



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF ECONOMIC JUSTICE
ANTITRUST BUREAU

November 2, 2009

**VIA FACSIMILE AND
OVERNIGHT DELIVERY**

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Room 100
Washington, DC 20423-0001

Re: MC-F-21035, Stagecoach Group plc and Coach USA, Inc. et al. -
Acquisition of Control - Twin America LLC

Dear Secretary Quinlan:

Enclosed, please find one original and ten copies of the State of New York's comments for filing in the above-referenced matter. I have also filed comments by facsimile today. A copy of service is attached.

If you have any questions, please do not hesitate to contact me (212) 416-8822.

Very truly yours,

James Yoon
Assistant Attorney General
Antitrust Bureau

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CERTIFICATE OF SERVICE

I certify that I have on this 2nd day of November 2009, served a copy of the foregoing Comment of the State of New York by overnight courier to:

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Antitrust Division
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. MC-F-21035

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

COMMENT OF THE STATE OF NEW YORK

The State of New York ("NYSAG") respectfully submits the following comments to the Surface Transportation Board ("STB") in connection with the above captioned STB Docket No. MC-F-21035 ("Application"). By decision and order dated September 15, 2009 ("Decision"), the STB did not grant applicants tentative authority under 49 CFR 1182.4(b) and instead instituted a proceeding to address certain matters and to determine the merits of the parties application.

The NYSAG currently has an open antitrust investigation concerning Twin America, LLC and its formation. That investigation is ongoing so our comments are made using publicly available information and the parties' Application to the STB. Nevertheless, commenting on certain key issues may be beneficial in addressing certain matters and determining the merits of the application.

The NYSAG submits these comments to emphasize the competitive importance to New York, its consumers and tourists visiting New York City. We urge the STB to take a particularly close look at the Application of the parties to ensure that there is fair competition for sightseeing tours of New York City by double-decker buses and to the integrity of the STB application process.

BACKGROUND

The New York State Attorney General subpoenaed Stagecoach Group plc and Coach USA, Inc. on July 31, 2009. City Sights LLC, City Sights Twin LLC, and Twin America, LLC ("Twin America") were subpoenaed on August 3, 2009.

The subpoenas concerned a "joint venture" agreement entered into by International Bus Services, Inc. ("IBS"), a subsidiary of Coach USA, Inc. ("Coach USA") and City Sights Twin, LLC ("City Sights Twin") in March, 2009 for the formation of Twin America, LLC ("Twin America"). We believe the joint venture concerned the parties' respective business of a sightseeing hop-on/hop-off tour primarily by double-decker and other vehicles in the 5 boroughs of New York City. Twin America, LLC began operations as a joint venture on March 31, 2009.

After we issued subpoenas to the parties, the parties made an application to the STB on August 19, 2009, about 4½ months after the joint venture began, for control of Twin America

under 49 U.S.C. § 14303 ("Application"). Also after our subpoenas, on August 10, 2009, Twin America applied to the Federal Motor Carrier Safety Administration ("FMCSA") for appropriate operating authority to become a regulated motor carrier.

We met with the parties on August 19, 2009,¹ the same day the parties filed their Application to the STB. The parties asserted that they believed the NYSAG did not have jurisdiction over the parties and we disagreed. Without waiving jurisdiction, the parties and the NYSAG agreed to a voluntary production of documents. The parties are currently in the initial stages of voluntarily producing documents to us.

On August 27, 2009, the NYSAG filed its Notice of Intent to Participate in this STB proceeding as a party of record to receive any filings by the parties. This was done without conceding the NYSAG's jurisdiction over the parties.

ANTITRUST CONCERNS

In the view of the NYSAG, the Application to control Twin America by two direct competitors of tour guided sightseeing tours by hop-on/hop-off double-decker buses in New York City raises significant competitive concerns. The NYSAG makes these comments without passing judgment as to the legality of Twin America, LLC at this time.

a. Approval of the Application Would Strengthen Market Power and Create a Monopolist in Major Routes

Market shares determine the likelihood that a joint control agreement will create or increase market power or facilitate its exercise. "The creation, increase, or facilitation of market power will likely increase the ability and incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement." (see Antitrust Guidelines for Collaborations Among Competitors). To assess the impact on market power of the Application filed on August 19, 2009, it is necessary to go back and examine the change in market shares that occurred before and after the parties entered into the joint venture agreement in March, 2009. It is necessary to look back because the joint venture agreement in March, 2009, resulted in a major consolidation of market power in at least one of the primary product segment markets in which Twin America operates. Hence, this raises potential antitrust issues, and the STB's approval of the Application would have the effect of exempting the applicants from both state and federal antitrust law under 49 U.S.C. § 14303.

The starting point for estimating market share is identifying the relevant markets. Twin America was formed by (i) IBS, which is associated with both Stagecoach plc and Coach USA, and (ii) City Sights.² IBS was operating under the trade name Gray Line New York ("Gray

¹ After several postponements by the parties, we were finally able to schedule a meeting for August 19, 2009. To our great surprise, the parties informed us during our initial meeting that they were making a filing to the STB for the acquisition of Twin America, LLC that same day.

² For purposes of this discussion, we will call City Sights LLC and City Sights Twin as "City Sights" because "Twin America was formed in March 2009 in recognition of the fact that IBS and CitySights LLC, the previous operator of transportation services now provided by City Sights Twin..." (Application, pg. 10).

Line") before entering into the joint agreement. Both Gray Line and City Sights provided and competed on various transportation and tour services. Tour services included double-decker buses and other vehicles before the parties entered into the joint venture agreement.

Both IBS and City Sights served various product segment markets instead of one product market that includes all transportation and tour services. For example, the market for the hop-on/hop-off double-decker tour bus business segment is not the same kind of bus business segment as carrying passengers from New York City to Washington, DC or Boston, MA. The sightseeing double-decker tour buses allow passengers to board and un-board (hop-on/hop-off) the buses at short intervals along a tour route and allow ticketed passengers to board any bus along the tour route for the sightseeing tour purchased.

To further explain why Twin America operates in various relevant product segment markets, instead of a single product market that includes all transportation and tour services, it is helpful to understand the different market segments in which Twin America's competitors participate and the particular products which they provide. For example, both On Board New York Tours and Big Taxi Tours were identified by the applicants as Twin America competitors in the Application (Application, pg. 11). On Board New York Tours serves in the destination-specific shuttle bus tour segment market and Big Taxi Tours serves the double-decker bus tour market. That is, customers using the double-decker product would be able to catch any double-decker bus at any of the designated tour stops with an average waiting time of about 15 minutes, while the shuttles for the On Board New York Tours are scheduled to leave roughly 4 times a day and customers stay on the same bus and do not have the option to decide how long to stop at a particular destination. Hence, Twin America services various product segment markets instead of one product market that includes all transportation and tour services.

With access to only limited information on the various product market segments which IBS and City Sights service, market shares are only calculated for the "double-decker" market as an illustration of the impact on market power of approving the Application. According to the Application, both IBS and City Sights were active participants in the "double-decker" product segment market. (Application, pg. 11). Applicants state that Twin America was formed because of "a declining revenue base due to a drop-off in tourism in the New York City area." (Application, pg. 10). Thus, the market share calculation treats New York City as the geographic market.

Without any financial information from the applicants and any of its competitors in the market, the market shares were estimated using the number of major geographic routes,³ which are covered by providers in the market. The major geographic routes are the (i) Downtown Loop, (ii) Uptown Town Loop, (iii) All Around Town Loop, and (iv) Brooklyn Loop. The estimated market shares indicate that even without the approval of the joint control, Stagecoach already owns roughly 44.5% of the market through its association with Gray Line, while City Sights owns about 44.5% of the market. The remaining 11% of the market is owned by Big Taxi Tours. The approval of the Application will solidify the applicants' control to approximately 89% of the market share (See summary Tables 1 and 2 below with the estimates of market share). Additionally, approval of the Application will endorse a monopoly in three out of the four major

³ Information was collected from each of the provider's internet websites. City Sights. October 23, 2009. <http://www.citysightsny.com> Grey Line New York. October 23, 2009. <http://www.newyorkstseeing.com>. Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>.

routes. That is, the Uptown Loop, All Around Town Loop and Brooklyn Loop will be controlled by the applicants alone, with the majority of the Downtown Loop controlled by the applicants as well.

Table 1:

	<u>CitySights</u>	<u>Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Loop</u>
Downtown Loop	1	1	1	3
Uptown Loop	1	1		2
All Around Town Loop	1	1		2
Brooklyn Loop	1	1		
Total by Company	4	4	1	9
Estimated Market Share	44.5%	44.5%	11%	100%

Sources:

City Sights. October 23, 2009. <http://www.citysightsny.com/>

Grey Line New York. October 23, 2009. <http://www.newyorksightseeing.com>

Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

Table 2:

	<u>CitySights & Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Tour Type</u>
Downtown Loop	2	1	3
Uptown Loop	2		2
All Around Town Loop	2		2
Brooklyn Loop	2		2
Total by Company	8	1	9
Estimated Market Share	89%	11%	100%

Sources:

City Sights. October 23, 2009. <http://www.citysightsny.com/>

Grey Line New York. October 23, 2009. <http://www.newyorksightseeing.com>

Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

b. Approval of the Application Would Increase Barriers to Entry and/or Assert Negative Impacts on Employees

The applicants claim that the joint control would allow them to achieve significant economies and cost savings by combining their common management and purchasing activities. The applicants claim that they have already achieved savings on purchases of fuel and spare parts since entering into the joint venture agreement and that they are also expecting to save on insurance and advertising costs in the future (Application, pg 10). Unless the applicants lowered the number of buses running and/or reduced current employee levels after consolidating their operations, the reported cost savings in fuel, spare parts and insurance purchases could probably only have been generated by receiving volume discounts. This indicates that the approval of the application would likely significantly increase the barriers to entry into the market by putting potential entrants in competition with an incumbent with control of nearly 90% of the market and with the ability to benefit from volume discounts that further enhance its competitive position in the "double-decker" market.

As for the anticipated savings on advertising costs suggested by the applicants, these could likely be achieved either by consolidating the number of advertisements, or by firing advertising/field sales personnel who are currently employed by Twin America. The applicants further suggest that the joint control could eliminate duplicative "back office" administrative functions, including accounting, sales, and IT functions. Unless these back office functions are currently out sourced rather than performed in house by Twin America employees, eliminating these function will likely mean layoffs of Twin America employees.

Any cost savings, if any, would only benefit the applicants and not the consumers unless the applicants were to pass on the savings to consumers in the form of lower prices for their products. Economic theory suggests that businesses strive to maximize their profits. Businesses would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices. That is, the likelihood of passing on cost savings increases with the level of competition. This suggests the approval of the Application will lower the applicants' incentive to pass on any cost savings in the double-decker market since the approval will affirm the applicants' control of nearly 90% of the market as explained in the previous section. Hence, the applicants anticipated cost savings in the double-decker market come from the cost of (i) increased barriers to entry through volume discount contracts; (ii) firing of Twin America's employees and/or reducing the hours or wages of Twin America's employees; and/or (iii) reducing the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route.

c. Horizontal Agreement By Competitors of Sightseeing Hop-on/Hop-off Tours Primarily By Double Decker Buses

The joint venture as structured in March, 2009 gave IBS, a subsidiary of Coach USA and City Sights Twin each a 50 percent share of the voting rights in Twin America. The joint venture gave Coach USA a 60 percent share and City Sights Twin a 40 percent share of the economic rights.⁴

⁴ Article from www.busride.com, "Stagecoach Group, CitySights NY form Twin America in joint venture," March 18, 2009 and parties' Application, pg. 3.

Currently, the joint operation by two direct competitors of tour guided sightseeing hop-on/hop-off tours primarily by double-decker buses in New York City gives the entities the power to restrict competition for double-decker bus tour ticket prices and marketing to customers. Dividing profits by competitors are a disincentive to compete on price. Both competitors can remain static on price or have price differentials relative to each other but the profits would always be divided the same, 60/40 amongst the two direct competitors.

Coordinated action by two direct competitors can also eliminate competition for marketing with ticket selling partners such as hotel concierges, museums, helicopter and boat tour operators, etc. Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

JURISDICTION

With due deference to the STB, the NYSAG disagrees with the applicants' assertion that the NYSAG does not have jurisdiction over the parties under the present facts.

a. Twin America, Inc., CitySights LLC and City Sights Twin Are Not Interstate Passenger Carriers

As the STB recognized in its Sept. 15, 2009 Decision, the parties do not provide specific information detailing the authority under which the various interstate transportation services operate. Although Twin America recently filed with the FMCSA to obtain appropriate operating authority after our subpoenas, we are not aware of CitySights LLC or City Sights Twin as having had appropriate interstate operating authority either. Applicants state that City Sights Twin, a non-carrier, now provides interstate transportation services previously provided by CitySights LLC.

We are not persuaded that CitySights, LLC, City Sights Twin and Twin America were interstate passenger carriers when we subpoenaed the parties. Although Coach USA and its parent Stagecoach plc controlled interstate passenger carriers, the joint venture they entered into with City Sights Twin in March, 2009, did not involve interstate transportation because the parties' sightseeing double-decker tour buses in New York City did not carry passengers interstate. Also, the sightseeing passengers did not purchase New York City double-decker bus tour tickets to travel interstate.

We believe Twin America was formed by the parties to jointly operate their respective sightseeing hop-on/hop-off tours primarily by double-decker buses and other vehicles in the 5 boroughs of New York City.

b. The March, 2009 "Joint Venture" Transaction is Not Interstate

The parties' respective hop-on/hop-off double-decker bus sightseeing tours of New York City did not carry passengers interstate.

As noted above, the hop-on/hop-off double-decker bus sightseeing service is not the same service as transportation services carrying passengers interstate. The sightseeing double-decker

tour buses in New York City allow passengers to board and un-board the double-decker buses at specific tourist attractions along a specified tour route, at short intervals. The New York City sightseeing tours by double-decker buses did not carry passengers out of New York State, let alone New York City.

Although the parties enumerate various services as part of Twin America's tourism services to give the semblance of interstate transportation, such as garaging buses in New Jersey, we believe the crux of the joint venture concerned the sightseeing hop-on/hop-off tours primarily by double-decker buses in the 5 boroughs of New York City. Characterizing a New York City transaction as an interstate motor passenger carrier transaction should not trigger STB jurisdiction and avoid antitrust scrutiny.

c. Approval of the Application is Not in the Public Interest

The parties state in their Application that "a grant of this Application will not only comport with the requirements of section 14303, but underscore the role of the Board in connection with transactions of the sort that led to the formation of Twin America." (Application pgs 15-16).

While underscoring the role of the STB, we are not aware of any filing made to the STB by the parties or any approval by the STB for the March, 2009, joint venture formation of Twin America under 49 USC § 14302, if such a filing were required for the pooling and division of transportation or earnings. The role of the STB may have been critical at that juncture had a filing been made because one of the standards for approval by the STB under 49 U.S.C. § 14302 is whether the transaction will not unreasonably restrain competition. While the parties have now filed the Application under 49 U.S.C. § 14303 and state that the transaction is consistent with the public interest, we disagree. The elimination of competition is not in the public interest.

A signed copy of the March, 2009 joint venture agreement and its exhibits may already have been submitted by the parties for STB review.

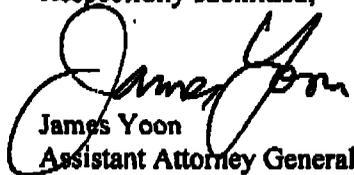
d. Jurisdictional Issues Not Resolved

"Applicants submit that the Transaction is subject to the Board's exclusive jurisdiction and will be pursuing that issue with the New York Attorney General." (Application, pg. 15). At present, since our meeting with the parties on August 19, 2009, we have only agreed to disagree as to jurisdiction. We believe that we have jurisdiction over the parties conduct concerning the formation and the subsequent joint activities of Twin America.

Consequently, the NYSAG believes the STB should find that under the present facts, the NYSAG has jurisdiction and should deny the parties' Application for control of Twin America LLC and restore competition for tour guided sightseeing by double-decker buses in New York City. In the alternative, the STB should condition the approval of the Application by ordering a divestiture of the tour guided sightseeing business by double-decker buses in the 5 boroughs of New York City from the transaction.

DATED: November 2, 2009

Respectfully submitted,


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