

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MC-F-21035

STAGECOACH GROUP PLC AND COACH USA, INC., ET AL.–
ACQUISITION OF CONTROL–TWIN AMERICA, LLC

Decided: March 8, 2011

This decision grants a petition for stay pending resolution of a petition for reconsideration of the Board's February 8, 2011 decision (February 8 decision). In the February 8 decision, the Board denied the application under 49 U.S.C. § 14303 for City Sights Twin and International Business Services (IBS) (a carrier that operates under the Gray Line New York (Gray Line) trade name) to acquire control of a new company, Twin America, LLC (Twin America). The joint venture that formed Twin America¹ merged 2 direct competitors in the New York City tour bus industry. The first co-applicant, IBS,² is a subsidiary under the Coach USA family of motor carriers controlled by Stagecoach that has operated its local service and its interstate charter and tourism services under the Gray Line³ trade name. The second co-applicant, City Sights Twin, is a new entity that took over the operations of City Sights, LLC (collectively, City Sights)⁴ for the purpose of effectuating the joint venture. Collectively, IBS and City Sights are referred to as Applicants. The Board found that, as a combined entity, Twin America possessed excessive market power and, as a result, the agency concluded that the approval of the transaction was not consistent with the public interest.

¹ On November 17, 2009, Twin America became a registered motor passenger carrier (MC-688284).

² IBS is a registered motor passenger carrier (MC-155937).

³ The corporate family of IBS/Gray Line includes Stagecoach Group PLC (Stagecoach), its noncarrier intermediate subsidiaries (Stagecoach Transport Holdings plc, SCUSI Ltd., and Coach USA Administration, Inc.), and Coach USA, Inc. (Coach USA). The Stagecoach/Coach USA group controls numerous passenger carriers throughout the United States. Its umbrella organization, Coach Group, is based in the United Kingdom and operates bus, coach, tram, and train operations throughout the UK as well as the United States.

⁴ Mr. Zev Marmurstein is the managing member of City Sights and the president and chief executive officer of Twin America.

The February 8 decision required Applicants to take steps to comply with the Board's ruling and report to the Board by March 25, 2011, on the steps they have taken. On February 18, 2011, Applicants filed a petition for stay pending resolution of a petition for reconsideration and, in the event the Board denies reconsideration, a petition for stay pending judicial review.⁵ On February 24, 2011, the New York State Attorney General (NYSAG) filed an opposition to the stay request.

DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits (here, of a request for reconsideration); (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) (Holiday Tours); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921 (D.C. Cir. 1958). A stay is warranted in this case.

Applicants claim that they will suffer irreparable harm if they are required to comply with the February 8 decision. Applicants argue that significant resources have been dedicated to repositioning the Gray Line and City Sights brands. Twin America claims that it has: (1) allocated more buses to Gray Line; (2) financed bus purchases for Gray Line; (3) designated ticket sales locations to Gray Line; and (4) reallocated bus stops to Gray Line in order to promote the Gray Line brand. Further, Applicants argue that the operations have been integrated so that Twin America has complete control over Gray Line's operations. If Twin America were to be dissolved, Applicants argue that a new management team would lack knowledge about current operations and marketing conditions, which would put Gray Line at an operational disadvantage. Also, Applicants argue that IBS would incur significant costs, including re-staffing management and operations departments, purchasing new buses and equipment, entering into new leases, and relocating offices. Applicants also claim that dissolution of Twin America puts it at legal and economic risk of breaching various contracts that have been entered into in Twin America's name.

Although the complained-of harm would not have been a concern had Twin America not prematurely merged the Gray Line and City Sights brands, Applicants have shown that the steps required to comply with the Board order prior to Board action on the petition for reconsideration could be unduly disruptive to Gray Line and City Sights, its contractors, and its employees. Unlike many cases, monetary damages would not be available to compensate for losses that could result. Applicants have made a sufficient showing that there is a possibility of irreparable harm to warrant a stay here. Applicants are cautioned, however, to proceed no further with steps to integrate these two companies during the pendency of the petition for reconsideration.

⁵ In support of the petition, Applicants filed Verified Statements of Ross Kinnear (V.S. Kinnear, Feb. 18, 2011) and Professor Robert Willig (V.S. Willig, Feb. 18, 2011).

Applicants also argue that they are likely to prevail on the merits because the Board's economic analysis of the joint venture is flawed. The Board need not determine, however, how likely Applicants are to prevail on reconsideration, because "tribunals may properly stay their own orders when they have ruled on an admittedly difficult legal question and when the equities of the case suggest that the status quo should be maintained." Holiday Tours, 559 F.2d at 844-45. In the February 8 decision, the Board recognized that "the facts that this case presents are not routine," and many of the issues addressed were novel. Also, Applicants have made a case that denial of a stay pending resolution of their petition for reconsideration could impose hardship. Therefore, on balance, the Board concludes that a stay is warranted.

The Board will address Applicants' request for a stay pending judicial review, if necessary, after the petition for reconsideration is resolved.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for stay is granted.
2. This proceeding is stayed pending the Board's resolution of Applicants' petition for reconsideration of the February 8 decision.
3. This decision is effective on its date of service.

By the Board, Daniel R. Elliott, Chairman.