UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD
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ORAL ARGUMENT

IN THE MATTER OF:

STAGECOACH GROUP PLC:
AND COACH USE, INC.,:
MR. ZEV MARMURSTEIN, ET AL.:

- ACQUISITION OF CONTROL -:

TWIN AMERICA LLC:

Tuesday,
April 27, 2010
Surface Transportation Board
Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.
BEFORE:

DANIEL R. ELLIOTT III Chairman
FRANCIS P. MULVEY Vice Chairman
CHARLES D. NOTTINGHAM Commissioner

Neal R. Gross & Co., Inc.
202-234-4433
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CHAIRMAN ELLIOTT: Good morning and welcome. Thank you for coming in today. Today, we'll hear oral argument in the case of Stagecoach Group and Coach USA, et al., acquisition of Control Twin America, STB Docket Number MC-F-21035. In an effort to move things along, the Board Members will not be making any opening remarks, this morning. But I wanted to cover a few procedural matters before we begin. We've asked each party to make a short statement of their arguments. The Counsel should be prepared to answer questions from the Board at any time during your allotted time. I assure you that we have read all of your pleadings and there is no reason to repeat every argument. We will have three sets of Counsel participating in argument, this morning, in the following order of presentation and respective times allotted: Applicant Stagecoach Group and its
subsidiaries and Zev Marmurstein -- I hope I got that right -- and you have been allotted a time of 20 minutes. We understand that you wish to use 13 minutes for opening and seven minutes for rebuttal, after the other two parties present their arguments. If you wish to make a change to reserve rebuttal time, please advise us when you begin your opening presentation. New York State AG's Office will be allotted 16 minutes. Counsel for Continental Guest Services Corp., will be allotted four minutes.

Speakers, please note that the timing lights are in front of me. You will see a yellow light when you have one minute remaining and a red light when your time has expired. The yellow one-minute light will be accompanied by a single chime, hopefully. And the red light, signifying that your time has expire, will be accompanied by two chimes. Please keep to the time you have been allotted. When you see the red light and hear
the double chime, please finish your thought
and take a seat.

Additionally, just a reminder,
everyone, please turn off your cell phones.
We will now proceed. Counsel for Stagecoach
and Coach USA and Mr. Marmurstein, you have an
allotment of 17 minutes for opening. Please
step up to the podium, introduce yourself,
indicate if you wish to change your time for
rebuttal, and then begin.

MR. COBURN: Thank you, Mr.
Chairman. My name is David Coburn. I
represent the Applicants. I have 13 minutes,
I believe, Mr. Chairman.

CHAIRMAN ELLIOTT: Yes. Thank
you. I have just been corrected by Vice
Chairman Mulvey.

MR. COBURN: Yes. Thank you.

CHAIRMAN ELLIOTT: Someone's in
big trouble. I wrote that down, let me tell
you.

MR. COBURN: I hope not.
MR. COBURN: Good morning, Mr. Chairman and Mr. Vice Chairman and Commissioner Nottingham. With me at Counsel table is Michael Cohen of the firm of Paul, Hastings, Janofsky & Walker, who's been representing Twin America in the anti-trust investigation.

The question before this Board in this proceeding is one that is addressed on multiple occasions. And that is whether the Board should approve the acquisition of control of a federally regulated motor carrier -- motor passenger carrier, in the exercise of its authority under 49 USC 14303. Here, Stagecoach Group and Coach USA, together with one of the approximately 40 motor carriers that they already control, International Bus Service, seeks authority to control a new interstate passenger carrier, Twin America. Twin America was formed by the consolidation of the transportation assets of
IBS, which operated or -- under the Grey Line
name in New York, and the City Sights --
Anthony's -- the City Sights Applicants. The
owner of City Sights, Mr. Zev Marmurstein, you
did get his name right, also seeks
authorization to control Twin America. He
needs that authorization because he controls
another motor passenger carrier, RW Express,
which was the subject of another separate
application pending -- or decided by this --
by this Board. And the remaining Applicant,
City Sights Twin, seeks authorization to
combine its transportation assets that it
inherited, so to speak, from City Sights LLC,
an operating carrier, with those of IBS, for
the operation of Twin America, which is a
joint venture. Twin America is a joint
venture between IBS and City Sights LLC.
The transaction occurred as a
result of difficult economic circumstances
that are well known to all of us, and
particularly pertinent to the transportation
-- tour transportation business in New York, which suffered considerably during the recession.

CHAIRMAN ELLIOTT: Can I ask a quick question about City Sights and City Sights Twin? Did either one of those ever get their motor carrier certificate from a DOT, at any point in time?

MR. COBURN: No.

CHAIRMAN ELLIOTT: Okay.

MR. COBURN: They did not. City Sights, which operated as an interstate carrier, we recognize, should have had a motor carrier certificate. It did not. We were not representing City Sights. It did not have transportation counsel. It -- it had other counsel who handled transactions for it. I think it didn't recognize that the interstate service that it was providing through joint arrangements with other carriers was, in fact, interstate and did, in fact, bring it -- bring it within FMCSA jurisdiction and Board
jurisdiction. That may not have been obvious.

It was not obvious to -- to the folks who were running the company. They understand it now. And, through Twin America, they've applied for FMCSA authority, which they have, which they --

CHAIRMAN ELLIOTT: Well, the thought is now that City Sights and City Sights Twin are essentially gone and that they're in the Twin America. So there's no need?

MR. COBURN: Right.

CHAIRMAN ELLIOTT: Okay.

MR. COBURN: At this point, there's no need. They are -- they are shell corporations, at this time.

CHAIRMAN ELLIOTT: Okay.

VICE CHAIRMAN MULVEY: Why did Twin America fail to seek STB approval for the proposed joint venture, prior to August of 2009? And these are companies that are sophisticated; have been before the Board
before. It strikes us that it -- it strikes me, anyway, that there should have been an application before this, rather than waiting so long. Could you explain that?

MR. COBURN: Yes. I can explain it. And I can certainly understand the proposition you've raised, Vice Chairman Mulvey. Because Coach USA has been here many times. I've represented them on many of those occasions. In fact, on all of those occasions. But this was a different transaction. It involved different people at the company, who were primarily engaged in the sight seeing aspect of the business in New York. Totally different folks than those who run the inter-city bus operations. So this was a different animal. And they didn't realize that the sight seeing operation was within federal jurisdiction. That's point one. Point two, it was a joint venture. And, unlike going out and buying an intercity bus company, which was the standard modus
operandi over the years, this was a creation of a joint venture. And again, it didn't occur to them that STB jurisdiction was triggered. It occurred to them only after I explained to them, once they hired me. And, by the way, I was not involved in the transaction. My firm was not involved in the transaction. The lawyers who were involved in the transaction were New York City -- and I don't mean to demean them in any way, but they're New York City transaction lawyers. They just didn't understand the regulatory setting. And it didn't occur to them. And it didn't occur to my client that well, formation of this joint venture would trigger federal jurisdiction. They understand it now. They're sorry. They can't unring that bell. They're sorry they didn't file as they should have, before the transaction. But here we are. And there have been, as you know, many instances where parties didn't know -- inadvertently, didn't know that Board
jurisdiction was triggered; came in afterwards; and the Board has granted those applications.

VICE CHAIRMAN MULVEY: Well, bus companies have long been horizontally integrated, offering both regular route services, as well as charter and tour services. I came to Washington D.C. to work for the bus industry for the American Bus Association many, many years ago. So --

MR. COBURN: Right. I recall that.

VICE CHAIRMAN MULVEY: Go ahead, right now. I will have a few more questions.

COMMISSIONER NOTTINGHAM: Mr. Coburn, if I could.

MR. COBURN: Sure.

COMMISSIONER NOTTINGHAM: You just mentioned about the history of Counsel in this matter. Can you tell us who was advising your client on the transactional side of this back in the March time frame, pre-March of 2009,
when we all agree it would have been desirable if the appropriate filings had been made to this agency, as required by law?

MR. COBURN: Right. Right. It was a small, New York City law firm. The name of which, I don't know. Perhaps my co-counsel knows the name of that firm? No. It was a small firm that is no longer actively involved as far as I know.

CHAIRMAN ELLIOTT: It wasn't Sullivan and Cromwell? Sorry? Sullivan and Cromwell?

MR. COBURN: It was not Sullivan & Cromwell. No. No. Trust me, it was a small firm.

CHAIRMAN ELLIOTT: But could you provide that, for the record?

MR. COBURN: I'll be happy to provide you the name of that firm.

CHAIRMAN ELLIOTT: And if we have the names of the actual attorneys, that would be helpful too.
MR. COBURN: Absolutely. I'll be
-- I'll be happy to do that. They are not
known to me because, again, they're not
transportation lawyers. They don't work in
the world in which I work. They're deal
lawyers who -- who were hired to draft the LLC
agreement and, you know, deal with that legal
aspect of the transaction and -- and we were
not involved.

CHAIRMAN ELLIOTT: Thank you.

MR. COBURN: It's the firm of
Saretsky, Katz, Dranoff & Glass. And Allen
Katz is the lawyer who -- who represented the
parties during the transaction.

So, faced with reduced ridership,
faced with challenging economic circumstances,
the Applicants undertook the transaction as a
means of achieving efficiencies needed to meet
these challenges and needed to maintain a --
a prosperous business, in the face of
difficult circumstances. And, in fact,
they've succeeded in doing that. They are
retaining and building a -- a higher and
higher level of service than existed before
the transaction.

Now, the New York Attorney General
argues that Twin America has been working hard
since March 2009, to bring the transaction
within STB jurisdiction. We submit it was
within STB jurisdiction at the time it
occurred, notwithstanding that no filing was
made. The Board clearly has authority under
14303 to approve transactions where one
carrier -- when one entity that already
controls more than carrier, assumes control of
another carrier. That's exactly the situation
here. And transactions in which the
transportation assets of two or more carriers
are consolidated for operation, again, that's
the situation here.

There's nothing suspect about the
timing of the transaction and nothing suspect
about the application. As I explained, I was
retained a few months after the transaction
occurred. We did an investigation. We concluded that there was -- this was a control situation. We made the filing within weeks after that occurrence. Now, as it happens, the New York Attorney General began his investigation during that period, while the application was being prepared and after we had been retained and after we had decided, jointly with the client, that it was appropriate to make the filing -- in fact, required to make the filing at the Board. The Attorney General draws conclusions from that timing. I would suggest that's just the way things worked out.

CHAIRMAN ELLIOTT: Mr. Coburn?

MR. COBURN: Yes?

CHAIRMAN ELLIOTT: With respect to your bringing the transaction, the application, under 14303, it wasn't clear which section of that you were bringing it under. I know there's (a)(1)-5, I believe. And this is more of a hypothetical. But let's
say, hypothetically, we found that City Sights -- we didn't have jurisdiction over them at any time, would we need to be here today, under 14303, for this transaction to merge in City Sights with Coach, with Gray Line?

MR. COBURN: Yes. We would still be here. We would still have filed an application. Because Coach USA and Stagecoach, which control all the carriers, are obtaining control through this joint venture arrangement of the new carrier. That alone triggers 14303.

CHAIRMAN ELLIOTT: Okay. And is that -- that's 14303 (a)(5) or (a)(1)?

MR. COBURN: That is (a)(4), acquisition of control of at least two carriers by a person that is not a carrier. Coach USA and Stagecoach are actually not carriers.

CHAIRMAN ELLIOTT: Okay.

MR. COBURN: So it's (a)(4). And I think we also fit within (a)(5), acquisition
of control of a carrier by a person that is
not a carrier, but that controls any number of
carriers. So there is certainly a
jurisdictional hook here, putting aside the
City Sights situation. But, for Mr.
Marmurstein, there's also a jurisdictional
hook because of his control of -- of RW
Express. And also, he did control City
Sights, which, before the joint venture, was
an operating carrier, albeit one without --
without the appropriate FMCSA authority.

VICE CHAIRMAN MULVEY: Mr. Coburn,
you mentioned that the reason for this was the
declining tourism market in New York City.
Did either of these carriers make any attempt
at trying to expand their market or capture
new business by reducing prices, by cutting
prices, to try to make their services more
attractive rather than go the route of
merging, as a way out of the crisis?

MR. COBURN: Right. They, in
fact, do offer discounts. They offer
discounts on a regular basis. If you buy over
the internet, you get it's either a five or a
ten percent discount.

VICE CHAIRMAN MULVEY: Were these
discounts in response to the declining market
conditions, or were these discounts that were
always in place?

MR. COBURN: They were always in
place, as far as I know, or at least in place
for quite some time. But I think there was
some more aggressive discounting, as a result
of the recession. But there was also a
determination that, in fact, Coach USA, or the
IBS side of the business, had not raised
prices for very many years -- I think four or
five years, they had not raised prices, other
than a fuel surcharge, which came and went,
depending on the price of fuel. And they
actually decided to maintain their revenues to
increase prices. And they did that in a
setting where a lot of the transfer -- where
a lot of the tourism business, including
transportation tours in New York, and there is an exhibit on this, increased prices, modestly, but they did increase prices. They decided to do that in February, before the deal. After the transaction, City Sights or Twin America, I should say, decided the City Sights side of the business should match what Gray Line had done before the transaction, and raised prices modestly. Prices have not gone up since then. And, in fact, -- and the discounting continues. Thank you.

CHAIRMAN ELLIOTT: Thank you.

Next, we will hear from Counsel for, I believe Continental Guest Services Corp. And you have four minutes. Please step up; introduce yourself for the record; and begin.

MR. BERMAN: Good morning. My name is Mark Berman. I'm from the law firm of Ganfer & Shore, a small New York law firm, representing Continental Guests. For the record, Mr. Alan Katz, who was mentioned by Counsel, did appear for the Applicants in the
New York litigation, representing them at the
-- at the temporary restraining order hearing.

Given my four minutes, I'm just -- if you do not mind, I will be reading somewhat
from my presentation to get all the pertinent facts in. Continental Guests is an over 100
year old family owned company that's involved in the selling of bus tickets in New York City. That's double decker bus tickets,
through concierge desks. It is now being exposed to grievous harm because of the anti-
competitive consequences directly attributed to the aggregation of the market power of the Applicants. At which market power aggregation is now being formalized and entrenched if this application is approved by the Board.

I speak on behalf of a client on the ground. The first thing that needs to be made clear is that a representative of Twin America has affirmatively stated to my client on multiple occasions that the reason why the Applicant is seeking to take over my client's
concierge desks is to ensure that another
double decker bus company cannot enter the New
York City market. This statement is contained
in paragraph 49 of the Zang affidavit and is
not rebutted, in any fashion, by the Applicant
in their opposition to the preliminary
injunction papers submitted to the New York
court. That is the hallmark of anti-
competition. The fact is, Mr. Marmurstein had
come to my client, begging for Continental
Guests to sell his company's tickets.
Continental Guests could not, because they
were in an agreement with the other party
seeking application, Gray Line. When that
agreement expired, my client decided to
actively promote City Sights ticket over Gray
Line's. Why? Because City Sights gave my
client more of a commission. Now, that is, on
the other hand, the hallmark of competition.
The Applicant has made it clear, they do not
want Continental Guests to be able to do this
with any other double decker bus company in
the future, that might want to come into New
York City. One might ask how that can be
effectuated. Continental Guests has a 43
desks in hotels in this city. Those hotels
control approximately, based on the
Applicant's numbers in the New York action, 50
percent of the hotel rooms in New York.
That's how it could be effectuated. And
that's why Mr. Marmurstein knew, when he came
to my client years ago, why it was so
important to offer my client such a high
commission. They made -- my client made City
Sights. The service of my client provides
unequivocal and concrete proof that the
concerns articulated by the New York Attorney
General, regarding the competitive harm likely
to result from the aggregation of these bus
companies is not theoretical and not
speculative.

VICE CHAIRMAN MULVEY: About what
percent of the total charter bus market -- the
tour bus market rather, in New York, is
marketed through the concierge's desks? Do you have any idea?

MR. BERMAN: I can't tell, because I could tell, we have 43 desks.

VICE CHAIRMAN MULVEY: Yes.

MR. BERMAN: And there are other concierge's desks. Some hotels have. Some hotels do it in house. Some hotels use other people. So I'm not aware of that figure.

VICE CHAIRMAN MULVEY: Aren't there also other places in other venues where you can buy tickets for these tour busses, other than the hotels?

MR. BERMAN: Yes. Vice Chairman. There are multiple other places.

VICE CHAIRMAN MULVEY: Yes.

MR. BERMAN: One would be the hawkers or street sellers, the guys with the vests on the street corners.

VICE CHAIRMAN MULVEY: Well, it's important because I would consider this to be a potential barrier to entry in a market.
which, on the face of it, has very low barriers. So, if this is an important selling point, then that could comprise a very, very serious barrier to market entry for new entrants.

MR. BERMAN: The answer is the evidence of it being a barrier to entry is the factual statement that City Sights went and begged to my client and we put them on the market. They were a small guy running up against Gray Line. How else do you come into New York City, but by getting the one source, if you will, that will have a captive market of all the guests in -- in the hotels in New York City. I understand my time is up. I have not, Mr. Chairman, had the opportunity to go through. If you'd like, I would, with the Panel's permission, some of the anti-competitive effects that have resulted post-merger -- post-combination, since my client is on the ground.

COMMISSIONER NOTTINGHAM: Mr.
Chairman, I'd like to ask --

CHAIRMAN ELLIOTT: I think we have one more question and then we'll let you bring out your point, as well, Mr. Berman.

COMMISSIONER NOTTINGHAM: But you mentioned your client is located at 43 hotel sites. I mean, rough estimate, how many hotels would you estimate there are in New York City?

MR. BERMAN: Based -- based on the documents provided by the Applicants to New York, their -- their list included 299 hotels. Those 290 hotels represent about 60,000 and some odd rooms. And, when you look at the 43 desks that my clients control or lease, those hotels represent about 49 percent of the 60,000 some odd hotel rooms, based on the chart submitted by the Applicant.

COMMISSIONER NOTTINGHAM: In your presentation, you touched on a little bit of the history, recent history and somewhat recent history in this -- this market. You
mentioned your long-standing working relationship with the Gray Line, which I understand is -- had been, historically, the long time dominant provider of this type of service?

MR. BERMAN: Yes. Coach, Gray Line, they -- they were the predominant double decker tour bus company in New York. That is correct.

COMMISSIONER NOTTINGHAM: And then, somewhere along the line, a new entrant entered the market?

MR. BERMAN: Correct. We had an agreement with Gray Line. We sold their tickets. Sometime down the line, City Sights came to my client. Mr. Marmurstein had said would you sell my double decker tour bus tickets. We said no, because we're in an arrangement with Gray Line. When the agreement with Gray Line expired, we then sold to both. City Sights offered my client --

COMMISSIONER NOTTINGHAM: If I
could, what happened to Mr. Marmurstein's
business when you said no. Did he -- was he
not able to enter the market at that point?
Or did he proceed to enter the market?

MR. BERMAN: I do not know the
precise timing. But the -- this was in 2007.
Mr. Commissioner, I believe that the requests
to my client came shortly prior to the
termination of the Gray Line agreement. So
the period of window was very small. But I
can't tell you -- I mean, factually, what City
Sights did during those couple of months. How
did they -- or did they not enter the market
with the anticipation that the agreement was
going to end? My client, very likely, said to
them well, I have an agreement with Gray Line.
It's ending in X months. And when the X
months expired, they -- they struck a deal.

COMMISSIONER NOTTINGHAM: The
record seems to indicate that there is a
history here of new entry into this market.
And, in fact, that's exactly what we've seen
is a new entrant that has actually pulled
together a pretty significant team of
companies and bundled them together. And it's
not -- to me, it's not a history of market
dominance by one carrier. It's a story of a
market that's been successfully penetrated and
it causes me to wonder why anybody who can get
their hands on a bus or two and has the
ambition to go out and work with street
hawkers, the internet, and any friendly
concierges they can befriend, can enter this
market. So what's mysterious or difficult
about entering this market?

MR. Berman: Well, first of all,
we have -- Gray Line was there for a very long
time. I believe the industry and the players
in the industry would testify or indicate
that, when City Sights came on board --

Vice Chairman Mulvey: Can you
speak up a little, please?

MR. Berman: When City Sights came
on board, they needed my clients to promote
City Sights ticket over Gray Line. And, in fact, what happened is, as a result -- and I think the numbers would reflect that using my client as the venue -- the distribution channel, City Sights was very, very, very successful. As far as there's one other double decker tour bus company, Big Taxi. I think they have five busses in -- in the whole -- in all of New York City. I think perhaps their percentage is a percent or two, maybe three. The Attorney General would have better information about percentages. But when you look at the -- the Applicants, they control well in excess of 90 percent. So I don't think the -- they're -- it's easy to enter. And, if it was easy to enter, and there was no barrier -- no barrier created, they wouldn't have come to my client begging to use my client's distribution channel as a means to sell their tickets. So I don't think it's easy. And, in fact, since Gray Line and since City Sights, you haven't seen another company
come in, other than Big Taxi, which has a
couple busses and is virtually ineffective.

COMMISSIONER NOTTINGHAM: Just one
last question, if I could, Mr. Berman. You
work closely with -- it sounds like your
client works closely with a number of major
hotels in New York City, on a daily basis.

MR. BERMAN: That is correct.

COMMISSIONER NOTTINGHAM: In your
experience, or your client's experience, do
those hotels make it a practice of referring
their guests to tour businesses and tourist
businesses that don't provide good service;
that are either unsafe or are over charging
their customers? I mean, just in my
experience as an individual, guests at hotels,
usually, you can count on -- on the concierge
to, you know, give you the straight scoop.
They tell you, you know, don't go to that
restaurant. They're really over priced. You
really -- you'd probably prefer the one around
the corner. I mean, but what's the -- you're
there. I'm not an expert on that area of the business.

MR. BERMAN: We have 43 desks. We are full service. We have been in the business for over 100 years. If we don't do a good job, we don't sell the product. It's unlike other venues. A -- yourself would go over to the general manager or the reservation desks and say, you know that concierge over there, gave me a bum steer -- gave me a -- a crummy restaurant, a bad -- gave me bad guidance. And you get many of those, you get terminated. So the answer is, if you're doing a good job, you're providing full service, you will be successful in the concierge's market. And the fact of the matter is, double decker tour bus tickets, because of their price point, because of the ability where they're guided, because, on nice days, they can be outside, because of the hop on hop off attribute of them, and because you can bring your whole family, it is the number one
tourist attraction in the city. Everyone wants to do it. They're all over the place and a whole family could do it at a reasonable price. The result is if, in fact, the Applicants stop selling to us, we're no longer full service. If we're no longer full service, the hotels will terminate us because their guests will come to the concierge and we're going to be able to say you want a double decker bus tour ticket? We can't provide it. Go down the street and fight with the hawkers -- the street sellers who are on the corners who, right now, post combination, are fighting with each other about territories. And, in fact, hassling -- I mean, right now, post combination, hassling the consumer. I -- I understand my time is up. I haven't had an opportunity to give --

CHAIRMAN ELLIOTT: Yes. I have one follow-up question -- just finally, along the lines of what Chip was asking you -- Commissioner Nottingham. Is there a reason
your client could not promote a new third
company along the lines of what Chip was
asking you?

MR. BERMAN: If a third company --
CHAIRMAN ELLIOTT: Came onto the
market.

MR. BERMAN: -- came to us and
said we're good. We have the services. This
is what we offer. Our client utilizes
everybody. We -- you know, whether it's some
sports, double decker tour busses -- if you're
quality, we've been around 100 years. If
you're -- and you're well priced; you do your
job; we'll use you. Right now, you'll -- you
know, being on the ground, what has happened
post combination, the lines have gotten
longer. The service -- the quality has gotten
-- gone down. The prices have gone up. The
cost, obviously, with the reduction of my
client's commission -- commissions have gone
down. The result is, with those lower costs,
view -- and, of course, without multiple bus
companies out there, there's no competition
with -- vis a vie us. The fact of the matter
is, when it was Gray Line and City Sights and
they weren't combined, both offered
alternative commission rates. We played one
off against the other. That's gone now. They
set the unilateral -- unilaterally, it's take
it or leave it.

CHAIRMAN ELLIOTT: Thank you,
Counsel, very much. Next, we'll have Counsel
for the New York State Attorney General. You
have been allotted 16 minutes for your
argument. Please step to the podium;
introduce yourself for the record; and begin.

MR. YOON: Good morning
Commissioners. My name is James Yoon. I'm an
Assistant Attorney General from the Antitrust
Bureau of the New York City Attorney General's
Office. And with me today is Michael Berlin,
Deputy Attorney General also, for Economic
Justice, also from the New York Attorney
General's Office.

You've heard from the Applicants about how the -- the different people were involved in the transaction to the joint venture. But I believe Mr. Kanir and Mr. Moser signed affidavits to the earlier transactions and to this particular joint venture, also. So I don't understand why they say different people are involved.

COMMISSIONER NOTTINGHAM: Just for the record, could you explain who those individuals are? Are you talking about attorneys, private attorneys, or corporate officers?

MR. YOON: No. These are the individuals -- corporate officers, representing Coach USA.

COMMISSIONER NOTTINGHAM: Thank you.

MR. YOON: We feel that the joint venture by the Applicants is -- harms competition, harms employees, and we believe
the STB should deny the application because it is not in the public interest. The effects of this joint venture are not speculative. We've already seen that the prices have gone up. They've even said that, after the merger, prices have gone up. They say a little. But it's about ten percent. And the services -- we've heard from the unions, that the -- that they've lost wages, lost hours. All these, I believe, harm the consumer, ultimately, as well as the employees.

The Applicants put forth some efficiency justifications for this joint venture. We believe those efficiencies are not outweighed by the anti-competitive effects. Some of these efficiencies that claim -- that they claim can be done on their own. For example, they say maintenance of busses. I think that's something they can do on their own. Replacing older busses and fixing the older busses, you can do that on your own, without this merger. Upgrading the
garage? I mean, do you really need a merger to do all this? I don't think so.

VICE CHAIRMAN MULVEY: We have this in most industries. When firms merge, they try to consolidate some operations to generate some cost savings. So you may have a single garage doing the maintenance and you may be dealing with only 150 percent of the employees, instead of the 200 percent that there were while operating separately. So there tends to be some efficiency economies. But my concern is much more on the entry barriers. I know the AG's Office argues that the hop on hop off, double decker bus market is a unique product -- a separate market. But, are there really significant barriers to entry in this market? I mean, it seems like almost anybody can buy a bus and get into the market and begin operating.

MR. YOON: Well, I think the -- you have to have timely and sufficient -- a timely manner and sufficient skill and it has
to be likely that there would be an entry. So I believe the merger guidelines considered two kinds of entry. There's committed and uncommitted. The uncommitted are, you know, the bus companies that can leave -- get a license, have bus stops, but they may leave the next day or, you know, the week after.

VICE CHAIRMAN MULVEY:

Contestability theory argues that if you have low barriers to entry, then that, itself, can be sufficient to keep down prices and create competition, even if there aren't that many actual competitors.

MR. YOON: But low barriers to entry, I believe there are other barriers to entry besides just getting a license. As I said, the skill, in terms of having -- maybe now, you'd have to have more than 50 busses -- double decker busses. You'd have to have -- invest in the office. You'd have to invest in the arrangements with the ticket sellers, travel agents, street sellers. As
the Applicant's economist has stated, most of
the tickets for Twin America, also which means
Coach and City Sights, were sold in the
streets, through ticket sellers. All that
sort of investment, for somebody to come in,
I believe would be very difficult. I believe
that would be a barrier.

Also, there are regulatory
cconcerns. There -- currently, New York City
is a mature market. There are many more
busses than there were a few years ago.
People have been complaining about the
congestion and the noise. And I know there
was a hearing on the New York City Commission
on sight seeing busses, to regulate that. So
that certainly is a future concern. Also, the
Applicants site to the City Sights of growing
from eight busses to 70 in four years. As I
said, the market is a little bit much more
mature now. And also, I would believe in
2003, there was another double decker bus
company -- Big Apple, New York Tours, that
they went out of business. And they were a substantial company. Those assets were later bought by Gray Line, I believe. So I think the barriers to entry are not just getting a license and bus stops. I believe that you won't see another City Sights kind of company growing that rapidly. And also, timely entry. I think it has to be within two years or so. It took City Sights four years. I believe whoever tries to come in now, unless you have really a lot of substantial amount of capital, it will be very difficult.

The other barrier to entry --

CHAIRMAN ELLIOTT: Have there been any new entrants since the joint venture began?

MR. YOON: I'm not aware of any new entrants that are that scale or scope. And I believe the Applicants have stated that the fuel costs are a big part of the costs of operating a sight seeing business. And the Applicants, in their earlier first
application, have said that they are going to leverage the -- I guess, being part of the Coach USA's company of busses, are getting better prices. I believe the volume discounts that they are able to achieve from the economies of scale, somebody -- a new entrant coming in, other than, as I said, an uncommitted entrant, would be very difficult to sustain.

COMMISSIONER NOTTINGHAM: Mr. Yoon, if I could, frankly, I was a little surprised when I saw that your office was keenly interested in this transaction. But you certainly have a -- I respect the office and I just want to understand a little bit more about it. How typical is it for your office to get involved in the tourism market, where you reference the 10 percent price increase here? We read regularly in the press that, you know, a lot of prices have gone up in New York in the tourism business, sometimes affecting Broadway shows, sometimes affecting
cruise line tour operations. I'm a baseball
fan, so I'm certainly familiar with the prices
at Yankee Stadium and the new Mets Stadium.
I mean, do you guys go in -- have you opened
up cases in all of those areas, looking out to
protect the consumers? Or is this just kind
of out of the ordinary for you?
MR. YOON: I guess I wouldn't say
out of the ordinary. I guess our concern is,
certainly, we are -- the tourism business and
the double decker busses and the other forms
of tourism are important to us. And I guess
our concern was that, because the double
decker bus business is unique, two major
players were getting together. We didn't see
any real alternative double decker bus
companies. They have a captive market. They
have the -- the market power to unilaterally
raise prices. And we felt that it was
important to at least investigate the
transaction -- the joint venture, that took
place in March. And, at that point, I believe
there wasn't any scrutiny by anyone at that point. So we just wanted to see what was going on there.

VICE CHAIRMAN MULVEY: One factor to determine market power is demand elasticity. And one would assume that, since this is not like commuter operations where you need to have access to transportation to get to work, this is discretionary travel. And one would assume, therefore, that demand was much more elastic and therefore, much more price sensitive. And that there are some real limits as to how much they can raise rates. Would you agree?

MR. YOON: Well, the elasticity -- the cost elasticity, I believe, deals with sort of substitutability. So if prices were to increase so that people -- the double decker riders would go somewhere else, I believe that, if there were something substitutable for double decker busses, you can sort of have that kind of study. But, as
we've said in our papers, we believe that the
double decker bus market is unique for all the
reasons. Number one, geographically, you're
going to all the sites in New York City. It's
-- you know, it's a finite area. The sights
that are very popular -- the tourist sites,
are also similarly finite. They run along the
routes where, physically, you can only have so
many busses at one time. The option of
going on and off these busses, looking at
the sites, then waiting for another bus to go
to the next site, these are all unique
properties, I believe, that makes this double
dercker bus market and the double decker busses
-- there are no redial substitutes.

VICE CHAIRMAN MULVEY: Why
couldn't a regular bus do the same thing; run
the same routes; stop; allow for hop on and
hop off service; have a guide who gives a
narrative. You wouldn't have the open top,
which, of course, isn't really good in winter
or when it's raining.
MR. YOON: Right.

VICE CHAIRMAN MULVEY: But nonetheless, it could still do the same thing. And I would think that that would be an option, even if it wasn't a double decker. You could stir up competition, but with something that is a close substitute. No?

MR. YOON: I believe the -- the point of, I guess, riding outside and, you know, being at eye level with the sights, are very important. I'll give you just a personal example. I rode on one of these busses. And I've lived in New York most of my life. And they were giving a tour about Macy's. And, as I was crossing 34th Street, they said the old Macy's is across the street. You can see the old Macy's sign, across the street from the new Macy's. And, you know, sure enough, on the wall is a sign, you know, that it was the former Macy's. I've lived in New York all my life and I never knew that. But that's something I would never have seen, you know,
riding or being down at street level.

VICE CHAIRMAN MULVEY: I was born and raised in New York. And, when I was a kid, they actually had double decker, open topped busses on Fifth Avenue. And that was actual regular route transportation service. But now you only have the tour busses.

MR. YOON: Right. And so --

CHAIRMAN ELLIOTT: Can I ask you a quick question?

MR. YOON: Sure.

CHAIRMAN ELLIOTT: Just for informational purposes only. Was your state court action that you brought, was that just strictly brought under state law -- state and anti-trust law or was that federal also?

MR. YOON: We didn't bring any action, yet.

CHAIRMAN ELLIOTT: Okay. It was an investigation?

MR. YOON: Oh. That was -- the state court action was by a private plaintiff.
We have not brought any action.

CHAIRMAN ELLIOTT: Okay.

MR. YOON: We are, as you know, we've started an investigation under the Donnelly Act. And we've sort of been investigating with one hand tied behind our backs. Because the Applicants have been, you know, raising jurisdictional issues. And they've voluntarily produced documents at their leisure and discretion. I have requests, for example, for since December and January, for simple things like the organization chart for Stagecoach.

CHAIRMAN ELLIOTT: Has justice had any issue in this?

MR. YOON: Yes. Justice Department has -- I believe they are not involved in this investigation.

CHAIRMAN ELLIOTT: Okay.

MR. YOON: So, as I say, the -- if we -- if we're allowed to go through our full investigation, you know, we can take the
statements under oath; get certified that all
documents have been produced to us; and so,
this actually was referred to us by Justice.

CHAIRMAN ELLIOTT: But what do you
think of their jurisdictional arguments?

MR. YOON: I -- the jurisdictional
argument, as I've said, the joint venture
agreement of March 17, 2009 -- the joint --
the language of the joint venture agreement,
itself, as well as the documents that I've
cited in the exhibit, all show that the -- it
was intrastate; that it was a separate
business -- this double decker sightseeing
business was not part of their overall
intrastate business, if they had any. For
example, City Sights, I believe, did not. I
don't think their arguments about the double
decker business being interstate really makes
sense. The joint venture agreement, itself,
was contemplated within New York City. I
believe the parties may have, themselves, felt
that's why they didn't need to file with the
FTB because it was just intrastate. I can't speculate but, you know, they've made all these arrangements and through-ticketing arrangement, I believe, which are sort of after the joint venture of March 17, 2009. And the -- their economist has stated that their tickets are sold, most of it, on -- by the ticket sellers on the street, literally standing on the street. That was on -- in his exhibit. So I believe it's very, very local. The sites are local. These busses don't take -- I've not seen a double decker bus go to pick up anyone at the airport. I have not seen anyone go out of state. I think this is purely --

VICE CHAIRMAN MULVEY: Purely a federal preemption? Is that your argument, is that it's purely a federal preemption of the New York State AG's authority of them? Is that your suspicion?

MR. YOON: That the Applicants'?

VICE CHAIRMAN MULVEY: Yes. In
other words, they want to preempt the state laws by --

MR. YOON: Oh, yes. I mean, the -- the exhibit that I attached to one of my applications, makes clear that they wanted to avoid our scrutiny. I can't -- I can't see anything that's --

VICE CHAIRMAN MULVEY: You say you have an investigation going on and you've asked us to postpone any decision until you complete your investigation. Do you have any sense as to how much longer your investigation would take before it would be concluded?

MR. YOON: The -- I believe the STB can -- has the authority to decide whether the Applicants' business -- the double decker business in intrastate or interstate. And we've argued and you've seen our papers, that we believe it's intrastate and that we should be able to continue our investigation. Right now, because the Applicants have stated that the STB preempts the New York State AG from
going on with its investigation, we've just
taken documents and such, voluntarily. So --
yes, so we would like the guidance of the STB
to determine whether the double decker bus
business in intrastate or interstate. We
strongly believe it's intrastate for all the
reasons that we've stated. And we hope that,
if the STB believes that it's intrastate, we
hope that the STB will deny the Applicants'
application, because it's not in the public
interest. Thank you, Commissioners.

CHAIRMAN ELLIOTT: Thank you,
Counsel. Now Counsel for Stagecoach, you have
seven minutes for rebuttal. If I could ask,
if we could -- I do have some issues with
jurisdiction here, that were raised by Mr.
Yoon. And could you kind of take us through
the time line of when -- because it sounds
like there was some charter service added,
possibly. And I understand your through-
ticketing arguments. I know there was a trip
out to New Jersey. But if you could just kind
of take us through the time line and --

because I do have some concerns about

jurisdiction here.

MR. COBURN: Thank you, Mr. Chairman. As part of the transaction, Twin

America received 12 standard, not double

decker, but standard motor coaches, the kind

you see on the highway all the time, through

-- from IBS. Those motor coaches had a

history when they were in IBS's control, of

being used for charter service. When Twin

America took them over, that was the logical

use. Twin America began, in fact, operating

them in charter service -- interstate charter

service.

CHAIRMAN ELLIOTT: When did that

start?

MR. COBURN: There were a few

charters operated after the transaction --

within a few months after the transaction.

That number has been growing, as they've been

focusing more on the charter side of the
business and putting those busses to productive use. I know that, in March of this year, they operated about 18 charters. And that's the rate at which they're operating them. The charters go to Atlantic City. They go to Washington, D.C. They go to the casinos in Eastern Connecticut. They go to various other places, Philadelphia, etc. So these are --

CHAIRMAN ELLIOTT: And you said, as of March '09, when the transaction was signed, that these 12 busses weren't with -- were part of that original transaction?

MR. COBURN: Yes, they were.

CHAIRMAN ELLIOTT: And the intent was always to have this charter service?

MR. COBURN: That's the best way of using these busses. The busses are sometimes used for sight seeing services. But besides that --

CHAIRMAN ELLIOTT: They are also used in the double decker tour --
MR. COBURN: On rare occasions, when they need extra busses.

CHAIRMAN ELLIOTT: Okay.

MR. COBURN: But, nine times out of ten, it's -- it's the double decker busses that operate the sight seeing services and these motor coaches are used for other services, primarily charter services. And it was because they were operated for charter services, that when we were hired, which was in June -- it was in June of -- of '09, we advised that they needed their own authority to operate these charter busses, as charter services. They had been thinking that they could operate them because they had been IBS busses, under IBS's operating authority. And we explained that was not a possibility. That they needed -- Twin America should have its own authority; get its own insurance. It -- It advertises these -- the availability of these busses for charter service and it operates charter services as part of what it
does. So it -- there were two sides to the business. There's the sight seeing side of the business and there's the charter side of the business. As far as the sight seeing side -- and -- and there's one other side, which is, that they operate vans to pick people up at certain hotels in New Jersey and bring them into New York City, where they then get on the double decker sight seeing busses. Well that van service is across state lines and it is subject to regulation.

CHAIRMAN ELLIOTT: And that's all part of Twin America?

MR. COBURN: That's all part of Twin America. Those vans also.

CHAIRMAN ELLIOTT: And that started from day one?

MR. COBURN: From day one.

CHAIRMAN ELLIOTT: Even the van service?

MR. COBURN: Van service from day one. And that -- that is a continuation of
service that IBS was offering, pre-transaction. So nothing changed.

CHAIRMAN ELLIOTT: And was that in the record in your verified statements?

MR. COBURN: It is in the record.

Yes, sir.

CHAIRMAN ELLIOTT: Okay. Thank you.

MR. COBURN: The -- and then, of course, the sight seeing service, itself, is subject to these joint arrangements with Peter Pan, with other bus companies, including some of the Coach USA companies, with Metro-North, a railroad that operates into Connecticut. We have evidence in the record of a through-ticketing arrangement with Peter Pan, where you can buy a ticket to go from Connecticut, down to New York City, get on a sight seeing bus, do your sight seeing, and go home on Peter Pan, all one ticket and one price.

VICE CHAIRMAN MULVEY: I have a question along those lines. Before the Bus
Deregulation Act of 1982, regular intercity services provided by Greyhound and Trailways were different from the charter and tour operations that were provided by other carriers. Now, a company like Gray Line, which focused on local tours in New York City, for example, before 1982, did they need authority from the ICC at that point? Or were they strictly regulated locally -- by local entities and were therefore exempt from ICC regulation?

MR. COBURN: I can't speak to -- to Gray Line's situation. I would think, if they operated in an area where they crossed state lines, they should have had federal authority. And I know that the Gray Line companies that Coach USA bought back in 1998, as I recall -- yes, it was 1998 -- including Gray Line of New York and GL Bus, which was a Gray Line company, they had federal operating authority. Coach USA bought them. It's a precedent for this proceeding, because those
were the companies that were operating the
double decker operations. And we explained
that back in 1998, when we came to the Board
and said we want to buy these companies.
Here's what they do. And the Board approved
that transaction. And we explained they
operate double decker sight seeing tours in
New York. So it's a precedent for this very
case.

COMMISSIONER NOTTINGHAM: Mr.
Coburn, if I could ask, in your reply brief on
page 9, you explain your client's application
to this Board, that the main reason for that
is that your client was taking "rational --
and legally required -- actions as a motor
passenger carrier to further its
transportation business and to comply with the
law." When -- when -- at what point in time
should your client have filed with the Board
to fully comply with the law?

MR. COBURN: They should have
filed, in a perfect world, they should have
filed before the transaction and waited the period during which you would have deliberated on their application.

COMMISSIONER NOTTINGHAM: And we would have put that out for comment and we would have heard, perhaps, from the New York Attorney General's Office in a timely manner, at that time.

MR. COBURN: Yes. Yes.

COMMISSIONER NOTTINGHAM: Or, and other parties. Do you see any sense of awkwardness or a problem with a regulatory agency at the federal level, such as ourselves, not being able to do our job because we don't even know about the existence of the transaction. And, in this case, thank goodness it was not ten or 20 years. But it could have been. We're lucky it wasn't. I mean years could have gone by before complaints could have risen that would have triggered concerns on the ground in New York. And then we would have learned wow. Do you
see a sense of why we would be concerned with that scenario? We're in a climate here in Washington where all regulatory agencies are being scrutinized. You know, are we doing our job? Are we protecting the public interest? And here we are, we don't even know about what we're supposed to be regulating because people are failing to disclose that according to law. And I guess the last part of the question is are you familiar with some of the civil penalty provisions in Title 49, that apply to parties who fail to file various applications with the Board?

MR. COBURN: We are -- we are familiar, Commissioner. And we are respectful of the Board and here we are. I must say that our -- my colleague here, representing Continental Guest, was not respectful of the Board. They did not come before the Board. And yet we heard arguments this morning about affidavits that I've never heard of and all sorts of facts that Mr. Berman is throwing
into the record. They didn't come before the
Board. They went right to state court. We --
my client was not a perfect actor here. We
acknowledge that. But once they determined
that there was a problem, here we are. We
came before the Board. We filed an
application. We're doing the best we can,
given those facts. And there are lots of
situations where, for any number of reasons,
we're not the first, where parties have come
to the Board after a transaction, in the
railroad area, as well as in the bus area.
And the Board has perhaps slapped the party on
the wrist. But where the transaction serves
the public interest, that's the ultimate test.
The Board has approved the transaction. And
that's what we submit you should do here. If
I may just -- there were so many points that
were raised, I really didn't get a chance to
respond to them. And I have just another
minute. About barriers to entry, I think the
barriers to entry argument is -- is really
illustrated so well by City Sights. City
Sights started with eight busses. They
quickly grew within two years to 50 busses,
without the cooperation -- without an
arrangement with Continental Guest Services --
without the concierge service, they grew to 50
busses, between 2005 and 2007. It was in
2007, when they first made an arrangement with
Continental Guests. So the notion that
Continental Guests is somehow -- that dealing
with them is somehow critical to success is --
it's belied by the fact that about 90 percent
of the sales for these busses is done through
street sellers and through the internet. You
go on Orbits; you go on Expedia; you can buy
these tickets. And lots of people do. In
fact, the hotels only represent about nine
percent of the sales. And Continental Guests
is only -- has concierges in -- out of -- in
43 hotels out of hundreds.

COMMISSIONER NOTTINGHAM: Mr.
Coburn, while you're on that point, can I ask
would your client object to Continental 
Guests, in the future, purchasing tickets 
online, on the internet, or from street 
hawkers and reselling them?

MR. COBURN: They -- I think 
they're free to do that. I think they're free 
to do that. And so they don't need an 
arrangement with us to sell tickets. In fact, 
I was -- I walked through Times Square the 
other day, enroute to Penn Station, and there 
were street sellers at every corner, trying to 
sell me tickets on City Sights busses and on 
Gray Line busses. They're all over the place. 
And for a new entrant to arrange for street 
sellers is not -- is not a problem. It's not 
--

VICE CHAIRMAN MULVEY: Well, what 
about the allegation that Mr. Marmurstein has 
told the concierge group that he wants to buy 
them out, he wants them to turn over the 
business for some compensation to Twin 
America?
MR. COBURN: Well, I think he did -- I'm not -- I'm not fully conversant with the arrangement between the City Sights folks and the Twin America folks and the concierge group. But my understanding is that they did try to buy the concierge group. Nothing wrong with that. And have tried and, that having failed, have tried to set up their own concierge group. Perfectly within their contract rights to do that. That will be tested, I suppose, in a New York court. But --

VICE CHAIRMAN MULVEY: Would that kind of vertical integration now become a barrier to entry? I mean, sometimes you can be fooled by entry barriers. In the aviation industry, many assumed that it had very low entry barriers; that it was an easy business to get into. But, at GAO, we discovered that there were a lot of hidden barriers to entry, marketing barriers, etc., that new entrants couldn't get into in major airports. And I'm
wondering if there aren't some similarities here, where, on the surface if it, it looks very, very easy to get into the bus market. Anybody can buy a bus. And yet, on the other hand, because of the marketing situation, and the marketing requirements, it really is fairly difficult to get in, as Mr. Yoon suggested.

MR. COBURN: Well again, City Sights grew without the concierge assistance, because they represent only a small percentage of the sales. The vast majority of the sales being on the internet and through ticket sellers on the street. So even if you didn't have any opportunity to make arrangement with concierges and we're far from a situation where City Sights or Twin America is going to control all the concierge desks. But even putting aside the concierge desks, there's lots of opportunities to sell tickets. And that's what City Sights did without the assistance of the concierges. So I don't
think this is something for any of us to lose
sleep over. I think there's all sorts of
opportunity for new entrants and for existing
companies to grow their services and -- and,
just like City Sights did. On top of which,
the notion that we're talking about a market
here that is confined to just double decker
busses is a false premise. And I think our
papers and Dr. Willard's testimony, explore
that in great detail and demonstrate that the
market is, in fact, a much bigger market that
consists of all of the tourism opportunities
available to people in New York. Not only
land tours, but water tours, air tours, and
other kinds of attractions where they can
spend their tourist dollars.

VICE CHAIRMAN MULVEY: Thank you.

CHAIRMAN ELLIOTT: Thank you,

Counsel. I think we're --

MR. COBURN: If I may, just a
clarification for the record. The counsel for
Coach USA in the transaction was Robert
Okulski of Gibney, Anthony, and Flaherty, the
Alan Katz who I mentioned the other -- earlier
was a counsel for the City Sights side.

CHAIRMAN ELLIOTT: Sure. Yes.

You -- thank you, very much, Counsel. And if
you would like, I saw that you reacted to one
of the statements. And if you -- but just
keep it short.

MR. YOON: Thank you,

Commissioners. I just wanted to say that the
joint venture agreement excluded a general
charter business. I'm not sure about the
charter business that the Applicants were
talking about, number one. And number two,
the Applicants stated that they compete with,
you know, Harlem Bus Tours and boats and
whatnot. But their website actually
adVERTISES these tours. So I don't think a
competitor -- they would advertise a
competitor's business.

CHAIRMAN ELLIOTT: Thank you,

Counsel. Thank you, very much, for your
arguments today. We've got your arguments.
We will take this matter under advisement.
And the meeting of the Board is not adjourned.

(Whereupon, the meeting was
adjourned at 10:20 a.m.)