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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MC-F-21039

NATIONAL EXPRESS CORPORATION—CONTROL EXEMPTION— VOGEL BUS COMPANY, INC.

Decided: December 27, 2010

Digest:¹ The Board authorizes National Express Corporation to acquire Vogel Bus Company, Inc., a motor passenger carrier.

By petition filed on October 25, 2010 (Petition), National Express Corporation (NEC) seeks an exemption, under 49 U.S.C. § 13541, from the prior approval requirements of 49 U.S.C. § 14303(a)(5), to acquire Vogel Bus Company, Inc. (Vogel), a motor passenger carrier.

Notice of the Petition was served and published in the Federal Register on November 24, 2010 (75 Fed. Reg. 71,792-93). A copy of the notice was also served upon the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation, the Antitrust Division of the U.S. Department of Justice, and the Office of the General Counsel of the U.S. Department of Transportation. No comments have been filed in response to the notice. Based upon our review of the record, we will grant the exemption.

BACKGROUND

NEC, a noncarrier, requests an exemption under 49 U.S.C. § 13541 from the prior approval requirements of 49 U.S.C. § 14303(a)(5) and 49 C.F.R. pt. 1182 for the acquisition of Vogel, a motor passenger carrier (MC-274520). NEC indirectly owns and controls one interstate motor passenger carrier, Durham School Services, L.P. (DSSLP) (MC-163066). Both DSSLP and Vogel provide interstate charter bus transportation to the public. NEC proposes to acquire Vogel through its acquisition of all of the shares of Vogel pursuant to a Share Purchase and Sale Agreement.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

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, in accordance with 49 U.S.C. § 13541, the Board will exempt a motor carrier transaction if: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. § 13101; (2) regulation either is not needed to protect shippers from the abuse of market power or the transaction or service is of limited scope; and (3) an exemption is in the public interest. NEC argues that the Board should exempt its proposed transaction because it meets the above criteria. Because the proposed transaction meets these criteria, we will grant the requested exemption.

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 transportation system that is consistent with the policy established by 49 U.S.C. § 13101. NEC states that this transaction will allow NEC to leverage its expertise, resources, and asset base to enhance Vogel's limited charter services. It will also provide a strong foundation upon which to support Vogel's charter operations, resulting in the delivery of better and more efficient services to customers. With respect to Vogel's charter operations, NEC intends to maintain existing compensation and benefit levels for employees, and does not anticipate a substantial reduction in forces resulting from the transaction. Any downsizing would be limited to reducing redundancies at, or above, the managerial level. NEC does not anticipate that the transaction will have any negative effects on DSLLP's limited charter operations.

Based upon NEC's representations, we find that the proposed transaction will promote safe, adequate, economical, and efficient transportation services (49 U.S.C. § 13101(a)(1)(B)); encourage sound economic conditions in transportation, including sound economic conditions among carriers (49 U.S.C. § 13101(a)(1)(C)); encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices (49 U.S.C. § 13101(a)(1)(D)); promote efficiency in the motor carrier transportation system (49 U.S.C. § 13101(a)(2)(B)); meet the needs of shippers, receivers, passengers, and consumers (49 U.S.C. § 13101(a)(2)(C)); allow the most productive use of equipment and energy resources (49 U.S.C. § 13101(a)(2)(E)); and improve and maintain a sound, safe, and competitive privately owned motor carrier system (49 U.S.C. § 13101(a)(2)(I)). Other aspects of 49 U.S.C. § 13101(a) will not be adversely affected.

Based upon these considerations and the absence of any opposition to NEC's acquisition, 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.

Abuse of Market Power. Regulation is not necessary to protect passengers from the abuse of market power. The petition for exemption is unopposed, and it appears that it will have little or no adverse impact on competition. To the contrary, it appears that to

the extent the proposed transaction has any competitive impact on the motor passenger industry, it will increase Vogel's ability to compete more efficiently in its portion of the regulated charter and special operations spectrum.

Given our finding regarding the probable effect of the proposed transaction on market power, we need not determine whether the transaction is limited in scope.

Public Interest. Exempting this transaction from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed scrutiny would serve no meaningful public policy or regulatory purpose and would be wasteful of Board resources, as well as those of NEC, Vogel, and the public. On the other hand, an exemption will have multiple benefits relating to adequate transportation services, efficient and economic operations, and will not give rise to problems that might warrant regulatory scrutiny.

For the reasons discussed above, we will grant NEC's requested exemption.

In accordance with NEC's request for expedited handling, we 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. Pursuant to 49 U.S.C. § 13541, National Express Corporation's acquisition of Vogel Bus Company, Inc., is exempted from the prior approval requirements of 49 U.S.C. § 14303(a)(5).
2. This exemption is effective on December 27, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.