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SERVICE DATE - APRIL 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20908

PETER PAN BUS LINES, INC.--POOLING--GREYHOUND LINES, INC.

Decided: April 21, 1998

On May 20, 1997, Peter Pan Bus Lines, Inc. (Peter Pan), of Springfield, MA, and Greyhound Lines, Inc. (Greyhound), of Dallas, TX (collectively, applicants), jointly applied for approval under 49 U.S.C. 14302 of an operations and revenue pooling agreement to govern their motor passenger and express transportation service between New York, NY, and Washington, DC, generally via the New Jersey Turnpike and Interstate Highway 95. Notice of the application was served and published in the Federal Register (62 FR 46400) on September 2, 1997. In addition, a copy of the notice was served on the U.S. Department of Justice, Antitrust Division (DOJ). On October 3, 1997, DOJ filed comments in opposition to the application. On November 5, 1997, applicants replied to DOJ's comments, as did the American Bus Association, Inc. (ABA).¹

Under 49 U.S.C. 14302(b), an agreement to pool or divide services and earnings may be approved if the carrier participants assent, and if we find that the agreement (1) will be in the interest of better service to the public or of economy of operation, and (2) will not unreasonably restrain competition. By jointly filing the application, both carriers presumably assent to the transaction. After analyzing the application under the remaining statutory criteria and considering the comments submitted by DOJ and ABA, as well as applicants' rebuttal, we have decided to approve the application, subject to the condition that applicants file periodic reports on the fares they charge for service between the points in their pooling agreement.

BACKGROUND

Peter Pan (MC-61016) is a Class I regional bus carrier, operating over a series of regular routes throughout New England and the Middle Atlantic States. Greyhound (MC-1515) is a Class I nationwide bus carrier, operating over approximately 70,000 miles of intercity bus routes

¹ ABA states that it filed comments in this proceeding in order to support the mechanism of pooling as an opportunity for scheduled service carriers to cooperate in providing efficient, cost-effective service to the public. It takes no position on whether applicants' proposed pooling arrangement warrants Board approval.

throughout the country. Applicants state that they are longtime competitors on certain intercity routes, including, for example, service between Albany, NY, and Boston, MA, between Boston and New York City, and between New York City and Washington. They have already received authority to pool their operations and revenues for their motor passenger and express transportation service between Philadelphia, PA, and New York City,² between Boston and New York City and Springfield, MA, and New York City,³ and they have a pending application to pool their motor passenger and express operations (but not their revenues) between Albany and Boston.⁴ According to applicants, this application is a logical extension of the others and they intend to implement these “interrelated” agreements simultaneously after Board approval.

As relevant to this filing, Peter Pan operates 13 daily trips between New York City and Washington and 14 daily trips between Washington and New York City.⁵ Between these same points, Greyhound operates 23 southbound and 20 northbound trips, most of which also operate daily.⁶ Applicants state that their services between these points overlap and that excess schedules are operated because of the need to protect their respective market shares. According to applicants, this overlap has fragmented the available passenger business and led to unsatisfactory load factors,⁷ an over-served market, and inefficient operations.

Applicants submit that the pooling of operations and revenues will allow them to reduce excess bus capacity, cement their business relationship, and allow them to share in the financial vicissitudes of the pooled-route operations. They also submit that service to the traveling public will improve. For example, by eliminating some duplicate departures on the hour and adding some departures on the half-hour during the busiest times of the day, applicants contend that there will be more frequent bus service over a broader period of time. They also contend that there will be more flexible bus service through the coordination of ticket sales and bus arrivals and departures in the same location within the same terminal and elimination of the restrictions on tickets so that

² Peter Pan Bus Lines, Inc.--Pooling--Greyhound Lines, Inc., STB Docket No. MC-F-20904 (STB served June 30, 1997).

³ Peter Pan Bus Lines, Inc.--Pooling--Greyhound Lines, Inc., STB Docket No. MC-F-20912 (STB served Feb. 12, 1998).

⁴ Peter Pan Bus Lines, Inc.--Pooling--Greyhound Lines, Inc., STB Docket No. MC-F-20913 (STB served and published at 63 FR 2716 on Jan. 16, 1998).

⁵ There are also additional schedules in each direction that operate several days each week.

⁶ In addition, Greyhound operates two round trips between New York City and Baltimore, MD, which is considered to be an intermediate point between New York City and Washington.

⁷ The load factor is a ratio or percentage comparing the number of passengers transported to the number of available seats.

passengers in every case will be able to take the next bus out. Other public benefits cited by applicants include increased financial stability of the carriers, which will enable them to purchase the most modern coaches.⁸

In their application, applicants point to the “overwhelming” intermodal competitive pressures in the New York City to Washington market from Amtrak,⁹ the airlines,¹⁰ and private automobiles. Applicants conclude that the pooling agreement will have a minimal effect on competition and will certainly not unreasonably restrain competition.

DOJ challenges this conclusion and urges us to find that there is a substantial likelihood that the proposed pooling agreement between Peter Pan and Greyhound will unduly restrain competition. DOJ states that Peter Pan and Greyhound are the only bus lines that provide scheduled transportation between New York City and Washington, and that the pooling agreement will create a monopoly in bus service between those points. DOJ acknowledges the existence of other modes of transportation between New York City and Washington, but argues that they are significantly more expensive than bus service. Thus, its position is that the other modes of transportation are not in the same product market as intercity bus service for this city pair and will not act as a restraint on the ability of the pooled companies to raise bus fares above competitive levels. Using its own Horizontal Merger Guidelines (DOJ Guidelines), DOJ also argues that entry into the market may be difficult for other bus companies.

In their rebuttal statement, applicants challenge the propriety of using DOJ Guidelines in the context of carrier financial transactions. Citing the Supreme Court’s decision in McLean Trucking Co. v. U.S., 321 U.S. 67 (1944) (McLean) and its progeny, applicants argue that these transactions are to be judged by the standards of the transportation laws and not the antitrust laws. According to applicants, while we are not to ignore the policy of the antitrust laws, they are not dispositive in proceedings subject to our jurisdiction. See McLean at 85-87. Thus, applicants argue that we could approve the arrangement between the applicants under the standards of 49 U.S.C. 14302(b) even if it did violate the antitrust laws.

Applicants point to similar arrangements between passenger motor carriers that have been approved under 49 U.S.C. 14302(b), notwithstanding that the applicants in those cases were the

⁸ Applicants cite energy conservation as an additional public benefit.

⁹ Applicants state that Amtrak operates 38 daily trains each way, providing service on the average of every half hour.

¹⁰ Applicants state that there are a total of 120 daily nonstop flights in each direction, including shuttle flights leaving every half hour.

only intercity bus lines operating over the affected routes.¹¹ Applicants note that DOJ did not appear as a party in any of those proceedings involving revenue pooling agreements between competing passenger carriers to voice its concerns about the lessening of competition. Nor, according to applicants, has DOJ even attempted to explain its apparent repudiation of the Congressional testimony of its former Acting Deputy Assistant Attorney General Ronald G. Carr, whose testimony was relied upon in the decision authorizing Greyhound to purchase the assets of its only competitor between Washington and New York City, Trailways Lines, Inc. (Trailways).¹² In fact, in that very market, applicants indicate that Peter Pan, a company a fraction of the size of Greyhound, was subsequently successful in entering the market, despite not having access to Greyhound's terminals in Washington and Baltimore. Applicants submit that Peter Pan's entry into the market is not unique. It states that Coach USA, Inc., in a matter of 2 to 3 years, has become the Nation's largest bus holding company, and that within the past 5 years, other bus companies have begun operating over routes over which Greyhound operates.

Applicants urge us to reject what they term as DOJ's novel theory in this case, that intercity bus transportation constitutes a separate sub-market of intercity passenger transportation. Applicants assert that there is no significant difference in bus fares between city pairs where there is competition from other bus companies and city pairs where there is not. While intramodal competition has some bearing on the establishment of bus fares, applicants argue that fares are constrained primarily by intermodal competition and the customers that use bus service. Among the factors they consider in setting fares are the prices of Amtrak, the airlines, rental cars and other forms of intercity passenger transportation.¹³ According to applicants, the bulk of their customers,

¹¹ See, e.g., Capital Motor Lines, et al.--Pooling--Greyhound Lines, Inc., STB No. MC-F-20906 (STB served Sept. 25, 1997); Peter Pan Bus Lines, Inc.--Pooling--Greyhound Lines, Inc., STB No. MC-F-20904 (STB served June 30, 1997); and Capitol Bus Company--Pooling--Greyhound Lines, Inc., No. MC-F-20783 (ICC served May 20, 1996).

¹² See GLI Acquisition Company--Purchase--Trailways Lines, Inc., 4 I.C.C.2d 591, 601 (1988) (GLI Acquisition), aff'd mem. sub nom., Peter Pan Bus Lines, Inc. v. I.C.C., 873 F.2d 408 (D.C. Cir. 1989), quoting Acting Deputy Assistant Attorney General Carr as follows:

Neither predatory pricing nor monopoly pricing is likely in an industry, such as bus transportation, where the economic barriers to entry are low. Without high entry barriers, monopoly pricing is usually prevented by the threat of new entry--even where only one carrier can profitably serve the route. This would be particularly true with respect to bus transportation, since it also faces competition from airlines, private automobiles and railroads. Bus Regulatory Reform: Hearings Before the Subcomm. On Surface Transportation of the House Comm. On Public Works and Transportation, 97th Cong., 1st Sess. 157 (1981).

¹³ As explained in the verified statement of Greyhound's Executive Vice President and Chief
(continued...)

especially in the Washington-to-New York market, have numerous non-bus alternatives.¹⁴ Applicants state that a significant portion of their customers are discretionary travelers who will switch to an alternative mode of transportation if bus fares are not highly competitive. Applicants argue that transitional passengers often will opt for the greater speed and comfort of rail and air travel and, therefore, fares must be kept low in order for applicants to compete vigorously with Amtrak and the airlines to prevent the loss of their patrons to these other modes. The remainder of applicants' customers are budget-conscious, low or fixed income travelers, for whom the standard, walk-up fares must be kept affordable. If fares are raised to non-competitive levels, applicants argue that these customers will switch to private automobile¹⁵ or rental cars.¹⁶ Unlike the airlines, applicants state that they have no ability to sell seats at different prices and, therefore, any fare change must apply equally across the board. Thus, applicants assert, the nature of their customer base dictates that their fares must not only be competitive, but also affordable.

DISCUSSION AND CONCLUSIONS

Applicants have demonstrated that the proposed pooling of their operations and revenues between New York City and Washington will benefit the public through more frequent and flexible bus service. In addition to better service to the public, applicants have shown that the proposed pooling arrangement will result in economies of operation by reducing excess bus capacity and rationalizing the level of service that exists over this route.

¹³(...continued)

Operating Officer Jack W. Haugland, Greyhound employs a staff of eight individuals just to keep tabs on the fares offered by Amtrak and the airlines. In response to the fares being offered by its competitors, Greyhound will offer standard walk-up fares and, if need be, discount or promotional fares in order to maintain a sufficient margin below its competitors' fares and its limited market share.

¹⁴ Applicants offer a number of other reasons for rejecting DOJ's sub-market analysis, including: that the airlines, rental cars, privately owned vehicles, and Amtrak compete directly with bus transportation and that potential entry by other bus companies would defeat any attempts by applicants to increase their fares.

¹⁵ A 1996 survey by Greyhound showed that approximately 51% of its passengers own an automobile. Also, as explained in the supplemental verified statement of the President of Peter Pan Peter A. Picknelly, a traveler need not be a licensed driver or own an automobile in order to travel by car. According to Mr. Picknelly, Peter Pan's competition, in most instances, consists of four or five people in a private automobile, often including young family members or adults who are not licensed to drive.

¹⁶ Applicants state that rental car rates, approximately \$26 a day, compare favorably with Greyhound's \$29 standard, walk-up fare for travel between Washington and New York City, and become even more attractive with each additional passenger traveling together.

Applicants have also demonstrated that the proposed pooling arrangement will not unreasonably restrain competition. While DOJ argues that under its Guidelines there is a substantial likelihood that the proposed pooling arrangement will unduly restrain competition, it has not explained why the market between New York and Washington is so unique that new bus companies would not be able to enter and other modes of passenger transportation would not act as a restraint on the ability of the pooled companies to raise bus fares above competitive levels. Indeed, if any market would be conducive to entry it would be this one, as demonstrated by the successful entry of Peter Pan. Similarly, the competitive intermodal alternatives between these two major cities far exceed those of most passenger markets throughout the country.

We recognize, however, that predictions that carriers will or will not act anticompetitively are just predictions, and we respect DOJ's expertise in assessing the competitiveness of markets. It would be unfortunate if DOJ were correct about this particular market, and we were unable to remedy any anticompetitive behavior that might occur. Therefore, we will require applicants to submit written data to the Board, and simultaneously to serve a copy of the data on DOJ, at 6-month intervals over the next 3 years, on the fares they charge for service between New York City and Washington. If the data should show that, as a result of the pooling of their operations, competition for passengers has been diminished to such an extent that Peter Pan and Greyhound have been able to raise fares between New York City and Washington to an unreasonable level, we will reopen this proceeding and re-examine the issue of whether the operations and revenue pooling agreement we are approving here continues to foster improved economical service without unreasonably restraining competition.

We find:

As conditioned, the proposed operations and revenue pooling agreement between Peter Pan and Greyhound will foster improved service to the public and economy of operation, and will not unreasonably restrain competition. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed operations and revenue pooling agreement between Peter Pan and Greyhound is approved and authorized to the extent specified in the application, the pooling agreement, and this decision.
2. Applicants are directed to submit to the Board, and to serve on DOJ, at 6-month intervals for 3 years from the date of service of this decision, data on the fares charged by Peter Pan and Greyhound for passenger service between New York City and Washington.

STB Docket No. MC-F-20908

3. This decision will be effective on May 29, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary