

28595
EB

SERVICE DATE - LATE RELEASE NOVEMBER 13, 1997

SURFACE TRANSPORTATION BOARD

CORRECTED DECISION*

STB Finance Docket No. 33428

COACH USA, INC., AND LEISURE TIME TOURS--CONTROL AND MERGER
EXEMPTION--VAN NORTWICK BROS., INC., THE ARROW LINE, INC.,
AND TRENTWAY-WAGAR, INC.

Decided: November 3, 1997

By petition filed July 18, 1997, Coach USA, Inc. (Coach), a noncarrier that controls 28 motor passenger carriers,¹ and Leisure Time Tours, d/b/a Leisure Lines (Leisure Time), a motor passenger carrier (MC-142011) wholly owned by Coach (collectively, petitioners), seek an exemption, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), for Coach to acquire indirect control and Leisure Time to acquire direct control of Van Nortwick Bros., Inc. (Van Nortwick), a motor passenger carrier, and thereafter to merge Van Nortwick into Leisure Time, which will be the surviving entity. In the same petition, Coach also seeks an exemption, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire direct control of The Arrow Line, Inc. (Arrow), and Trentway-Wagar, Inc. (Trentway),

* This decision corrects the prior decision served on November 13, 1997 by adding additional language in footnote 1 to reflect Coach USA, Inc.'s filing of a petition for exemption in Coach USA, Inc.--Control Exemption--Browder Tours, Inc., and El Expreso, Inc., STB Finance Docket No. 33506. Also, the effective date of the decision should have been the same as the service date which is November 13, 1997, not November 17, 1997. All other information remains the same.

¹ Coach currently controls the nation's second largest group of motor passenger carriers. See Coach USA, Inc.--Control Exemption--America Charters, Ltd., STB Finance Docket No. 33393 (STB served Oct. 3, 1997), slip op. at 1. In addition to the instant petition, Coach has three other pending petitions: Coach USA, Inc. and K-T Contract Services, Inc.--Control and Merger Exemption--Gray Line Tours of Southern Nevada, STB Finance Docket No. 33431 (STB served Aug. 22, 1997), in which it seeks an exemption to acquire control of one additional motor passenger carrier, Coach USA, Inc.--Control Exemption--Air Travel, Inc.; Airlines Acquisition Co., Inc.; and Transportation Management Services, Inc., STB Finance Docket No. 33471 (STB filed Oct. 7, 1997), in which it seeks to acquire control of three additional motor passenger carriers, and Coach USA, Inc.--Control Exemption--Browder Tours, Inc., and El Expreso, Inc., STB Finance Docket No. 33506 (STB filed Oct. 31, 1997), in which it seeks to acquire control of two additional motor passenger carriers..

motor carriers of passengers.² To avoid any unlawful control pending disposition of this proceeding, the stock of Van Nortwick, Arrow, and Trentway was placed in independent voting trusts.³

Notice of the exemption petition was served and published in the Federal Register on August 12, 1997 (62 FR 43195-96). A copy of the notice was also served on the U.S. Department of Justice, Antitrust Division. No comments have been filed in response to the notice.⁴ Based on our review of the record, we will grant the exemption.

BACKGROUND

Van Nortwick is a New Jersey corporation. Prior to the transfer of the stock of the carrier into the voting trust, it had been owned by Maureen Hockey. Van Nortwick holds federally issued operating authority in MC-149025 and intrastate operating authority issued by the State of New Jersey. Van Nortwick provides charter and tour operations primarily in New Jersey and nearby states. The carrier operates 5 buses; it has 10 employees; and it earned revenues of approximately \$600,000 in 1996.

Arrow is a Connecticut corporation. Prior to the transfer of the stock of the carrier into the voting trust, it had been owned by Amy K. Dupuis, Bertha T. Dupuis, Danielle Dupuis, Michael Dupuis, Nicole Dupuis, and Raynald R. Dupuis. It holds federally issued operating authorities in MC-1193 and MC-1934⁵ and intrastate operating authority issued by the States of Connecticut,

² Petitioners state that none of the carriers to be acquired holds an unsatisfactory safety rating from the U.S. Department of Transportation, and none is domiciled in Mexico or owned by citizens of that country.

³ Petitioners filed a copy of the trust agreements executed for each carrier.

⁴ On October 10, 1997, petitioners filed a request for expedited action and a decision by no later than October 31, 1997. In support of the request, petitioners submit that no comments to the notice have been filed, the petition is “unexceptional,” similar Coach petitions have been granted in less time in the past, and the carriers to be acquired are becoming stagnant because their stock is being held in voting trusts. We find no merit to the request. Petitioners elected to use the voting-trust mechanism and the existence of the voting trusts is not sufficient in itself to justify expedited action. Accordingly, we are denying petitioners’ request in this proceeding and have decided this case in the normal course. As discussed later, we will, however, make the exemption effective on the date of service of this decision.

⁵ In our August 12, 1997 notice, we indicated, based on information contained in the petition, that Arrow held operating authorities in MC-1193 and MC-1194. By letter filed August 13, 1997, petitioners state that they improperly described one of the operating authority
(continued...)

Massachusetts, and New York. Arrow provides charter and tour services throughout Connecticut and nearby New England States and New York. It also provides certain regular-route services between points in Connecticut. The carrier operates a fleet of 95 buses; it has 315 full-time and 50 part-time employees; and it earned revenues of approximately \$13.4 million in 1996.

Trentway is an Ontario corporation. Prior to the transfer of the stock of the carrier into the voting trust, it had been owned by Trentway-Wagar Properties, which was owned by Allan Joseph Bolton, James Joseph Bolton, Isable Crowley, Joanne Devlin, Italia Maria English, Ronald Patrick English, Joanne McMynn, Robert McMynn, and Working Venture Canadian Fund Inc. Trentway holds federally issued operating authority in MC-126430 and a variety of common carrier licenses issued by federal and provincial authorities in Canada. Trentway provides regular-route service between points in Ontario and points in the United States. It also operates charter and special services within the United States, particularly charter trips originating in Ontario. It operates a fleet of 348 buses, including 200 school buses and 148 motor coaches; it has approximately 600 full- and part-time employees; and it earned revenues of approximately \$37.4 million in 1996.

Petitioners submit that granting the petition will not significantly reduce competitive options available to the traveling public. They state that neither Arrow nor Trentway competes to any meaningful degree with each other or with any other Coach-controlled carrier, and that Van Nortwick competes, but only to a limited degree, with certain other Coach-controlled bus carriers based in New Jersey, including Leisure Time. In addition, petitioners state that there is competition from other bus companies and modes of transportation. Petitioners assert that apart from the possible merger of Van Nortwick into Leisure Time, there will be no transfer of any federal or state operating rights held by the acquired carriers. Following the consummation of the control transactions, each of the acquired carriers will continue operating in the same manner as before. In the event of a merger between Van Nortwick and Leisure Time, it is proposed that the interstate and intrastate operating authorities held by Van Nortwick will be transferred to, and operated by, Leisure Time.

Petitioners also submit that granting the petition will produce substantial benefits, including interest cost savings resulting from the restructuring of debt and reduced operating costs resulting from Coach's enhanced volume purchasing power. Specifically, petitioners claim that the carriers to be acquired will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Petitioners indicate that Coach will provide each of the carriers to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, they state that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment and that, with Coach's assistance, coordinated driver training services will be provided, enabling each carrier to allocate driver resources in the

⁵(...continued)
numbers for Arrow in their petition for exemption. The correct number is MC-1934, not MC-1194.

most efficient manner possible. Finally, petitioners submit that all collective bargaining agreements will be honored by Coach and that employee benefits will improve as a result of the transaction. Petitioners anticipate that the annual savings that will be generated by the proposed acquisition will total several hundred thousands of dollars.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies that began with the acquisition of the existing Coach-controlled companies are largely benefits of scale, and, as such, will be enhanced further by the proposed transaction and subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from these control transactions.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(5), a noncarrier that controls any number of carriers may not acquire control over another carrier without our approval. However, under 49 U.S.C. 13541(a), we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not needed to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Detailed scrutiny of these transactions under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a sound transportation system consistent with the policy contained in 49 U.S.C. 13101(a)(1). Exempting these transactions will permit Coach to coordinate and centralize planning, safety, and other functions of the carriers to be acquired with those of its other carrier subsidiaries, allowing it to rationalize and use resources productively, thus promoting safe, adequate, economical and efficient transportation and encouraging sound economic conditions [49 U.S.C. 13101(a)(1)(B) and (C)].

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient transportation services consistent with the policy in 49 U.S.C. 13101(a)(2). By facilitating the development of a bus system with coordinated marketing and reservation service, the exemption will promote efficiency in the motor passenger carrier industry, responsive to the needs of passengers and consumers [49 U.S.C. 13101(a)(2)(B) and (C)]. The exemption will also strengthen the financial status of each of the carriers to be acquired, which will permit continued service to small communities and enhanced commuter bus operations [49 U.S.C. 13101(a)(2)(G) and (H)]. In addition, the exemption will improve each carrier's financial and managerial ability to compete in its respective market, thus improving and maintaining a sound, safe, and competitive privately owned motor carrier system [49 U.S.C. 13101(a)(2)(I)]. By facilitating vehicle sharing arrangements and other efficiencies, the exemption will also allow the most productive use of equipment and energy resources, enhancing intermodal competition with rail passenger carriers and private automobiles [49 U.S.C. 13101(a)(2)(E) and (K)].

Finally, the transportation policy in 49 U.S.C. 13101(a)(3) for motor passenger carriers requires cooperation with the states to ensure that state regulation does not undermine federal policy objectives. Because this proceeding does not implicate state regulatory initiatives, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the policy in 49 U.S.C. 13101(a)(3).

Based on the above considerations and the absence of any opposition, we find that regulation of the proposed transactions is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101.

Abuse of Market Power. Regulation is not necessary to protect passengers from the abuse of market power. The petition for exemption is unopposed. The proposed transactions will have no adverse impact on competition. As noted above, neither Arrow nor Trentway competes to any meaningful degree with the other or with any other Coach-controlled carriers. While Van Nortwick competes to a limited degree with certain Coach-controlled bus carriers based in New Jersey, including Leisure Time, each of the carriers to be acquired faces significant competition from numerous other bus firms not controlled by Coach that provide charter and other services in their respective primary operating territories, as well as from private automobiles and other transportation providers. The efficiencies that will result from these transactions will permit each of the carriers to be acquired to become more responsive and effective competitors. Thus, the proposed acquisitions will have no adverse impact on the competitiveness of passenger transportation in the markets served by each of the carriers involved here.

Further, each of the carriers to be acquired holds a relatively small market share of the transportation services available to its potential passengers. Moreover, the industry's low entry barriers and pervasive intermodal competition effectively foreclose any opportunity for abuse of market power.

Given our finding regarding the probable effect of the transactions on market power, we need not determine whether the transactions are limited in scope. Nevertheless, we note that the market shares of each of the carriers involved in these transactions are relatively small.

Public Interest. Exempting these transactions from regulation is consistent with the public interest. Subjecting the proposed transactions to detailed scrutiny would serve no meaningful public policy or regulatory purpose and would be wasteful of both our resources and those of petitioners, the carriers they propose to acquire, and the public. On the other hand, an exemption will have multiple benefits relating to adequate transportation services, efficient and economic operations, and employees, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. Accordingly, we will grant the requested exemption.

Petitioners have requested that the exemption be made effective immediately so that the parties and the traveling public may realize sooner the substantial benefits of the acquisition. We agree and will make the exemption effective on the service date of this decision.

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

It is ordered:

1. Under 49 U.S.C. 13541, the acquisition by Coach and Leisure Time of control of Van Nortwick and the subsequent merger of Van Nortwick into Leisure Time is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).
2. Under 49 U.S.C. 13541, the acquisition by Coach of control of Arrow and Trentway is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).
3. This exemption is effective on November 13, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary