the court determines that there is good cause for not permitting the proposed new personal sports mobile dealership.*" 10 M.R.S. § 1244(1) (emphasis added).

8. By framing the ultimate question for the court as being whether there is good cause not to permit the contemplated establishment or extension of a dealership, section 1244 of the Act places the burden of persuasion upon the plaintiff dealer. The three plaintiffs in these cases acknowledge and accept their burden of proof.

9. The Act guides the court in determining whether good cause not to permit the manufacturer's proposed action has been shown, by identifying six factors that the court is to consider, along with any other factor that the court deems relevant:

In determining whether good cause has been established for not entering into or relocating an additional dealership for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to:

- A. The permanency of the investment of both the existing and proposed new personal sports mobile dealers;
- B. The effect on the retail new personal sports mobile business and the consuming public in the relevant market area;
- C. Whether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established;

D. Whether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area, including the adequacy of personal sports mobile sales and service facilities, equipment, supply of personal sports mobile parts and qualified service personnel;

E. Whether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest; and

F. The effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate.”

10 M.R.S.A. § 1244(2).

10. The range of factors is sufficiently focused yet broadly worded to encompass most, if not all, of the considerations, *pro* and *con*, that might be implicated by a manufacturer’s plan to establish or expand a dealership in an area populated by existing dealers. In this case, the parties have not identified any “existing circumstances” that are not in some way subsumed within the six factors identified by the Legislature as mandating consideration.

11. The six statutory factors have to be weighed separately with regard to each plaintiff, because each plaintiff has the burden of proof on its own claim under the Act. However, the Act is silent as to whether, when multiple dealers bring separate actions in opposition to the same notice of intent issued by the manufacturer and the actions are tried together, the court should consider the plaintiff dealers’ proof together, as well as separately, in determining whether there is good cause not to permit the proposed action. In theory, the evidence relating to an individual plaintiff dealer might be insufficient to show good cause, but the evidence cumulated as to all plaintiff dealers might be sufficient. In other words, a negative impact that would not rise to good cause because it affects only one plaintiff dealer might be given more weight, to the point of showing good cause, because it is shown similarly to affect other dealers.

12. In addition, the six statutory factors plainly should be given a consistent legal interpretation as to each and all of the plaintiff dealers, so a prefatory analysis of the factors is appropriate.

13. Factor A on its face calls for the court to evaluate the “permanency of the investment of both the existing and proposed new personal sports mobile dealers.” The presumed legislative purpose is to focus on the effect of the manufacturer’s proposed action on permanently established businesses. On its face, Factor A calls for the court to consider the permanency of the investment made, not just by the three plaintiffs in their businesses, but also by CMP in its business.

14. Because the evidence indicates that CMP’s permanent investment in its business is no less substantial than that of any of the plaintiffs, Factor A does not favor the plaintiffs nearly as much as it likely would were Polaris proposing to establish an entirely new dealership with no history of permanent investment. Plaintiffs do have an investment in Polaris Ranger inventory (units, parts and accessories) specifically, whereas CMP does not. However, investment in inventory arguably cannot be considered “permanent” in the sense that an investment in land, buildings, fixtures is. Plaintiffs point to the fact that CMP’s owner evidently resides out of state, whereas the owners of the plaintiff dealerships are all Maine residents, the implicit argument being that the permanent investment of an out-of-stater in a dealership may not deserve as much consideration under the Act as the permanent investment of a Maine resident. However, this factor seems designed to focus the court less on where the dealership owner resides than on the extent to which the owner has invested in permanent jobs, a permanent location and a permanent business presence in Maine. Viewed in that light, for purposes of Factor A, each plaintiff has shown a permanent investment that merits

consideration, but not as much as it would were CMP a start-up enterprise rather than an existing dealership with a substantial permanent investment of its own.

15. Factor B calls for the court to consider “the effect on the retail new personal sports mobile business and the consuming public in the relevant market area . . .” 10 M.R.S.A. § 1244(2)(B). This factor focuses on the effects of adding or expanding a dealership upon the industry as a whole and on consuming public within “the relevant market area” (RMA), without identifying whether the RMA in question is that of the plaintiff dealer or the proposed new dealer, or both. Because the statute clearly calls for the court to consider the impacts of the manufacturer’s proposed action on nearby existing dealers as well as the proposed new dealer and the public, the courts opts for a broad reading of Factor B and interprets the phrase “relevant market area” in Factor B to mean the RMA of either the plaintiff dealer or the proposed new or expanded dealer.

16. Factor C—“[w]hether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established”—plainly focuses on the public welfare alone and not at all on the benefit or injury to either the plaintiff dealers or the proposed new dealer. The theoretical benefit to the public welfare of adding a new dealership is more apparent than the theoretical harm. Such a benefit could include the lower prices and enhanced service that often flow from increased competition, as well as the additional jobs and demand for services often associated with the advent of a new business in a community. The potential injury to the public welfare that could ensue from adding a new dealership would arise only when the advent of the new dealership actually diminishes competition and causes loss of jobs by putting existing dealerships out of business. That is exactly the specter raised by the plaintiffs in these cases. They suggest that Polaris’s plan to allow CMP to sell Ranger side-by-

sides will, if implemented, jeopardize their future prospects. However, the effect of allowing CMP to sell Rangers has to be assessed separately as to each plaintiff.

17. Thus, the beneficial effects on the public welfare of allowing CMP to sell Polaris Rangers are basically the same as to all three plaintiffs, but the injurious effects on the public welfare need to be evaluated separately as to each plaintiff.

18. Factor D focuses on whether the existing dealers in the relevant market area “are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area . . .” This factor in some respects overlaps with the previous one, in that adequate competition and convenient service tend to benefit the public welfare, and vice-versa. Factor D obviously has to be assessed separately with respect to each of the plaintiffs. Although which RMA is involved in the analysis is not defined in the statute, it seems plain that the primary focus should be on CMP’s RMA. Whether each of the plaintiffs provides adequate competition and convenient service in those parts of their respective RMAs that do not overlap with CMP’s RMA is less relevant than how they are doing in the areas that CMP would primarily serve.

19. Factor E—“[w]hether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest”—is likewise a partial reformulation of Factor C, and in fact removes any doubt as to whether the Legislature considers increased competition to be in the public interest and, to quote from Factor C, “beneficial to the public welfare.” Moreover, the absence of any reference to RMA in the Legislature’s framing of this factor suggests that the focus needs to be on competition generally as opposed to a particular plaintiff’s or CMP’s RMA.

20. Factor F requires the court to focus directly on “[t]he effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate”—in this case, the

effect on CMP of not being permitted to sell Ranger side-by-sides. Interestingly, there is no counterpart factor requiring the court in express terms to focus on the effect on the plaintiff dealers of permitting CMP to sell Rangers. However, the previous factors all focus on the plaintiff dealers in terms of both their performance as competitors and the effect on them of adding another competitor.

II. FACTS COMMON TO ALL PLAINTIFFS

A. Polaris And The Off-Road Vehicle Market

21. Polaris is a distributor of “personal sports mobiles,” which include snowmobiles, all-terrain vehicles (“ATVs”), and side-by-sides.

22. The “personal sports mobile” industry is also referred to as the powersports industry, while ATVs and side-by-sides are often referred to collectively as off-road vehicles or “ORVs,” and side-by-sides are often referred to as utility vehicles or “UTVs.”

23. A side-by-side is a four- or six-wheeled off-road vehicle, with four-wheel-drive or two-wheel-drive depending on the model, and multi-passenger seating to accommodate between two and six passengers seated side-by-side, again depending on the model.

24. While a side-by-side is legally an ATV under Maine law, 12 M.R.S.A. § 13001, the industry differentiates side-by-sides from traditional ATVs or “four-wheelers,” which are smaller and accommodate multiple passengers only by allowing passengers to sit behind the driver on the same seat, as on a motorcycle, instead of side-by-side. To distinguish them from side-by-sides, the traditional ATVs are hereinafter referred to as simply ATVs.

25. Polaris first began selling side-by-sides in 1998, making it a far newer product than ATVs, which have been manufactured and sold for much longer.

26. Polaris manufactures its side-by-sides under the brand names Ranger and Ranger RZR.

27. The Ranger segment includes up to 22 different models, including limited editions, which increases to up to 40 different models when color, engine type, and other options are factored in. The Ranger RZR segment represents Polaris' race-inspired line of side-by-sides, and is delineated by up to 16 different models, including limited editions, which increases to up to 24 different models when color and other options are factored in. Polaris also offers a youth Ranger RZR model. Polaris Rangers and Ranger RZRs are hereinafter collectively referred to simply as "Rangers."

28. Polaris markets its ATVs and side-by-sides together as off-road vehicles, because ATV consumers generally also fall within the target demographic for side-by-sides. However, the Polaris ORV sales in recent years have trended strongly toward side-by-sides as opposed to ATVs. Between 2005 and 2012, Polaris ATV sales have dropped by approximately 50% in Maine as well as nationally, as ORV consumers have increasingly shifted from ATVs to side-by-sides. Consumers may enter the ORV market by purchasing ATVs because the least-expensive ATVs are generally more affordable than the least expensive side-by-sides, but often move to side-by-sides when able.

29. Ranger sales at Maine dealerships were over seven times greater in 2012 than in 2005. Nationally, sales of Polaris Rangers greatly outnumber sales of Polaris ATVs.

30. The reasons for the market trend toward side-by-sides include:

- The side-by-side demographic is broader and includes some consumers who would not otherwise be interested in the purchase of an ATV.
- Polaris side-by-sides incorporate additional features as standard equipment that are not generally found on ATVs such as seat-belts, roll bars, head rests, safety nets or doors, and the option of windshields. For some ORV consumers, particularly the older demographic, side-by-sides offer a more comfortable and familiar ride because of the seating position of the riders and the fact that the controls resemble those of an automobile – a steering wheel for directional control and pedals for gas and brake.

- Side-by-sides are generally used on the same trails as ATVs, with a few exceptions due to the slightly greater width of the average side-by-side. However, Polaris manufactures and sells Ranger RZR models that are 50 inches wide and therefore able to be ridden on all the same trails as ATVs. (Trial Exhibit M34 at pp. 223–24.)
- The typical riding season for ATVs and side-by-sides is generally the same, but side-by-sides are capable of comfortable year-round use with the addition of cab systems, heaters, and/or snow tracks. Some ATVs are also capable of accommodating such accessories, but they are much less common on ATVs.
- Side-by-sides generally offer more utility value than ATVs, as Ranger models feature cargo boxes and ample storage space, and readily incorporate other accessories such as trailer hitches, plows, and winches.

31. The side-by-side has become a crucial if not essential part of a successful dealership's business in the off-road vehicle market because consumers generally prefer side-by-sides to ATVs, and because ATV owners often evolve into side-by-side customers.

32. The pervasive ORV market trend in favor of side-by-sides generally and Rangers in particular confers a distinct advantage on Polaris dealers who can offer customers the opportunity to purchase from Polaris's two Ranger segments. In addition to the profit on the sale of a Polaris side-by-side, a dealer authorized to sell Polaris side-by-sides can also benefit substantially from being able to sell parts, garments and accessories ("PG&A") to those side-by-side customers. A dealer can realize a 30-40% gross profit margin on sales of PG&A, as compared to the 7-12% gross profit margin associated with the sale of the side-by-side itself.

33. Conversely, Polaris dealers who cannot sell Rangers are at a significant disadvantage in the ORV market. They may have developed a substantial customer base through ATV sales over the years, but they risk losing those customers when the customers are interested in purchasing side-by-sides.

B. The Relationship Between Polaris And Its Dealers

34. The relationship between Polaris and its dealers is essentially a franchise relationship, although dealers are not assigned exclusive territories. Polaris dealers are not

“captive” in the sense that they are limited to selling Polaris products; they are free to enter into franchise agreements with competitors of Polaris, and in fact two of the three plaintiffs—PEP and Tri-Sports—are dealers for competitors of Polaris. This fact means that the plaintiffs, like other Polaris dealers, have flexibility in responding to changing business conditions, including the advent of another Polaris dealer within or near their RMAs.

35. The Polaris representative who is in most frequent contact with Polaris dealers is the district sales manager (DSM), whose duties include assisting dealerships in increasing sales and in understanding and taking advantage of Polaris’ sales programs and techniques. Maine is a separate district and has its own DSM assigned to work with the Maine Polaris dealers.

36. The DSM visits the dealers in his or her particular district on a regular basis to discuss operational issues, review inventory, listen to complaints, and make suggestions designed to increase a dealership’s sales and profit. For example, during an onsite visit, the DSM may review the dealership’s current offering of PG&A and make suggestions to improve it, which is significant for dealership profitability as PG&A often produces a higher profit margin for the dealership.

37. The DSM keeps notes of dealer visits and interactions in documents entitled “Dealer Business Plan: Action Items,” which are maintained separately by Polaris for each dealership and which can be accessed by the dealerships to which they pertain. (*See, e.g.*, Trial Ex. M9 at p. 3.)

38. Polaris provides each dealer with a separate website portal that provides the dealer with ordering tools, access to ordering history, access to Polaris’ written policies and programs, and other important information for a dealer to have and use to maximize sales and profit.

39. Polaris holds dealer meetings and pays for dealers to attend, and also Polaris provides both in-person and remote trainings for dealers and dealership staff on a number of topics, at no charge to the dealer.

40. Polaris works with dealers to establish retail plans, and provides in-depth reporting and analysis to dealers on their sales activity to help them better understand and focus their sales efforts. For example, Polaris provides dealers with sales leads generated by traffic to Polaris' website and other marketing efforts by Polaris. Polaris provides dealers with sales training and consumer-traffic tracking programs to assist the dealers in meeting retail demand in their markets. For these programs to be effective, dealers actually have to use them, meaning that there needs to be prompt follow-up on sales leads, and a dealer needs to input consumer traffic data in order to obtain a meaningful analysis.

41. Polaris has developed and implemented an inventory management program referred to as the Max Velocity Program ("MVP"). The MVP is designed to enhance retail and ensure that a dealer maintains appropriate and sufficient inventory to meet retail demand in its market.

42. When determining what product should be allocated to a dealership, the MVP takes into account a dealership's current inventory by product type, down to the specific model and color, as well as a dealership's historical sales figures including information on when products are typically sold at the dealership. The effectiveness of the MVP depends in part on dealers to use it and provide the information that the program relies on to help meet their needs.

43. Two requirements of the MVP program are that dealers register warranties with the MVP system promptly after the sale of a unit, and that dealers maintain lines of credit

sufficient to enable maintenance of a reasonable level of inventory so that walk-in customers have floor models to view.

44. Polaris learns of the sale of a unit only when a dealership warranty registers it, which, according to Polaris' warranty registration policy and the dealer's agreement with Polaris, should occur within three days of the retail delivery of the unit to the end consumer. A dealership that does not register warranties on a timely basis not only violates Polaris' policies and dealership agreement, but also interferes with the proper functioning of MVP, which in turn affects a dealer's inventory allocations and shipments of products to the dealer.

45. Likewise, for a dealership not to maintain an adequate line of credit violates its dealership agreement with Polaris but also will interfere with the property functioning of the MVP system, which in turn affects a dealer's inventory allocations and shipments of products to the dealer. For example, if Polaris Acceptance – a separate financing company – places the dealer on “credit hold,” Polaris must cancel that dealer's orders to the extent they exceed the available line of credit.

46. When dealers take delivery of new power sports equipment, they are typically provided a period of “free flooring,” which is a period during which dealers are not required to pay interest on the units they have in inventory. For side-by-sides and ATVs, dealers may receive up to six months of free flooring depending on whether they order the number of units allocated to them through the MVP system.

47. According to Polaris' expert and its Regional Sales Manager, Polaris' flooring terms are among the most generous in the industry.

48. At trial, the plaintiff dealers expressed concern that if CMP is authorized to sell Rangers, the plaintiffs' ability to order and obtain Rangers will be limited. They suggested

that, even without CMP being added as a Ranger dealer, they occasionally have difficulty obtaining Rangers. However, the evidence did not substantiate their contention.

49. According to Polaris' expert, who works with dealers for a number of manufacturers, it is unusual for Polaris dealers to complain that they cannot obtain enough product from Polaris for sale to the end retail customer. Dealers are generally more concerned with having too much product. Prior to Polaris moving to the MVP system, dealers would often complain that they had too much inventory, as they would sometimes have trouble selling units during the free flooring period and would therefore have to begin paying interest on unsold units. This was a primary reason that Polaris moved to the MVP system, as MVP permits dealers to order more frequently – depending on the volume of a dealer's sales – and therefore maintain lower inventory levels which means they are less likely to have to pay interest.

50. In July 2012, Polaris instituted a practice regarding ordering as Polaris sought to provide more clarity to dealers as to when they would receive product and to set expectations about what product would not be shipped to dealers. Except for orders for units marked "pre-sold" by a dealer and orders that fulfill a segment stocking requirement, Polaris will cancel the order if, after a total of eight weeks, it cannot provide a dealer with an estimated shipment date. However, after an order is cancelled, a dealer who still needs the item may resubmit the order without "losing its place in line."

51. It is not typically desirable or reasonable for a dealer to stock one of every model; rather, dealers typically attempt to stock a representative array of models from different segments in order to give customers a general idea of the features and options available. If a customer then desires a particular unit that is not in inventory, the dealer may either order the unit as a "pre-sold" unit – which gives the order priority in Polaris ordering system – or the

dealer may locate the unit at another dealership and transfer the unit using Polaris' transfer system.

52. Since Polaris does not cancel segment stocking orders, an order cancellation actually indicates that a dealership has inventory in the same segment as the cancelled order. At trial, it was demonstrated that on those occasions where the Plaintiffs had received cancellation notices from Polaris, the Plaintiffs in fact had the same or similar models in stock as the cancelled orders, and therefore were able to fulfill sales to clients seeking those particular models and did not lose sales.

53. Moreover, Polaris also maintains a system that allows dealerships to transfer products from one dealership to another in order to assist dealers in getting timely access to a wide range of product types to ensure they can consummate sales. The Polaris transfer system provides dealers with access to information about the location of all inventoried Polaris side-by-sides in the country. When a dealer is working with a customer who desires a particular model and/or color that the dealer does not have in stock at the time, the dealer's access to the location of all units in the nation allows the dealer to be able to locate the desired unit and to request the transfer of that desired unit to the dealer's location so that the dealer can complete the retail sale of that desired unit. Polaris DSMs assist dealerships in locating particular products to transfer from other dealerships in order to facilitate the process, including at times personally delivering the unit to the dealership at no charge to the dealer.

54. One of the major arguments advanced by the three plaintiffs against allowing CMP to enter the Ranger side-by-side market is that the plaintiffs already have difficulty ordering and obtaining from Polaris sufficient Rangers to meet market demand. However, the evidence substantiated this contention only with regard to MAS, which indeed had had to obtain significant quantities of side-by-sides from other dealers to meet customer demand. PEP

and Tri-Sports, in contrast, have not moved inventory quickly or experienced difficulty getting side-by-sides to sell. Even as to MAS, the vehicle transfer system among Polaris dealers has helped compensate for any difficulty in ordering side-by-sides from Polaris. Between the MVP system and the transfer system, the plaintiffs have generally been able to obtain the Rangers their customers need. In fact, Tri-Sports acknowledged that it had not lost sales due to any order cancellations, as it either had units in stock or were able to transfer in the units desired by customers in order to satisfy sales. Thus, the evidence did not reveal any chronic, substantial inability on the part of the plaintiff dealers to obtain Rangers.

C. The Current Market Opportunity For Rangers, And Polaris' Local Market Opportunity Areas

55. Despite the popularity of Rangers, Polaris competes vigorously with other manufacturers of side-by-sides and other ORV products. As part of its effort to improve its share of the side-by-side market, Polaris continuously analyzes its own and its competitors' sales of ORV vehicles, notably ATVs and side-by-sides. The market shares sales data for ATVs but not for side-by-sides.

56. Based on Polaris's analysis of potential sales in each dealer's market area, Polaris sets sales goals for its dealers. Polaris uses a formula to quantify potential sales or, to use Polaris's term, "market opportunity," as follows: (A) Polaris takes the total number of ATVs sold by all manufacturers in a designated market area; (B) multiplies this figure by its target ATV market share of 44%, which is only 2% above Polaris' actual ATV market share in Maine of 42%; (C) multiplies the result by the expected Ranger to ATV ratio, which in this case is 143%; and (D) subtracts the current sales of Rangers in the designated market area, with the result being an estimation of the potential additional sales opportunity in that area.

57. Both parties' experts, Amanda Blackstone and Gordon Wisbach, support the use of a ratio of side-by-side sales to ATVs to identify and measure a market opportunity for future and/or additional sales of side-by-sides.

58. Specifically, Mr. Wisbach testified that using the ratio of side-by-side sales to ATV sales was the next logical step because the industry does not share side-by-side sales data as it does ATV sales data.

59. Ms. Blackstone supports Polaris' use of the 143% ratio because it is based on actual historical sales and is less than the current national ratio, which is over 170%, as noted in her report and at trial.

60. Using the aforementioned formula, Polaris has analyzed the unmet opportunity for Ranger sales in each of the Plaintiffs' 'relevant market areas,' or RMAs, as that term is defined in the Act, 10 M.R.S.A. § 1244(1). In each case, Polaris has concluded that there is a substantial opportunity for additional Ranger sales in the Plaintiffs' RMAs. As to side-by-sides, Polaris projects that, in a fully served market, the sale of Polaris side-by-sides on a national basis should be at least 143% of sales of Polaris ATVs on a national basis. This 143% side-by-side to ATV ratio is based on Polaris' actual sales data and the actual national average as of June 30, 2012.

61. However, Polaris's conclusion as to the plaintiffs' RMAs is to a large extent based on an extrapolation of data from its own method of analyzing dealer marketing opportunity.

62. Polaris's method of analyzing market opportunity differs from the statutory RMAS, in that it is not based on geographical distance. For its own analysis of potential sales in each of its dealers' areas, Polaris defines its dealers' marketing areas by "drive time"; in other words, by the average amount of time it would take a person to reach the dealership by car,

instead of by geographic distance, which is how RMAs are defined in the Act. The dealer marketing areas developed and used by Polaris are referred to as Local Market Opportunity areas or LMOs. Polaris generally uses 35-minute or 45-minute drive times for its analyses, depending on where a dealer is located.

63. Thus, whereas the depiction of a dealer's RMA as defined by the Act is a perfect circle with a radius of 15 or 30 miles depending on the dealer's location, the depiction of a dealer's LMO is an irregular geometric figure in which the distance between the center point and every point along the perimeter is defined by drive time, not miles.

64. Because Polaris's position regarding the side-by-side sales opportunity in the plaintiffs' RMAs is based on extrapolating data from a different methodology, the validity of the extrapolation depends on whether the LMO analysis is sufficiently comparable to an RMA analysis to justify extrapolating from one to the other.

65. Logically, drive time and geographical distance are both significant factors in a potential customer's thought process about where to shop. Because a customer's shopping habits are at least in part a function of driving time, using drive time from a dealer's location is a reasonable way to measure a dealer's market. Polaris's use of 35- to 45-minute drive times to evaluate its dealers' marketing opportunity for ORV vehicles such as side-by-sides is a reasonable approach that has support in industry custom and practice. In fact, actual sales data confirms that customers will travel well beyond the limits of the statutorily defined RMAs. For example, CMP's RMA is only 15 miles in diameter but CMP has made sales to customers throughout a significant broader radius from its location in Lewiston.

66. Because of the substantial overlap between the plaintiffs' RMAs as defined by the statute and their LMOs as defined by Polaris, it is reasonable to extrapolate the marketing

opportunity in a dealer's RMA based on Polaris's LMO data, as well as the effects of competition and the overall state of the market within a dealer's RMA.

67. The parties' expert witnesses, Gordon Wisbach and Amanda Blackstone, appear to agree that, whether the plaintiffs' market areas are defined in terms of RMAs or LMOs, there is a significant additional sales opportunity that remains unmet. Mr. Wisbach, for example, concluded that there was a total opportunity of 82 additional Ranger sales in the Plaintiffs' RMAs.

68. The three plaintiffs vigorously dispute Polaris's projection that side-by-side sales in Maine should amount to 143% of ATV sales, or about three side-by-side sales for every two ATV sales. The plaintiffs note that Polaris is using nationwide data that does not necessarily hold true for Maine alone. Plaintiffs suggest the ratio should be closer to equal, or even less than equal, in the 89-90% range.

69. However, recent data limited to Polaris dealers in Maine corroborates Polaris's conclusion that there is a significant unmet marketing opportunity for Rangers in Maine:

- In North America, over 97% of dealerships that sell Polaris ATVs also sell Polaris side-by-sides. In Maine, however, of the 23 Polaris dealerships that sell Polaris ATVs, only 16 – or 69.6% – are currently authorized to sell Polaris side-by-sides as well as Polaris ATVs.
- Maine Ranger dealers sell more Rangers, on average, than Ranger dealers in any other New England state. Maine Ranger dealers sold, on average, 49 side-by-sides per dealer in the 12 months ending January 31, 2012, compared to 43 for New Hampshire dealers, 33 for Vermont dealers, 29 for Massachusetts dealers, 17 for Connecticut dealers, and 11 for Rhode Island dealers. Even if CMP became the 17th Ranger dealer in Maine, the Maine average would be 46. This is still higher than any other New England state.
- Moreover, in 2012, these 16 Maine Polaris dealers sold a total of 565 Polaris ATVs and a total of 784 Rangers, which represents a ratio of 139% of Ranger sales to Polaris ATV sales. This demonstrates that, at those Maine dealers that can sell Rangers, the actual side-by-side to ATV ratio is very close to the 143% expected ratio that Polaris uses to measure opportunity.

- The Ranger-to-ATV ratio in Maine has increased steadily since at least 2005, and the Plaintiffs and their expert agree that trend is likely to continue. Polaris side-by-side sales are expected to continue to grow while ATV sales are expected to continue to decline, the prevailing market trend since 2005.

70. Focusing specifically on the LMO around CMP, which overlaps with the plaintiffs' RMAs and LMOs, side-by-side sales are 67% of Polaris' goal for ATV sales and, therefore, far below Polaris' expectation of 143% in a fully served market. Thus, whereas the unmet marketing opportunity is statewide, there is some evidence that it is greater in the region around Lewiston than on some other parts of the State.

71. Based on all of the foregoing facts, Polaris has plainly substantiated its position that there is a significant unmet marketing opportunity for Rangers generally, and specifically within the plaintiffs' and CMP's respective RMAs as defined by the Act. If that unmet opportunity does not equate to the 143% ratio of side-by-side to ATV sales espoused by Polaris, it is far closer to that number than to the 90% ratio urged by the plaintiffs.

72. Before this case was commenced, and before notifying the plaintiffs of its intent to authorize CMP to sell Rangers, Polaris approached the three plaintiff dealers proposals and plans for increasing their "market penetration" into CMP's LMO. Polaris's motivation for doing so is somewhat in contention. The dealers plainly view Polaris's overtures as window-dressing aimed less at helping the plaintiffs and more at taking away some of the argument against allowing CMP into the Ranger market, whereas Polaris characterizes its outreach as an effort to address what Polaris has identified as a significant unmet market opportunity for side-by-side sales without adding a new competitor to the equation. By and large, there is little evidence that Polaris's effort, however motivated, made any real difference for any of the three plaintiffs. Polaris's proposals and ideas would all have involved a significant expenditure of time and energy, and in some cases, money, that the plaintiff dealers claim not to have available, especially for projects with dubious prospects of success. Thus, whether due to dealer

indifference or due to flaws in Polaris's plans and ideas, Polaris's overtures were for naught and do not figure further in the analysis.

D. Polaris's Proposal To Authorize Central Maine Powersports To Sell Rangers

73. Polaris's position that CMP should be authorized to sell Ranger side-by-sides involves three major premises, all of which found substantial support in the evidence:

- First, in a variation on a "rising tide lifts all boats" type of argument, Polaris says that allowing CMP to sell Rangers will not only *not* harm the plaintiff dealers in the ways they fear, but based on recent experience, may actually enhance their sales.
- Second, Polaris says that CMP is positioned to take advantage of the unmet sales opportunity
- Third, Polaris says that allowing CMP to sell Rangers will be of substantial benefit to consumers

Each of these arguments is addressed in turn.

74. Polaris's "rising tide lifts all boats" theory is that allowing CMP to sell Rangers will not harm the plaintiffs and may even benefit them by raising consumer awareness and confidence in the brand. Polaris's experience with another Maine dealer that recently began selling Rangers lends significant support to the "rising tide" hypothesis.

75. On March 8, 2012, West-Port Motorsports in Westbrook, Maine ("West-Port") became authorized to sell Polaris side-by-sides. Prior to becoming authorized to sell Polaris side-by-sides, West-Port sold Polaris ATVs and snowmobiles, Victory motorcycles (also owned by Polaris), and Ski-doo snowmobiles.

76. Like CMP, West-Port is in the RMAs of three other Polaris dealerships: Wescott & Sons in Gorham ("Wescott") 11.3 miles from West-Port; F.M. Abbott Power Equipment (aka Abbott's Power Equipment) in East Waterboro, Maine ("Abbott"); and Plaintiff Tri-Sports.

77. Between March 8, 2012 and December 31, 2012, after West-Port began selling side-by-sides, Wescott, Abbott and Tri-Sports all sold more side-by-sides than they did during the same period in 2011. Wescott sold 28 side-by-sides during this period in 2012 versus 20 side-by-sides during the same period the prior year, an increase of 40% year-over-year. F.M. Abbott sold 41 side-by-sides during this period in 2012 versus 33 side-by-sides during the same period the prior year, an increase of 24% year-over-year. Tri-Sports sold 21 side-by-sides during this period in 2012 versus 20 side-by-sides during the same period the prior year, an increase of 5% year-over-year.

78. As measured by drive time, Tri-Sports is closer to West-Port than it is to CMP.

79. Cumulatively, Ranger sales at Westport and the other dealers in its RMA increased at a greater rate than the overall state average, demonstrating that the growth experienced by these dealerships was not simply a result of the overall growth in the Maine market. (*Compare* Trial Ex. M30 *with* Trial Ex. M12.

80. Between 2005 and 2008, five existing Polaris dealers were allowed to add Rangers in addition to the 11 then existing Ranger dealers, including one in 2006, one in 2007, two in 2008, and one in 2012. Sales of Polaris Rangers continued to climb significantly after those line adds, and the number of Ranger sales per dealer is far higher today than in any year between 2005 and 2008.

81. Thus, the sales data before and after the addition of Ranger dealerships does support Polaris's position that authorizing CMP to sell Rangers is unlikely to cause the economic harm to the Plaintiffs that they fear.

82. If the focus narrows to CMP's own LMO—the area in which CMP is most likely to sell Rangers if it is authorized, side-by-side sales are 67% of Polaris' goal for ATV sales, suggesting that there are substantial Ranger sales to be made, as noted above. Since CMP's

LMO overlaps substantially with the LMOs and RMAs of the plaintiffs, CMP's vigorous marketing efforts may well lift the plaintiffs along with CMP.

83. Polaris's position also rests on the likely benefit to consumers to having a vigorous competitor enter the Ranger market in south central Maine.

84. In 2005, the current owner of Central Maine Powersports ("CMP") acquired Schott's, an existing dealership selling Yamaha, Honda, Polaris, and Harley Davidson products under one roof. The purchase price was \$3.5 million, of which \$500,000 was allocated to the Yamaha, Honda, and Polaris franchises – in other words, to the portion of the dealership that is now CMP. The new owner decided to separate the business into two separate dealerships – one for Harley Davidson and the other for Polaris, Yamaha and Honda – with separate buildings for each. He spent approximately \$500,000 to accommodate the changes and renovate the buildings.

85. CMP's main showroom area is expansive and occupies approximately 16,000 square feet, and is well stocked with ATVs, motorcycles, snowmobiles, and a wide array of garments and accessories for use by ORV consumers.

86. CMP employs 22 people currently, and more at certain times of the year.

87. CMP works with approximately 30 lenders to provide financing to consumers interested in the purchase of powersports equipment, which is far more than any of the Plaintiffs, and which significantly increases the chances that CMP will be able to provide financing to consumers on reasonable terms.

88. CMP advertises extensively, spending approximately \$120,000 per year in advertisement and promotional activities. CMP calculates that it spends approximately \$400 in advertising and promotional activity per customer who comes into its showroom.

89. CMP also focuses on service after the sale and building customer loyalty in hopes of generating repeat business. It organizes numerous events for its customers, such as group rides.

90. There is no question that CMP is a formidable competitor, but it does not compete on price alone, or even primarily on price, as its significant margin on new unit sales indicates. Thus, plaintiffs' concerns about being undercut on price are not substantiated. Instead, CMP's competitive efforts focus on advertising, which as noted, tends to promote the brand and thereby indirectly benefit all sellers of the brand; and service, during and after the sale, as well as customer loyalty.

91. CMP sells Honda and Yamaha side-by-sides, but sold only approximately 8 units total in 2011 and 12 units total in 2012, due to the fact that Polaris dominates the market and neither Honda nor Yamaha offer close to the quality or array of products that Polaris does. CMP has not been successful in persuading customers interested in a Ranger to purchase a Honda or Yamaha side-by-side instead, due to the undisputed superiority of the Ranger over competing manufacturers. As a result, customers interested in Rangers often have to be referred to another dealership. Such an occurrence results not only in the loss of a sale of a particular unit for CMP but also in the loss of a customer relationship that would provide revenue and profit for years to come. CMP is the top-selling Polaris ATV dealer in Maine.

92. Thus, within a couple of years of acquiring the dealership, as the ATV market declined and Ranger sales at other dealerships increased, CMP asked Polaris for authorization to sell Rangers. Polaris did not immediately acquiesce in CMP's request. Instead, Polaris approached the three plaintiffs with suggestions for how they could increase their own penetration in terms of Ranger sales into CMP's LMO, thereby capturing some of the unmet

sales opportunity that Polaris had identified as existing in that area. Those efforts and their outcome are discussed below.

93. Finally, Polaris points to CMP's relatively central location in arguing that allowing CMP to sell side-by-sides would provide more consumer choice, more competition and more convenience to consumers. Again, the data provides support to Polaris's position.

94. CMP's 15-mile radius RMA extends to Leeds, Maine to the North, to Litchfield Corner, Maine to the East, to West Durham, Maine to the South, and to Oxford, Maine to the West. CMP's LMO is not a circle like its RMA and is larger than its RMA and extends to Livermore, Maine to the North, to Litchfield, Maine to the East, to Sebago, Maine to the South, and to Oxford, Maine to the West.

95. Although CMP's RMA and its LMO overlap with the RMAs and LMOs of the three plaintiffs, only MAS is actually located within CMP's RMA and LMO, and barely within, at that. Thus, a Lewiston resident would have to travel about 15 miles with a drive time of approximately 35 minutes to shop for a Polaris side-by-side at MAS, and would have to travel 18 miles with a drive time of over 35 minutes to shop at Tri-Sports in Topsham. The same customer would have to travel nearly 40 miles – with a drive time of over 40 minutes – to shop at PEP in Sidney.

E. The Statutory Factors As They Relate To CMP

96. As noted in the initial discussion of the six factors enumerated in the Act, some of them relate specifically to the proposed new dealer—CMP in this case. Some observations regarding the evidence relating to CMP can be made, in connection with the statutory factors.

97. For purposes of Factor A—"permanency of investment"—plainly CMP's investment is as permanent and substantial as that of any of the three plaintiffs. Were CMP not an existing and substantial dealership, the permanency of investment factor would plainly

favor the plaintiffs in meeting their burden. But because CMP's investment is permanent and substantial, this factor does not weigh in favor of the plaintiffs.

98. For purposes of Factor B—"the effect on the retail new personal sports mobile business and the consuming public in the relevant market area"—the "rising tide lifts all boats" evidence that Polaris has submitted suggests that for CMP to begin selling Rangers would benefit not only the consuming public in the RMAs of the three plaintiffs and CMP, but perhaps even the plaintiff dealers in terms of enhanced visibility, brand awareness and, ultimately, increased sales.

99. A similar analysis obtains as to Factor C—"whether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established"—in that CMP is plainly a vigorous competitor and would enhance consumer choices and thus, inferentially, "the public welfare" if allowed to enter the Ranger market.

100. Factor D—"whether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care" plainly does not involve CMP and is specific to each plaintiff. Thus, Factor D is analyzed as to each plaintiff separately in the sections below.

101. Factor E—"whether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest." For reasons similar those for Factor C, the addition of CMP, a vigorous competitor, would increase competition.

102. Factor F focuses on "the effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate." CMP will survive and thrive as a business whether or not it is allowed to sell Rangers, but it is unquestionably losing potential sales by not being able to offer Rangers.

103. Thus, the evidence regarding CMP as it relates to Factors A, B, C, E and F, tends to support Polaris's position and not that of the three plaintiffs. However, as noted previously, the determination as to whether the plaintiffs have met their burden to prove good cause not to permit CMP to sell Rangers has to be made separately and distinct as to each plaintiff. The foregoing analysis of the statutory factors as they relate to CMP will figure in the determination of whether each plaintiff has met its burden, and should be deemed incorporated by reference into each of the three sections that follow.

III. THE CLAIM OF MAINE-LY ACTION SPORTS

A. Findings Regarding MAS

104. MAS has been a Polaris dealer since 1995, and has seven full-time employees and one part-time employee. James Bowden Sr. and his wife own almost all of BO-CO, Inc., which owns and operates MAS. James Sr., his wife, son, and daughter all work full time at MAS. Unlike the other two plaintiffs, MAS only sells Polaris products and therefore the Bowden family totally relies on Polaris sales for its livelihood. However, MAS has been consistently profitable over the years, thanks in recent years to its success in competing for the sale of side-by-sides.

105. MAS's facility is in a highly visible location on the main north/south route in the Oxford area, and MAS has a "very loyal customer base."

106. In 2002, MAS voluntarily terminated its ability to sell Polaris side-by-sides due to a perceived lack of consumer demand at that time. MAS suggested that it relinquished its side-by-side business under pressure from Polaris, but that suggestion lacks support either in the record or in logic. In 2004 and 2005, as consumer demand began to grow for Polaris' side-by-sides, MAS sought the ability to again sell Polaris side-by-sides, and with the support of the

DSM covering Maine at that time, Nick Vosinek, Polaris allowed MAS to resume selling Polaris side-by-sides in 2005.

107. MAS currently sells Polaris ATVs, side-by-sides, snowmobiles and motorcycles, which are sold under the brand name Victory. MAS also sells three-wheeled motorcycles referred to as Trikes. MAS also sells new and used trailers, used cars and used motorcycles.

108. Polaris's own data shows MAS to be a strong competitor. MAS was the largest overall Polaris dealer in Maine as of September 26, 2012. Among Maine Polaris dealers, Polaris's 2012-13 data indicates MAS ranked first or second in overall Polaris sports mobile sales and second in Ranger sales in the district of Maine. Similarly, MAS's PGA sales place it well above average among Maine dealers. MAS also ranks at or near the top of all Polaris dealers in Maine in terms of financial services criteria, such as extended warranty sales and credit applications. Of the dealers for whom Business Plan exhibits are in evidence, only MAS captures more than half the sales of any line make in its RMA. Current data indicates that MAS sells 56% of the side-by-sides, and 55% of Victory motorcycles sold in its RMA.

109. On the other hand, MAS does not take much advantage of the support Polaris offers its dealers, especially in comparison with CMP. In the area of training of service technicians, for example, CMP's technicians are trained at a higher level than MAS's. MAS also does not utilize the methods for monitoring and analyzing customer traffic as CMP does.

110. What clearly emerges from the evidence is that CMP fits Polaris's model of a competitive Polaris dealer better than MAS (or, for that matter, the other two plaintiffs), but that does not mean that MAS is not a strong competitor. Its top rankings among Polaris dealers in Maine speak for themselves. But this cuts two ways. Although it means that MAS satisfies the "adequate competition" factor, it undercuts MAS's claim to be at risk from CMP entering the Ranger market.

111. On the other hand, Polaris's data shows that CMP is competing aggressively for ATV sales in MAS's RMA and LMO, lending credence to MAS's argument that it could lose business if CMP were also allowed to sell Rangers, which has been MAS's strongest segment in terms of sales. For the 12 months ending June 30, 2012, MAS's Ranger sales were 191% of its Polaris ATV sales. For calendar year 2012, the ratio for MAS was 219%.

112. As high as MAS's sales of Rangers have been, however, within MAS's RMA however, Polaris side-by-side sales were only 83% of Polaris' goal for ATV sales for the 12 months ending June 30, 2012, substantially less than the average. The same holds true for MAS's LMO, where Polaris side-by-side sales are only 80.8% of its goal for ATV sales. These points confirm Polaris's position that there remains a substantial unmet opportunity for further side-by-side sales in MAS's market area, whether defined by the RMA or the LMO. Based on Polaris' formula, there is an opportunity for the sale of 45 additional side-by-sides within MAS's LMO and an opportunity for 111 additional side-by-side sales within MAS's RMA.

113. According to its sell-in report, MAS sold 56.31% of the total number of side-by-sides that were sold in MAS's LMO between September 1, 2011 and August 31, 2012. (Trial Ex. M7 at p. 42.)

114. According to its sell-out report, 59.18% of the side-by-sides sold by MAS were sold within its own LMO, while another 15.30% were sold into areas that are not assigned to any dealer's LMO. The other sales occurred in a number of other LMOs.

115. MAS contends that it already has difficulty obtaining enough Rangers to meet customer demand and would have even more difficulty if CMP is also trying to obtain Rangers to sell. However, the data does not support the contention. In the 24 months between January 2011 and December 2012, MAS's Polaris side-by-side inventory fell below 15 units only once in June 2011, to 12 units, and averaged 20 units.

116. Based on a dealer's rolling 12-month sales ("R12") and inventory level for a given month, Polaris calculates the 'days supply outstanding' or DSO, the number of days at current inventory levels before the dealership would run out of units without any additional shipments. Based on MAS's rolling 12-month sales, these inventory levels gave MAS a DSO that was never below 60 days and was often over 100 days in the 24 months between January 2011 and December 2012. MAS can order Rangers as often as every two weeks, because MAS's strong side-by-side sales put it in the most-frequent MVP ordering cycle.

117. Polaris has provided sufficient supply to MAS since 2005 to support MAS's 1350% increase in side-by-side sales in that period, and the 73% increase in MAS's side-by-side sales in a single year, from 2011 to 2012.

118. When MAS has not had in stock a particular model or color, on many occasions, MAS has made use of the ability to locate units held by other dealerships, has sought the transfer of the desired unit and has received the desired unit from another dealership. MAS successfully utilized the transfer system on 28 occasions in 2012 to transfer units from other dealerships, in order to consummate retail sales where the customer desired a particular unit that MAS did not have in stock.

119. At worst, the impact on MAS of Polaris's plan to allow CMP to sell Rangers will be to slow or stop the phenomenal growth in MAS's sales of Rangers, and at best, CMP's aggressive advertising and promotion efforts will benefit all Polaris dealers in CMP's general vicinity. James Bowden, Sr. forthrightly acknowledged that MAS can and does compete with CMP MAS will be able to compete against CMP in terms of price and customer service in the ATV market and will be able to do likewise in the side-by-side market.

B. Analysis Of MAS's Claim In Light Of The Statutory Factors

120. Considering the six statutory factors, the court finds and concludes that MAS has not met its burden to prove good cause not to permit CMP to sell Polaris Ranger side-by-sides:

- The evidence relevant to Factor A, which focuses on “permanency of investment”—is largely neutral and does not significantly weigh in favor of MAS, given that MAS and CMP both have substantial permanent investments in their businesses. However, the fact that MAS's investment is focused entirely on Polaris products whereas CMP's covers a variety of makes and lines, if this factor tilts either way, it is in favor of MAS.
- The evidence relevant to Factor B, on balance, weighs against MAS's position. For CMP to be allowed to sell Rangers will enhance convenience to consumers in the Lewiston/Auburn area, and, if Polaris's experience with West-Port holds true here, it may enhance overall sales for all Polaris dealers in the plaintiffs' combined RMAs
- The evidence relevant to Factor C, “[w]hether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established” likewise tends to disfavor MAS. The only injury MAS points to is the potential decline or failure of its own dealership business and a resulting diminution in competition. However, even assuming that harm to competing dealers does affect the “public welfare,” MAS has not shown more than a possibility that allowing CMP into the Ranger market will hurt its business. Polaris's “rising tide” theory, supported by some data, suggests otherwise. Thus, for purposes of this factor, the evidence indicates that benefits to the consumer and to the public generally of introducing a strong competitor into a major (for Maine) market are real and substantial, and they are not outweighed by any potential injury or harm.
- Factor D focuses on “[w]hether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area, including the adequacy of personal sports mobile sales and service facilities, equipment, supply of personal sports mobile parts and qualified service personnel.” Although MAS does not meet Polaris's expectations in terms of training of service personnel and attention to marketing, and although Polaris has shown that there is a significant marketing opportunity for Rangers in MAS's RMA, MAS has proved that it is both competing adequately and providing convenient consumer care. This factor thus weighs in favor of MAS's burden of proof.

- Factor E focuses on “[w]hether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest.” Plainly CMP’s entry into the Ranger market would enhance competition in its own RMA as well as in MAS’s RMA, at least in the short term. The fact that MAS dominates its RMA in terms of side-by-side sales indicates that MAS does not face particularly strong competition in its RMA, at least from any other Polaris dealers. The danger that MAS points to is that CMP will be such a strong competitor that MAS and other Polaris dealers will eventually drop out of the competition, thereby reducing competition over the long term. At least with respect to MAS’s RMA, which is the relevant market area for purposes of its own claim, MAS has not presented persuasive evidence that this danger is more than a speculative possibility. MAS has shown persuasively that CMP could take business away from MAS in the Ranger market, but not to the extent of creating a long-term threat to competition.
- Factor F focuses on “[t]he effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate.” This factor is either neutral or perhaps undercuts MAS’s effort to meet its burden only slightly. The reason why this factor does not deserve much weight is that CMP will certainly survive and likely thrive whether or not it is allowed to sell Rangers. On the other hand, not being allowed does impede CMP’s entry into a growing and profitable market, so there is a negative effect on CMP, but not a hugely substantial one.

121. Among them, the six statutory factors comprehend all of the significant considerations raised by the evidence. Both MAS and Polaris invite the court to focus on further facts and circumstances that seem immaterial or less material to the analysis. MAS, for example, points out that MAS is a family-run business owned by Maine residents, whereas an out-of-state investor owns CMP. While not entirely irrelevant, at least to the permanency of investment factor, CMP and its owner seem as fully committed to doing business in Maine as MAS. Similarly, Polaris draws many comparisons between CMP and MAS that are intended to disfavor MAS, and the court likewise sees little substance to those distinctions. The reality is that there are many recipes for success in business—the recipe that CMP follows differs from the one MAS follows, but they are both successful in their spheres, yet neither has fully tapped the available market, according to Polaris’s analysis.

122. For these reasons, the court does not identify any significant “existing circumstances” for purposes of section 1244(2) beyond those subsumed within the six statutory factors. Considering the record as a whole, the court finds and concludes that, although MAS presents by far the strongest and best case among the plaintiffs, MAS has not proved for purposes of section 1244(2) that there is good cause not to permit CMP to begin selling Polaris Ranger side-by-sides.

IV. THE CLAIM OF POWER EQUIPMENT PLUS

A. Findings Regarding PEP

123. PEP was incorporated in 1992 and operates from a conveniently located facility on a major state road and close to the interstate highway in Sidney, Maine. PEP’s owner, Randy Violette, has been involved since the company’s inception, and he works full-time at the company.

124. PEP sells a variety of lawn and garden and power sports products, including Polaris ATVs, side-by-sides and snowmobiles; Stihl leaf blowers, chainsaws and string trimmers; Husqvarna leaf blowers, string trimmers, chainsaws, snow blowers, tractors and generators; Honda generators, lawnmowers and string trimmers; Floe docks and trailers; Ram log splitters; Bobcat tractors and UTVs; and an array of used equipment. PEP has the smallest showroom of the three Plaintiffs, but has a large driving area and a large enclosed warehouse to store product.

125. PEP has six employees, including Mr. Violette. Besides him, there are a parts manager, two technicians, one office/administrative employee and one “set up” person, whose job it is to prepare products for retail sale. PEP has no designated service manager, but Mr. Violette himself covers much of the function a service manager might perform.

126. As is the case with MAS, PEP does not fit the Polaris model of what a Polaris

dealer should be in the way that CMP does. PEP spends more than \$25,000 per year on advertising, but it does not track or record customer data in any way, including through using the Polaris software available for those purposes. PEP also does not have any system or process for sales. Still, PEP has been profitable: its 2011 gross revenues from all sales (including non-Polaris items) was \$1,219,923.9 with a 25.07% gross profit of \$408,633.45.

127. Polaris's criticisms of PEP's dealership practices, or lack thereof, and its perceived shortcomings are somewhat better founded and more relevant to the statutory analysis than Polaris's criticisms of MAS. At trial, PEP's witness, Mr. Violette, appeared to lack a clear understanding of Polaris's MVP inventory ordering and control system, and he also appeared, as the owner of PEP, to be unable or unwilling to comply with Polaris's policies and requirements in at least two significant respects, regarding submittal of warranty information on newly purchased ORVs and regarding performance of warranty work for customers.

128. Although Mr. Violette expressed concern about being able to order and obtain an adequate supply of side-by-sides from Polaris, the evidence did not support the concern. It emerged that he was under a misunderstanding about how frequently PEP can submit orders through Polaris's MVP system, and also that PEP has ordered less than Polaris has recommended to maintain adequate inventory in the showroom. Admittedly, PEP's limited ordering may be justified by the fact that it has limited display place, but it undercuts PEP's claim about not having adequate access to side-by-sides when needed. Also, PEP's inventory data indicates it always had substantial unsold inventory in recent years—between January 2011 and December 2012, PEP always had at least 7 Polaris side-by-sides in its inventory with an average of 12 units in inventory.

129. . Lastly, PEP's side-by-side sales grew threefold between 2005 and 2012, and perhaps could have grown more had PEP sought to move inventory more aggressively. Thus,

the evidence did not indicate that PEP's ability to make sales of Polaris side-by-sides or other ORVs was at all constrained by any difficulty in ordering or obtaining the vehicle.

130. Polaris requires its dealers to submit warranty information on every Polaris vehicle sold at the time of sale. The submission serves two purposes—it enables the warranty information to be registered, and it tells Polaris that the vehicle has been sold. Polaris's MVP program depends on timely submittal of warranty registration to enable it to track dealer inventory in a timely and accurate manner, which in turn is needed to facilitate transfers between dealers and other purposes. Polaris also depends on up-to-date warranty registrations to assure that the owners of vehicles under warranty receive timely safety, recall and similar information.

131. PEP has repeatedly been caught holding warranty registrations well after the vehicles in question have been sold. The motive for doing so is to take improper advantage of special sales promotion programs involving cash back, discounts and other incentives for dealers to pass along to customers. Such incentives are meant to apply to sales during the time the program is in effect, not to sales that have occurred previously. Thus, not coincidentally, holding onto a warranty registration enables a dealer to conceal the fact of a sale from Polaris and to time the submittal of the warranty registration during a subsequent incentive program, so as to receive funds that the dealer is not entitled to.

132. After receiving a written warning, in 2012, Mr. Violette again held warranty registrations in order to take improper advantage of Polaris programs and gain an undeserved financial benefit.

133. Between 2003 and 2008, PEP also received written warnings from Polaris because customers had informed Polaris that PEP had refused to perform warranty work at no cost to the customer and because it was charging customers an administrative fee for warranty

repairs in violation of its dealer agreement with Polaris. At trial, Mr. Violette indicated that this was indeed the case. PEP also charges customers for oil and other consumables used in the performance of warranty repairs, again in violation of Polaris policies.

134. Like MAS, PEP has experienced significant growth in its sales of Polaris side-by-sides in recent years: sales increased threefold between 2005 and 2012, from eight vehicles per year to 24 per year.

135. PEP's RMA extends 30 miles in all directions--north to Skowhegan, east to Appleton, south to Wiscasset, and west to Jay. PEP's RMA also encompasses Waterville and Augusta, among many others. There are no other Ranger dealers in the Augusta area.

136. CMP's facility is about 27 miles from PEP's facility, meaning that CMP is within PEP's RMA, which extends 30 miles in all directions, but PEP's facility is not within CMP's RMA, which has a 15-mile radius.

137. Neither PEP nor CMP is in the other dealership's LMO. To the extent drive time is a factor in consumer shopping practices, the fact that the two LMOs are discrete and do not overlap implies that the extent of actual head-to-head competition may be limited. In fact, however, the sales patterns identified by Polaris's own LMO data suggests that, even if a 35-minute drive time accurately reflects how far consumers might drive to make average purchases, they are prepared to go much further when shopping for major purchases such as side-by-sides.

138. Recent side-by-sides sales data for PEP's RMA and LMO indicates a significant untapped sales opportunity. Based on Polaris' formula, there is an opportunity for the sale of 61 additional side-by-sides within PEP's LMO and an opportunity for 133 additional side-by-side sales within PEP's RMA. Under the plaintiffs' recalculation of the formula based on Maine data, the opportunity is smaller but still significant.

139. Although PEP's sales of both side-by-sides and ATVs increased significantly year-over-year between 2011 and 2012, PEP is not a particularly strong competitor with other Polaris dealers such as CMP and MAS either within its own LMO or outside it. Between September 1, 2011 and August 31, 2012, there were 97 side-by-sides sold to consumers who reside within PEP's LMO, with PEP selling only 21 or 21.64% of them. Similarly, just 16% of the Polaris ATVs and only 4% of the Polaris snowmobiles sold in PEP's LMO are sold by PEP. Of the 26 total side-by-sides sold by PEP between September 1, 2011 and August 31, 2012, 21 or 80.76 % were sold within PEP's own LMO.

B. Analysis Of PEP's Claim In Light Of The Statutory Factors

140. Considering the six statutory factors, the court finds and concludes that PEP has not met its burden to prove good cause not to permit CMP to sell Polaris Ranger side-by-sides:

- The evidence relevant to Factor A, which focuses on “permanency of investment”—is neutral and does not weigh in favor of PEP, given that PEP and CMP both have substantial permanent investments in their businesses.
- The evidence relevant to Factor B, on balance, weighs against PEP's position. For CMP to be allowed to sell Rangers will enhance convenience to consumers in the Lewiston/Auburn area, and, if Polaris's experience with West-Port holds true here, it may enhance overall sales for all Polaris dealers in the plaintiffs' combined RMAs
- The evidence relevant to Factor C, “[w]hether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established” likewise tends to disfavor PEP. The only injury PEP points to is the potential decline or failure of its own dealership business and a resulting diminution in competition. However, even assuming that harm to competing dealers does affect the “public welfare,” PEP has not shown more than a possibility that allowing CMP into the Ranger market will hurt its business. Polaris's “rising tide” theory, supported by some data, suggests otherwise. Moreover, there are currently no Polaris dealers in the greater Augusta area besides PEP. Thus, for purposes of this factor, the evidence indicates that benefits to the consumer and to the public generally of introducing a strong competitor into a major (for Maine) market are real and substantial, and they are not outweighed by any potential injury or harm.

- Factor D focuses on “[w]hether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area, including the adequacy of personal sports mobile sales and service facilities, equipment, supply of personal sports mobile parts and qualified service personnel.” PEP appears not to be as committed to competing in order to attract customers or as committed to serving existing customers as either MAS or CMP. However, the statutory standard is “adequate”—not a very high bar, so on balance the evidence indicates PEP is adequate, although its evident practice of charging customers for what should be warranty work performed free of charge to the customer detracts from its performance.
- Factor E focuses on “[w]hether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest.” Plainly CMP’s entry into the Ranger market would enhance competition in its own RMA as well as in PEP’s RMA, at least in the short term. The danger that PEP points to is that CMP will be such a strong competitor that PEP and other Polaris dealers will eventually drop out of the competition, thereby reducing competition over the long term. The evidence does not suggest that PEP is in such jeopardy—first, CMP’s entry could benefit all dealers as Polaris projects, and second, PEP has not shown that CMP’s entry into the Ranger market will put PEP’s very existence at risk. Finally, the evidence clearly suggests that PEP could take steps to meet the competition beyond what it is doing—by availing itself of the support Polaris provides to dealers in such areas as effective advertising and tracking customer patterns.
- Factor F focuses on “[t]he effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate.” This factor is either neutral or perhaps undercuts PEP’s effort to meet its burden only slightly. The reason why this factor does not deserve much weight is that CMP will certainly survive and likely thrive whether or not it is allowed to sell Rangers. On the other hand, not being allowed does impede CMP’s entry into a growing and profitable market, so there is a negative effect on CMP, but not a hugely substantial one.

141. Among them, the six statutory factors comprehend all of the significant “existing circumstances” raised by the evidence. Both PEP and Polaris invite the court to focus on further facts and circumstances that seem immaterial or less material to the analysis, and they do not need to be explored here.

142. For these reasons, the court does not identify any significant considerations or issues beyond those subsumed within the six statutory factors. Considering the record as a

whole, the court finds and concludes that PEP has not proved for purposes of section 1244 that there is good cause not to permit CMP to begin selling Polaris Ranger side-by-sides.

V. THE CLAIM OF TRI-SPORTS, INC.

A. Findings Regarding Tri-Sports

143. Tri-Sports, Inc. (“Tri-Sports”) is a Polaris dealership located in Topsham, Maine, near the major intersection of Routes 196 and 201. The business dates back to 1974, as a partnership between Frank Swenson and two business partners. In 1980, after a few years away from the business, Mr. Swenson returned and bought out his partners. He and his wife incorporated Tri-Sports, Inc. in 1980, and they remain the joint owners of the business.

144. Tri-Sports sells the following products: Polaris ATVs, side-by-sides, and snowmobiles; Honda ATVs, motorcycles, dirt bikes, and scooters; Suzuki ATVs, motorcycles, dirt bikes, and scooters; MotoGuzzi motorcycles; Piaggio scooters; and Vespa scooters. Tri-Sports also sells used cars.

145. Tri-Sports’ building was built in the 1970s, but has been significantly expanded several times since then. Today it includes approximately 4050 square feet of showroom space.

146. Tri-Sports has eight full-time employees, including a general manager, a parts manager, a service manager three service technicians, and two part-time employees. Mr. Swenson’s son, along with Mr. Swenson, work at Tri-Sports.

147. Like other businesses in the Brunswick-Topsham area and beyond, Tri-Sports’s business was hurt by the gradual closing of the Brunswick Naval Air Station (BNAS) during 2009-2011, not to mention the national recession that extended through those years. Although those setbacks negatively affected all off-road vehicle dealerships in southern Maine, they could have had more of an impact on Tri-Sports, because much of its natural customer base would have been associated with BNAS.

148. On the other hand, Polaris points out that another power sports dealer in Topsham, Woody's Performance Center, a Yamaha dealership, is one of the most successful Yamaha dealerships in the state, despite enduring the same conditions Tri-Sports has endured. Polaris suggests that one explanation for Woody's success is that its facility has excellent visibility from the road and extensive road-side product displays, whereas Tri-Sports is located down a long driveway and is not visible from a major thoroughfare.

149. Moreover, the data suggests that any residual effect that the closing of BNAS has had on off-road vehicle sales in the Brunswick-Topsham area has somewhat dissipated: more total ATVs, snowmobiles and motorcycles are sold in Tri-Sports' RMA than in the RMAs of MAS or PEP, although it is true that side-by-side sales in Tri-Sports's RMA lag those in MAS's and PEP's RMA's by as much as a third.

150. Like the other plaintiffs and in contrast to CMP, Tri-Sports does not utilize very much of the support that Polaris provides dealers in such areas as analyzing the effectiveness of advertising, as well as monitoring and analyzing customer traffic and other patterns. Tri-Sports does not invest substantially in advertising or sponsoring activities aimed at attracting new customers or maintaining existing customers. In the area of service, the Tri-Sports technicians are not certified under Polaris's MSD program. On the other hand, the Tri-Sports technicians have many years of experience, and there is nothing in the record to suggest that the lack of MSD certification has negatively affected service.

151. Unlike MAS and PEP, Tri-Sports did not advance, at least in any vigorous way, the argument that it was unable to obtain adequate quantities of side-by-sides to meet its customers' needs. Mr. Swenson's testimony implied that Tri-Sports does not attempt to compete with other Polaris dealers such as MAS or CMP on price, leaving the impression that

Tri-Sports is selling about as many Rangers and ATVs as it wants to, despite the fact that MAS and CMP both make significant sales into Tri-Sports's LMO.

152. Polaris's data also indicates that, despite year-to-year increases in ATV and side-by-side sales, Tri-Sports is not a vigorous competitor, even against other Polaris dealers, both within and outside its LMO. The most recent sell-in reports show Tri-Sports sells only 23.5% of the Polaris ATVs sold in its LMO, only 12.5% of the Polaris snowmobiles sold in its LMO, and only 28.4% of the Rangers sold in its LMO. According to the recent sell-out reports, Tri-Sports makes fewer than 10% of its Ranger sales to customers located outside of its LMO. Tri-Sports also sold only 13% of the Polaris snowmobiles and 24% of the Polaris ATVs sold in its own LMO. For the period from September 1, 2011, to August 31, 2012, CMP alone sold more Polaris ATVs to consumers in Tri-Sport's LMO than Tri-Sports itself sold.

153. A factor that has perhaps hampered Tri-Sports's ability to compete with other Polaris dealers is that Tri-Sports has been on "credit hold" with Polaris because Tri-Sports has not kept current on its payments to Polaris. A dealer on "credit hold" cannot order on credit, but can still attempt to meet customer demand by obtaining vehicles for customers on transfer from other dealers. Were Tri-Sports selling side-by-sides in volume as MAS has been, a credit hold could interfere significantly with sales, but because Tri-Sports's sales have been more modest, the credit hold has not had a major impact. Tri-Sports has seen significant recent increases in its side-by-side and ATV sales, suggesting that the credit holds have much less effect than Polaris suggests.

154. Based on Polaris's 143% projection of potential side-by-side sales as a ratio to ATV sales, formula, there is an unmet market opportunity of 45 additional side-by-sides within Tri-Sports' LMO and 125 additional side-by-side sales within Tri-Sports' RMA. Although the

plaintiffs dispute these figures, their own counter-analysis, as set forth in their proposed findings, indicates an unmet opportunity of smaller proportions.

155. Tri-Sports's witness, Mr. Swenson, was forthright in acknowledging that, although Tri-Sports might lose some side-by-side business to CMP, for CMP to enter the Ranger market would not jeopardize Tri-Sports's ability to stay in business. The evidence as a whole supports this analysis—Tri-Sports occupies a niche in which it is relatively comfortable, involving a significantly more modest sales and service effort. It is likely to retain the niche it has, and thus stands to be less at risk from CMP's entry into the Ranger market than, for example, MAS, which admittedly is at risk of selling significantly fewer side-by-sides than it would without CMP as a competitor. But even as to MAS, as noted above, the risk is not so much that overall sales will decline steeply, but that they will flatten out.

B. Analysis Of Tri-Sports's Claim In Light Of The Statutory Factors

156. Considering the six specified statutory factors, the court finds and concludes that Tri-Sports has not met its burden to prove good cause not to permit CMP to sell Polaris Ranger side-by-sides:

- The evidence relevant to Factor A, which focuses on "permanency of investment"—is neutral and does not weigh in favor of either CMP or Tri-Sports, given that Tri-Sports and CMP both have substantial permanent investments in their businesses.
- The evidence relevant to Factor B, on balance, weighs against Tri-Sports's position. For CMP to be allowed to sell Rangers will enhance convenience to consumers in the Lewiston/Auburn area. CMP's substantial ATV sales within Tri-Sports's RMA suggest that customers in the RMA are already traveling to Lewiston for off-road vehicle products and services, and that the opportunity to shop at CMP for Ranger side-by-sides will promote consumer convenience. Moreover, if Polaris's experience with West-Port holds true here, it may enhance overall sales for all Polaris dealers in the plaintiffs' combined RMAs
- The evidence relevant to Factor C, "[w]hether it is injurious or beneficial to the public welfare for an additional new personal sports mobile dealership to be established" likewise tends to disfavor Tri-Sports. As noted above, Tri-

Sports has not argued that allowing CMP to sell Rangers will cause Tri-Sports substantial harm. Thus, for purposes of this factor, the evidence indicates that benefits to the consumer and to the public generally of introducing a strong competitor into a major (for Maine) are not outweighed by any potential injury or harm.

- Factor D focuses on “[w]hether the new personal sports mobile dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the personal sports mobiles of the line make in the market area, including the adequacy of personal sports mobile sales and service facilities, equipment, supply of personal sports mobile parts and qualified service personnel.” Tri-Sports is not a vigorous competitor and focuses on more traditional methods for attracting and keeping business than does CMP. On balance, given that statutory standard is “adequate”—not a very high bar—Tri-Sports meets the standards of Factor D, so this factor weighs in favor of Tri-Sports meeting its burden of persuasion.
- Factor E focuses on “[w]hether the establishment of an additional new personal sports mobile dealership would increase competition and therefore be in the public interest.” Plainly CMP’s entry into the Ranger market would enhance competition in its own RMA as well as in Tri-Sports’s RMA, where CMP is already competing vigorously except in the Ranger side-by-side market. The evidence does not suggest that CMP’s entry into the Ranger market will harm Tri-Sports significantly. As to Tri-Sports, therefore, the benefit of enhanced competition is not offset by any significant detriment, and thus quite plainly would serve the public interest.
- Factor F focuses on “[t]he effect on the establishing or relocating dealer as a result of not being permitted to establish or relocate.” This factor is either neutral or perhaps undercuts Tri-Sports’s effort to meet its burden only slightly. The reason why this factor does not deserve much weight is that CMP will certainly survive and likely thrive whether or not it is allowed to sell Rangers. On the other hand, not being allowed does impede CMP’s entry into a growing and profitable market, so there is a negative effect on CMP, but not a hugely substantial one.

157. Among them, the six statutory factors comprehend all of the significant considerations raised by the evidence. There are no significant “existing circumstances” raised by the evidence that are not subsumed in some way by one or more of the six statutory factors.

158. Considering the record as a whole, the court finds and concludes that Tri-Sports has not proved for purposes of section 1244 that there is good cause not to permit CMP to begin selling Polaris Ranger side-by-sides.

VI. CONCLUSION

159. Sections III, IV and V of this Decision and Judgment have evaluated the evidence separately as to each of the plaintiff dealers, and have concluded in each instance that the plaintiff has not demonstrated good cause not to permit Polaris to authorize Central Maine Powersports to begin selling Polaris Ranger side-by-sides. As noted above, however, section 1244 is silent on whether, when the claims of plaintiff dealers are tried together, the court is to evaluate the evidence, not just as to each plaintiff dealer separately, but also as to all plaintiffs as a group. Evidence that might be insufficient to show good cause not to permit the manufacturer's proposed action when considered as to one plaintiff dealer in isolation might acquire additional weight and probative value when considered as to all plaintiffs.

160. The evidence clearly shows that Polaris's proposal to authorize CMP to sell Rangers is likely to affect plaintiff MAS much more substantially than either of the other plaintiffs. The greater impact on MAS stems from the proximity of MAS's facility to CMP's facility, but also from the fact that MAS sells side-by-sides at a much higher volume than either of the other plaintiffs, and thus has more to lose from the entry of a vigorous nearby competitor into the Ranger market. As indicated above, however, MAS's evidence of potential negative consequences to it from CMP's entry is offset by Polaris's evidence that the introduction of a new competitor does not necessarily cost existing dealers sales and might even enhance sales for all. Moreover, if MAS does lose sales to CMP, as does seem likely, the loss is not likely to jeopardize MAS's ability to continue in business, and is much more likely to be felt in terms of a flattening out of the tremendous increases in sales MAS has achieved.

161. In comparison, the other plaintiffs, PEP and Tri-Sports, maintain a lower competitive profile than MAS and sell at significantly lower volumes. They are farther away from CMP and, if they lose sales of side-by-sides to CMP, it will be at relatively low numbers.

162. Thus, the negative effects of allowing CMP into the Ranger market are limited and even speculative. Several of the six statutory factors focus on competition; Factor E, in fact, pronounces increased competition to be in the public interest. The factors also focus on the public welfare, the public interest and consumer convenience. There is no doubt that CMP's entry into the Ranger market will promote competition and consumer convenience in the short term. Plaintiffs argue that the entry of a competitor who drives other competitors out of business is bad for competition and the public interest in the long term. As an abstract proposition, the argument has merit, but it is not substantiated in the evidence. Thus, the clear benefit to competition and consumer convenience reflected in Polaris's proposal is not outweighed or even offset to any significant degree by potential harm to the plaintiffs.

163. Thus, considering the record as to plaintiffs as a group as well as individually, the court concludes that good cause not to permit Polaris's proposed action has not been shown.

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

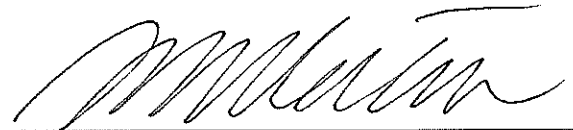
(1) Judgment in the action docketed as BCD-CV-12-66 is hereby granted to, and shall be entered in favor of, Defendant Polaris Sales, Inc. against Plaintiff Bo-Co, Inc. d/b/a Maine-Ly Action Sports, and Defendant is awarded its costs.

(2) Judgment in the action docketed as BCD-CV-12-67 is hereby granted to, and shall be entered in favor of, Defendant Polaris Sales, Inc. against Plaintiff Power Equipment Plus, Inc., and Defendant is awarded its costs.

(3) Judgment in the action docketed as BCD-CV-12-68 is hereby granted to, and shall be entered in favor of, Defendant Polaris Sales, Inc. against Plaintiff Tri-Sports, Inc., and Defendant is awarded its costs.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate this Decision and Judgment by reference in the docket.

Dated September 10, 2013



A. M. Horton
Justice, Maine Business and Consumer Court