

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21048

EL EXPRESO GROUP, LLC
—ASSET ACQUISITION—CUSA EE, LLC D/B/A EL EXPRESO

Digest:¹ This decision grants the request filed by El Expreso Group, LLC for approval to acquire the assets of an interstate motor passenger common carrier subsidiary currently controlled by Coach America Holdings, Inc.

Decided: September 7, 2012

On June 12, 2012, noncarrier El Expreso Group, LLC (El Expreso or Applicant) filed an application under 49 U.S.C. § 14303 and the Board's regulations at 49 C.F.R. pt. 1182 to acquire the assets of an interstate motor passenger common carrier subsidiary of noncarrier Coach America Holdings, Inc. (Coach America)—CUSA EE, LLC d/b/a El Expreso (CUSA EE or Coach America Subsidiary).²

Notice of the application was served on July 12, 2012, and published in the Federal Register on July 13, 2012 (77 Fed. Reg. 41,475). A copy of the notice was also served on: the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA); the U.S. Department of Justice, Antitrust Division; the U.S. Department of Transportation, Office of the General Counsel; the Federal Trade Commission, Bureau of Competition, Premerger Notification Office; and Michael Yusim, an individual who had filed a comment on June 13, 2012, in opposition to the proposed transaction.

On August 9, 2012, Applicant filed a letter advising the Board of Bankruptcy Court approval of the use of voting trust procedures to close the proposed asset acquisition and renewing its request that the Board grant its application for permanent control authority. Mr. Yusim replied on August 15, 2012, renewing his request that the Board deny the application. On

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).

² A request for interim approval to acquire management and operational control of the assets under 49 U.S.C. § 14303(i) was filed on July 26, 2012 (Docket No. MCF 21048 TA). In a decision served on August 13, 2012, interim approval was granted, effective on the decision's date of service.

August 29, 2012, Applicant filed its reply in support of the application and request for an expedited decision.³ Based on our review of the record, we are granting the application.

BACKGROUND

El Expreso, a noncarrier at the time of filing its application, is a Texas limited liability company whose sole members are Vazquez Holdings, LLC (Vazquez Holdings) and Vazquez Holdings Group, LP (Vazquez Holdings Group). Juan Vazquez is the sole member of Vazquez Holdings. Vazquez Holdings is the general partner and Mr. Vazquez is the sole limited partner of Vazquez Holdings Group. Mr. Vazquez thus essentially owns and controls El Expreso. Mr. Vazquez also owns all outstanding shares of Tornado Bus Company, Inc. (Tornado), an interstate passenger motor carrier affiliate of El Expreso subject to the jurisdiction of the FMCSA under Docket No. MC-276747.⁴ Tornado operates primarily as a provider of scheduled passenger transportation services, transporting passengers within the United States as well as between the United States and Mexico.

CUSA EE, a Delaware limited liability company, holds interstate passenger motor carrier authority subject to the jurisdiction of the FMCSA under Docket No. MC-463171. CUSA EE also holds intrastate authority issued by the State of Texas, as does Tornado. CUSA EE operates primarily as a provider of scheduled passenger transportation services.

Under the proposed transaction, Applicant would acquire the various assets of CUSA EE, including the vast majority of its equipment, various customer contracts, certain leased real property, various equipment leases, and good will. Following the acquisition, CUSA EE would wind down its business affairs and ultimately cease all operations. Applicant states that it will use these assets, including the acquired interstate and intrastate authorities and permits, to continue much of the scheduled passenger transportation services previously performed by CUSA EE.

CUSA EE, along with other Coach America subsidiaries, is currently involved in proceedings instituted under Chapter 11 of the Bankruptcy Code, having filed a voluntary petition for relief with the U.S. Bankruptcy Court for the District of Delaware on January 3, 2012. On January 13, 2012, CUSA EE filed a motion to sell substantially all of its assets and effectively to liquidate. According to Applicant, the Bankruptcy Court entered an order on May 25, 2012, authorizing and approving the sale of the assets of CUSA EE.

³ Mr. Yusim replied to Applicant's reply on August 30, 2012. While 49 C.F.R. § 1104.13(c) prohibits the filing of a reply to a reply, we will accept Mr. Yusim's August 30, 2012 filing in the interest of compiling a complete record. Acceptance of Mr. Yusim's additional filing will neither prejudice any party nor prolong our reaching a decision.

⁴ El Expreso's application identified Tornado as a second acquiring entity. However, by letter dated June 21, 2012, it was clarified that El Expreso is the sole acquiring entity.

DISCUSSION AND CONCLUSIONS

Jurisdiction

Under 49 U.S.C. §§ 14303(a)⁵ and (g), transactions effecting the acquisition of motor passenger carrier assets require Board approval where they involve a purchase, lease, or contract to operate property of another carrier by any number of carriers whose aggregate gross operating revenues exceed \$2 million during a period of 12 consecutive months ending not more than six months before the date of the agreement of the parties. Here, Applicant seeks to acquire the assets of a motor passenger carrier whose aggregate gross operating revenues exceeded \$2 million during the 12-month period preceding the filing date of the application. Accordingly, Board approval of the proposed transaction is required.

Statutory Standard for Approval

Under 49 U.S.C. § 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of the affected carrier employees. In determining whether the transaction is consistent with the public interest, the Board may evaluate many factors—including whether the transaction would have any anticompetitive effects.

Adequacy of transportation to the public. Applicant asserts that the proposed transaction will benefit the traveling public. Specifically, Applicant contends that the transaction will improve the services provided to the public, as Mr. Vazquez's experience in the scheduled passenger transportation business will afford Applicant the potential to improve upon and expand existing service levels and invest in additional equipment as needed.

⁵ The provisions of 49 U.S.C. § 14303(a) state as follows:

(a) Approval Required.—The following transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 may be carried out only with the approval of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 carriers into one operation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another carrier by any number of carriers.

(3) Acquisition of control of a carrier by any number of carriers.

(4) Acquisition of control of at least 2 carriers by a person that is not a carrier.

(5) Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

Applicant also asserts that the proposed transaction will have no adverse impact on competition. Applicant states that while there is some overlapping service area between CUSA EE and Tornado, there is still substantial competition in the applicable sector of scheduled passenger transportation services. Applicant cites to current competitors, low barriers of entry into the market, and the ability of railroads and airlines to schedule passenger service as factors that eliminate the potential for monopolistic pricing following the proposed transaction.

Fixed charges. Applicant asserts that there are no fixed charges associated with the proposed acquisition of control.

Affected carrier employees. Applicant states that CUSA EE will provide notice to its employees requesting that those who wish to work for Applicant promptly submit an application. Applicant further states that it does not anticipate a significant reduction in force or changes in compensation levels and/or benefits, as Applicant intends to continue CUSA EE's existing operations. Applicant notes that staffing redundancies could result in limited downsizing of back-office and/or managerial level personnel.

In addition, with respect to the transfer of CUSA EE's intrastate authority and permits, Applicant states that under 49 U.S.C. § 14303(f), Board approval of the proposed transaction would allow the acquisition of the assets of CUSA EE to be accomplished without the need for formal action by any state regulatory authorities, thereby relieving Applicant from burdensome regulatory requirements.

Applicant certifies that: (1) CUSA EE and Tornado hold satisfactory safety ratings from the U.S. Department of Transportation; (2) Tornado has the requisite insurance coverage under 49 U.S.C. § 13906 and Applicant will obtain the same following the closing of the proposed transaction; and (3) neither Applicant nor Tornado is domiciled in Mexico or owned or controlled by persons of that country. Applicant further asserts that approval of the application will not have a significant effect on the quality of the human environment or the conservation of energy resources.

In his comment, Mr. Yusim contends that a subsidiary of Coach America that is not at issue in this proceeding—Midnight Sun Tours, Inc. (Midnight Sun)—discriminated against him and another driver employed by Midnight Sun for accurately reporting their hours of service under the rules administered by the FMCSA. He states that the two cases are pending before the U.S. Secretary of Labor (Secretary) and have been stayed by the Bankruptcy Court. Mr. Yusim requests that, in the public interest, the Board disallow the sale of any subsidiaries of Coach America until the Secretary is allowed to hear and decide the two cases, and that Applicant be required to produce certain documents relating to hours of service reporting.

Mr. Yusim's claims are not relevant to this proceeding. The proposed transaction in this proceeding would transfer the assets of CUSA EE to Applicant—entities that are not the subjects of Mr. Yusim's claims pending before the Secretary and the Bankruptcy Court. Mr. Yusim's claims relate to Midnight Sun and its parent entities. While those claims may go forward in the

appropriate forums, we need not delay an unrelated transaction that is consistent with the public interest while that process continues. Thus, we will not delay our consideration of the proposed transaction, nor will we require Applicant to produce documents relating to hours of service reporting with respect to claims that are within the purview of the Secretary and the Bankruptcy Court and are expected to be addressed by them in due course.

Applicant has submitted the information required by 49 C.F.R. § 1182.2(a)(7). Specifically, Applicant has submitted information sufficient to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), in that it should have a positive effect on the adequacy of transportation to the public—including no adverse impact on competition—and should not result in an increase in fixed charges or material changes in employment.⁶ Accordingly, we find that the proposed transaction is consistent with the public interest under § 14303(b) and is otherwise necessary to ensure continued motor passenger service to the traveling public. Therefore, we are approving and authorizing the proposed transaction, as required when such findings are made under § 14303(b).

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

It is ordered:

1. Applicant is granted permanent authority to acquire the assets of CUSA EE, as discussed above.
2. This decision is effective on its service date.
3. A copy of this decision will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (4) the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue, N.W., Washington, DC 20580; and (5) Michael Yusim, 7499 Eagle Point Drive, Delray Beach, FL 33446.

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

⁶ Although Mr. Yusim makes broad allegations that this proposed transaction is not in the public interest, he provides no specific evidence challenging Applicant's representations under the three-part criteria of § 14303(b).