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SERVICE DATE - JULY 14, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20931

COACH USA, INC., AND COACH USA NORTH CENTRAL, INC.--CONTROL--NINE
MOTOR PASSENGER CARRIERS

STB Docket No. MC-F-20932

COACH USA, INC., AND COACH USA NORTHEAST, INC.--CONTROL--30 MOTOR
PASSENGER CARRIERS

STB Docket No. MC-F-20933

COACH USA, INC., AND COACH USA SOUTH CENTRAL, INC.--CONTROL--EIGHT
MOTOR PASSENGER CARRIERS

STB Docket No. MC-F-20934

COACH USA, INC., AND COACH USA SOUTHEAST, INC.--CONTROL--SEVEN MOTOR
PASSENGER CARRIERS

STB Docket No. MC-F-20935

COACH USA, INC., AND COACH USA WEST, INC.--CONTROL--14 MOTOR PASSENGER
CARRIERS

STB Docket No. MC-F-20937¹

COACH USA, INC., AND COACH USA NORTHEAST, INC.--CONTROL--BONANZA BUS
LINES, INC.

Decided: July 8, 1999

In Coach USA, Inc., and Coach USA North Central, Inc.--Control--Nine Motor Passenger Carriers, STB Docket No. MC-F-20931, et al. (STB served and published at 63 FR 64312-14 on Nov. 19, 1998), the Board tentatively approved, subject to the filing of opposing comments, the control applications filed by Coach USA, Inc. (Coach), a noncarrier, and its wholly owned

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

noncarrier subsidiaries, Coach USA North Central, Inc. (North Central), Coach USA Northeast, Inc. (Northeast), Coach USA South Central, Inc., Coach USA Southeast, Inc., and Coach USA West, Inc. (collectively, the subsidiaries), under 49 U.S.C. 14303. The transaction for which control authority was sought involves the acquisition of direct control by the subsidiaries of motor passenger carriers that are currently controlled by Coach, or that are subject to pending applications for control.²

Also, in Coach USA, Inc., and Coach USA Northeast, Inc.--Control--Bonanza Bus Lines, Inc., STB Docket No. MC-F-20937, et al. (STB served and published at 63 FR 64536-37 on Nov. 20, 1998), the Board tentatively approved, subject to the filing of opposing comments, the control application filed by Coach and Northeast for authority under 49 U.S.C. 14303 to acquire control of Bonanza Bus Lines, Inc. (Bonanza).³

Copies of both the November 19 and the November 20 notices were served on the U.S. Department of Transportation, Office of Motor Carriers-HIA, and the U.S. Department of Justice, Antitrust Division. Neither Department filed comments. A comment was filed on January 4, 1999, by Ground Systems, Inc., d/b/a Airport Bus (Airport Bus) opposing the control applications in STB Docket Nos. MC-F-20931, MC-F-20932, MC-F-20933, MC-F-20934, MC-F-20935, and MC-F-20937. Coach replied.

BACKGROUND

Coach was formed by Notre Capital Ventures II, LLC (Notre Capital), and acquired control of its first ten motor passenger carriers in Notre Capital Ventures II, LLC, and Coach USA, Inc.--Control Exemption--Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp., STB Finance

² The November 19 notice also embraced Coach USA, Inc., and Yellow Cab Service Corporation--Control--Four Motor Passenger Carriers, STB Docket No. MC-F-20936, in which the Board tentatively approved the application by Coach and its wholly owned noncarrier subsidiary, Yellow Cab Service Corporation (Yellow Cab), for Yellow Cab's direct control of four Coach-controlled motor passenger carriers: Airport Limousine Service, Inc. (MC-315702); Pittsburgh Transportation Charter Services, Inc. (MC-319195); Metro Cars, Inc. (MC-276823); and Kansas City Executive Coach, Inc. (MC-203805). No comments were filed in opposition to the Yellow Cab transaction, so that authority became effective on January 4, 1999.

³ The November 20 notice also embraced Coach USA, Inc., and Coach USA North Central, Inc.--Control--Central Cab Company and Mountaineer Coach, Inc., STB Docket No. MC-F-20939, in which the Board tentatively approved the application by Coach and North Central to acquire control of Central Cab Company and Mountaineer Coach, Inc. No comments were filed in opposition to that transaction, so that authority became effective on January 4, 1999.

Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996) (Notre Capital Ventures). In this initial transaction, and the intervening ones that occurred up to the filing of the transactions at issue, Coach represented that it would provide centralized management for the operating bus companies under its direct control. At the time that it filed the instant applications, Coach directly controlled 73 motor passenger carriers pursuant to exemptions or applications granted by the Board. It was because of the growth in the number of carriers under its direct control that Coach initiated a corporate reorganization and sought authority from the Board to transfer direct control of the operating carriers to noncarrier subsidiaries, organized primarily on a regional basis. According to Coach, this was the best way to maintain and improve the management of its controlled operating carriers, and promote the future growth of Coach.⁴

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. The Board's findings, giving tentative approval of the transactions pursuant to this statutory standard, were automatically vacated by the filing of the opposing comment under the procedures at 49 CFR part 1182. Under 49 CFR 1182.6(c), we have determined that a procedural schedule is not necessary because we are able to address the opposition to the applications on the basis of Airport Bus's comment and the reply.

Airport Bus alleges that Coach fraudulently obtained Federal exemptions to preempt state regulatory control in a scheme to take over the ground transportation market in California.⁵ Airport Bus has been providing ground transportation services in the Los Angeles/Orange County region

⁴ On June 22, 1999, Stagecoach Holdings plc (Stagecoach) filed an application under 49 U.S.C. 14303 to acquire control of Coach, the subsidiaries (including Yellow Cab), and the Coach-controlled motor passenger carrier subsidiaries. According to Stagecoach, there will be no substantial change in the organizational and strategic plans of Coach, including the activities undertaken or proposed to be undertaken by the subsidiaries. Coach management, as well as the management of the subsidiaries and the operating carriers, will remain largely in place, and Coach and the entities it controls will continue to be operated as separate companies in the manner in which they are operated today. It is represented that the change in ownership of Coach will strengthen Coach's financial position by providing it with additional financial resources. The Stagecoach transaction will be considered in Stagecoach Holdings PLC--Control--Coach USA, Inc., et al., STB Docket No. MC-F-20948, and does not affect this decision.

⁵ Airport Bus submits that Coach has broadened the exemption authority to take control of carriers with virtually no interstate operations and cites an example of a California company, Airport Bus of Bakersfield, that provides ground transportation between two destination points within the State of California, Los Angeles Airport and Bakersfield.

since 1988, and claims that it was the target of a takeover attempt by Coach. According to Airport Bus, after it refused to be acquired, Coach caused one of its recently acquired companies to compete directly with Airport Bus in an attempt to put it out of business.⁶ Airport Bus requests that we deny the pending applications and institute an investigation to revoke the previously granted exemptions based upon Coach's alleged abuse of the exemption process.

Airport Bus argues that Coach has repeatedly misrepresented itself in Board proceedings as a noncarrier involved in small, insignificant transactions⁷ in order to obtain unwarranted exemptions and to avoid regulatory scrutiny. Specifically, Airport Bus contends that Coach misled the Board as to the extent of its market takeover plans, and that the pending applications, which reverse control from the national level back to the regional level, reveal the fallacy of Coach's representations in the prior exemption proceedings. Rather than adding value to the ground transportation market, as Coach had represented, Airport Bus submits that Coach has imposed a larger debt structure on the industry without any savings to the traveling public in the form of reduced fares or improved service.

Coach impugns Airport Bus's motives in filing a comment in these proceedings. According to Coach, rather than focusing on the transactions in these proceedings, Airport Bus has mounted a broad attack on Coach designed to prevent PCSTC, Inc., d/b/a Pacific Coast Sightseeing/Gray Line of Anaheim and Gray Line of Los Angeles (PCSTC), a Coach-controlled bus company, from competing with Airport Bus in southern California. Coach submits that Airport Bus currently has an exclusive franchise in that market and is endeavoring to keep it that way in proceedings pending before the California Public Utilities Commission (CPUC). Coach views the comment submitted by Airport Bus in the proceedings before the Board as part of a strategy by Airport Bus to litigate in any forum in order to protect its exclusive southern California franchise.⁸ As to the merits of the allegations made against it, Coach argues that they are entirely unsubstantiated and should be rejected.

The allegations against Coach do not constitute a basis for denying the pending applications or for instituting an investigation to revoke any previously granted exemptions. There is no question that Coach is a noncarrier that controls a number of other carriers within the meaning of 49 U.S.C.

⁶ Airport Bus also claims that Coach actually threatened to put it out of business if it did not agree to be acquired. Coach categorically denies that it made such a threat.

⁷ Airport Bus points to assertedly inconsistent public statements, in Coach's annual report and on its website, indicating that it is one of the largest providers of motor coach services in the United States.

⁸ Coach states that, in filings with the CPUC, Airport Bus has contended that the Board did not properly exercise authority over Coach's acquisition of control of PCSTC and that CPUC approval of that control was required. According to Coach, PCSTC has opposed Airport Bus's arguments in this regard, relying on 49 U.S.C. 14303(f). We will not opine on the question, as the issue is not before us.

14303(a)(5). As such, Coach is governed by the provisions of 49 U.S.C. 14303 and appropriately filed applications pursuant to those provisions in these proceedings and was entitled to invoke the exemption provisions of 49 U.S.C. 13541 in past proceedings.⁹

Airport Bus alleges that the carriers that Coach controls do not engage in interstate commerce or do not engage in such commerce to any meaningful extent. This allegation is groundless. Each carrier for which Coach has sought Board approval, or an exemption from prior approval, to control holds interstate operating authority issued to it either by the Interstate Commerce Commission (the predecessor of the Board) or the Federal Highway Administration (the current agency responsible for licensing). The fact that many of the carriers also provide intrastate motor carrier services pursuant to operating authority issued by state regulatory agencies does not negate our jurisdiction to approve or exempt control transactions involving such carriers under 49 U.S.C. 14303. To the contrary, under 49 U.S.C. 14303(f), state regulation of control transactions involving carriers that engage in interstate commerce is preempted by our approval or exemption of such transactions. And contrary to Airport Bus's assertion, Coach does not claim that the carriers it controls are exempt from CPUC regulation. Coach states that those carriers controlled by Coach that operate in the state of California recognize their obligation to comply with non-preempted CPUC regulatory requirements with respect to their intrastate operations.

Coach has not misled the Board or the public about the scope of the transactions or about its intentions. Indeed, from the beginning, Coach has stated that it intended to acquire control of additional carriers¹⁰ and various Board decisions, in describing the Coach transactions, have emphasized the number of carriers under Coach's control. The point, however, is not how many carriers Coach controls, but whether that control results in an abuse of market power, and Airport Bus has not made that connection.

Coach admits that it has grown over the years by the number of carriers that it controls. Coach submits, however, that it has done so in a market sector in which there are thousands of

⁹ We do not agree with Airport Bus that Coach's public statements belie its status as a noncarrier or its representations before the Board. In the initial proceeding in which Coach acquired control of its first 10 carriers, the record showed that the transaction would result in the formation of the largest motor passenger group in the nation, after Greyhound Lines, Inc. (Greyhound). The Coach petitioners asserted, however, that the consolidated group would not compete with Greyhound's nationwide, regular-route bus network. Notre Capital Ventures, slip op. at 2. It is not surprising, therefore, that Coach's advertising and website describe Coach as the largest provider of motor coach tour and charter services in the United States and one of the leading providers of motor coach commuter and transit services.

¹⁰ In Notre Capital Ventures, slip op. at 5, petitioners' view of the proposed transaction was summed up as: "the start of a growing network that can take advantage of increasing economies of scale and other efficiencies as additional acquisitions are made."

players and strong intramodal and intermodal competition. In Notre Capital Ventures, slip op. at 6, it was determined that “[w]ith the low entry barriers and the pervasive intramodal and intermodal competition that characterizes the bus industry, most opportunities for the abuse of market power are effectively foreclosed.” Coach asserts, and the Board has found, that these conditions continue to prevail.¹¹ Airport Bus has not shown otherwise.

Coach also states that, as a result of its acquisition of the carriers under its control, the debt burden of these carriers has been reduced due to more advantageous financing rates available to Coach. Coach submits that the controlled companies are operating more efficiently and with lower fixed costs than they were prior to their acquisition and that it is exploring options for achieving even greater efficiencies through mergers and consolidations. Airport Bus has not shown otherwise.

Finally, we fail to see how the proposed corporate reorganization, by which Coach will indirectly control the operating carriers through its regional subsidiaries, in any way diminishes these efficiencies or is otherwise not in the public interest. As far as the Bonanza application is concerned, it is unrelated to the corporate reorganization and essentially mirrors other Coach transactions that have been previously exempted or approved. Airport Bus’s comments do not even address the specifics of that transaction.¹²

Under 49 U.S.C. 14303(b), we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. Accordingly, we reaffirm the tentative Board approval that was vacated by the filing of Airport Bus’s comments. As far as previously granted exemptions are concerned, we find that Airport Bus has not shown that regulation of any of these exempted transactions is necessary to carry out the transportation policy of 49 U.S.C. 13101.

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

¹¹ See, e.g., Coach USA, Inc.—Control Exemption—Progressive Transportation Services, Inc.; Powder River Transportation Services, Inc.; Worthen Van Service, Inc.; and PCSTC, Inc., STB Finance Docket No. 33343, et al. (STB served May 15, 1997), wherein the Board found that Coach’s control of several interstate bus carriers, including PCSTC, was in conformity with the transportation policy, that regulation is not necessary to prevent an abuse of market power because of the availability of competition and the small size of the bus companies, and that the control transactions further the public interest.

¹² According to Coach, its acquisition of control of Bonanza could not possibly affect Airport Bus’s intrastate operations in southern California because Bonanza operates in New England.

STB Docket No. MC-F-20931, et al.

It is ordered:

1. Airport Bus's request that we institute an investigation is denied.
2. The control transactions are approved.
3. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary