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SERVICE DATE - DECEMBER 4, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33431

COACH USA, INC., AND K-T CONTRACT SERVICES, INC.--CONTROL AND MERGER EXEMPTION--GRAY LINE TOURS OF SOUTHERN NEVADA

Decided: November 20, 1997

On July 23, 1997, Coach USA, Inc. (Coach), a noncarrier in control of 28 motor passenger carriers at the time it filed the petition at issue in this proceeding,[1] and K-T Contract Services, Inc. (K-T), a motor carrier of passengers wholly owned by Coach (collectively, petitioners), filed a petition under 49 U.S.C. 13541 for an exemption from the prior approval requirements of 49 U.S.C. 14303 to acquire control of Gray Line Tours of Southern Nevada (Gray Line) and to merge Gray Line into K-T.[2]

Notice of the exemption petition was served and published in the Federal Register on August 22, 1997 (62 FR 44748). A copy of the notice was also served on the Antitrust Division of the U.S.

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[1] Coach currently controls the nation's second largest group of motor passenger carriers. See Coach USA, Inc.--Control Exemption--America Charters, Ltd., STB Finance Docket No. 33393 (STB served Oct. 3, 1997), slip op. at 1. See also Coach USA, Inc. and Leisure Time Tours--Control and Merger Exemption--Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway--Wagar, Inc., STB Finance Docket No. 33428 (STB served Nov. 13, 1997, corrected decision served Nov. 13, 1997). In addition to the instant petition, Coach has two other pending exemption petitions: Coach USA, Inc,--Control Exemption--Air Travel, Inc., Airlines Acquisition Co. Inc., and Transportation Management Services, Inc., STB Finance Docket No. 33471 (STB filed Oct. 7, 1997), in which it seeks to acquire control of three additional motor passenger carriers; and Coach USA, Inc.--Control Exemption--Browder Tours, Inc. and El Expresso, Inc., STB Finance Docket No. 33506 (STB filed Oct. 31, 1997), in which it seeks to acquire control of two additional motor passenger carriers.

[2] Although an immediate merger is not anticipated, Coach and K-T seek approval at this time to avoid another transaction before the Board because they anticipate that Coach may at some future stage decide to merge Gray Line into K-T to obtain or enhance certain operational and administrative efficiencies.

Department of Justice. No comments have been filed in response to the notice. Based on our review of the record, we will grant the exemption.[3]

BACKGROUND

Coach is a Delaware Corporation. It is not a regulated carrier but controls 28 motor carriers of passengers that hold interstate operating authority, as well as several non-federally regulated bus and taxicab companies. Among the carriers controlled by Coach is K-T.

K-T is a Nevada-based motor carrier of passengers (MC-218583) acquired by Coach in November 1996. In addition to interstate authority, it holds intrastate authority issued by the Nevada Public Service Commission. K-T operates a fleet of approximately 125 buses with 1995 annual revenues estimated at $16.9 million. K-T specializes in charter and contract bus service in the Las Vegas, NV area and charters between Las Vegas and points in nearby states. K-T also conducts some regular route operations in Nevada and between points in Nevada and Arizona.

Gray Line (MC-127564) is headquartered in Las Vegas, and operates a fleet of 112 buses with 276 employees.[4] Gray Line focuses its operations on airport/hotel services in the Las Vegas area and sightseeing/tour services in Nevada and nearby states. Gray Line does not conduct any regular route operations. Gray Line is registered with the Federal Highway Administration, holds a satisfactory safety rating from the U.S. Department of Transportation, and is not domiciled in Mexico or owned by a citizen of that nation.[5]

Gray Line is not affiliated with any other regulated carrier. Its stock has been held by Henry F. Burroughs, The James and Janis Burroughs Trust, and the McCammack Family Trust.[6] Fiscal

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[3] On October 10, 1997, petitioners filed a request for expedited action and a decision by October 31, 1997. The petition offers a variety of reasons why expedited action is necessary here. Petitioners, however, have failed to show that their petition is more worthy of prompt action than the pending cases which Coach wishes to supersede by preferential treatment. Accordingly, we are denying petitioners' request and have decided this case in the normal course. As discussed later, we will, however, make the exemption effective on the service date of this decision.

[4] Petitioners state that unless and until any merger is effectuated between K-T and Gray Line, the latter will continue, following the acquisition of its stock, to provide bus services in its own name, and no certificates or other operating permits will be transferred from one entity to another in consequence of the control transaction.

[5] Gray Line also holds intrastate operating authority rights issued to it by the Nevada Public Service Commission.

[6] According to petitioners, pending Board action on this petition Gray Line's stock is

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1996 revenues were approximately $17 million, over 80% of which were earned in connection with Gray Line's airport transfer and sightseeing services.

According to petitioners, Gray Line competes vigorously with several other Las Vegas area passenger carriers for airport transfer and sightseeing operations that form the core of its business. It does not compete with K-T in any of these areas because K-T does not provide such services. Gray Line has only limited charter service, so there is no significant competition with K-T, which has more significant charter operations. Petitioners add that several other Las Vegas area carriers also provide charter services.

Petitioners assert that, as a result of the proposed acquisition, Gray Line and its customers will achieve substantial benefits. Among the benefits they foresee are savings in interest costs stemming from restructuring debt and reduced operating costs resulting from Coach's enhanced volume purchasing power. According to petitioners, the carrier to be acquired would also benefit from the lower insurance premiums that Coach has negotiated and from volume discounts for equipment and fuel. Petitioners state that Coach will provide its carriers with centralized legal and accounting functions and coordinated purchasing services. In addition, petitioners state that Coach will arrange sharing of vehicles to ensure maximum use and efficient operation of equipment. Petitioners indicate that Coach intends to provide coordinated driver training services to enable its carriers to allocate driver resources in the most efficient manner possible, and plans to centralize marketing and reservation services for the bus firms it controls. Finally, petitioners state that collective bargaining agreements with carrier employees will be respected and that employee benefits will improve.

According to petitioners, Coach plans to acquire control of additional motor passenger carriers in the coming months. They assert that the financial benefits and operating efficiencies that began with the acquisition of the existing Coach-controlled companies are largely benefits of scale and, as such, will be enhanced further by the proposed transaction and subsequent transactions. Over the long term, petitioners state that Coach will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from these control transactions.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(5), a noncarrier that controls any number of carriers may not acquire control over another carrier without our approval. However, under 49 U.S.C. 13541(a), we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not

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[6](...continued)
currently being held in a voting trust established pursuant to the Board's rules at 49 CFR 1013.

needed to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Detailed scrutiny of this transaction under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a sound transportation system consistent with the policy contained in 49 U.S.C. 13101(a)(1). Exempting this transaction will permit Coach to coordinate and centralize planning, safety, and other functions for carriers within its corporate family, allowing Coach to rationalize and use resources productively, thus promoting safe, adequate, economical and efficient transportation and encouraging sound economic conditions [49 U.S.C. 13101(a)(1)(B) and (C)].

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient transportation services consistent with the policy in 49 U.S.C. 13101(a)(2). By facilitating the development of a bus system with coordinated marketing and reservation service, the exemption will promote efficiency in the motor passenger carrier industry, which will help meet the needs of passengers and consumers [49 U.S.C. 13101(a)(2)(B) and (C)]. The exemption will also strengthen Gray Line's financial status, which will permit continued service to small communities and enhanced commuter bus operations [49 U.S.C. 13101(a)(2)(G) and (H)]. In addition, the exemption will improve Grey Line's financial and managerial ability to compete in its respective market, thus improving and maintaining a sound, safe and competitive privately owned motor carrier system [49 U.S.C. 13101(a)(2)(I)]. By facilitating vehicle sharing arrangements and other efficiencies, the exemption will allow the most productive use of equipment and energy resources, enhancing intermodal competition with rail passenger carriers and private automobiles [49 U.S.C. 13101(a)(2)(E) and (K)].

Finally, the transportation policy in 49 U.S.C. 13101(a)(3) for motor passenger carriers requires federal/state cooperation to ensure that state regulation does not undermine federal policy objectives. Because this proceeding does not implicate state regulatory initiatives, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the policy in 49 U.S.C. 13101(a)(3).

Based on the above considerations and the absence of any opposition, we find that regulation of the proposed transaction is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101.[7]

Abuse of Market Power. Nor is regulation necessary to protect passengers from the abuse of market power. The petition for exemption is unopposed and the proposed transaction will have no

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[7] In the event of a merger between K-T and Gray Line, many of these same national transportation goals will be achieved, such as operational and administrative efficiencies and rational use of equipment and personnel. The surviving entity would then be in a position to receive the benefits.

significant impact on competition. Gray Line and K-T do not compete significantly with each other because they offer different transportation services; as noted above, Gray Line is primarily an airport transfer and sightseeing/tour carrier, while K-T specializes in charter and contract bus services with some regular route operations. Also, Gray Line does not compete at all with any other Coach-owned company. However, Gray Line does face significant competition from numerous other bus firms not controlled by Coach that provide transportation services in the Las Vegas area, as well as from private automobiles and other transportation modes. Therefore, the proposed acquisition and possible subsequent merger will have no adverse impact on the competitiveness of passenger transportation in the markets served by the carriers involved.

Further, Gray Line holds a very small market share of the transportation services available to its potential passengers. Moreover, the industry's low entry barriers and pervasive intermodal and intramodal competition effectively foreclose any opportunity for abuse of market power.[8]

Public Interest. Exempting this transaction from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed scrutiny, instead of serving a meaningful public policy or regulatory purpose, would be wasteful of both our resources and those of petitioners, the carrier they propose to acquire, and the public. An exemption will have multiple benefits relating to adequate transportation services, efficient and economic operations, and employees, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. Accordingly, we will grant the requested exemption.

Petitioners have requested that the exemption be made effective immediately so that the parties and the traveling public may realize sooner the substantial benefits of the acquisition. We agree and will make the exemption effective on the service date of this decision.

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

It is ordered:

1. Under 49 U.S.C. 13541, the acquisition by Coach USA, Inc., and K-T Contract Services, Inc. of control of Gray Line Tours of Southern Nevada and the merger of Gray Line into K-T is exempted from the prior approval requirements of 49 U.S.C. 14303.

2. This exemption is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

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[8] Given our finding regarding the probable effect of the transactions on market power, we need not determine whether the transactions are limited in scope.

Vernon A. Williams
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