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SERVICE DATE - MAY 12, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20995

PETER PAN BUS LINES TRUST—PURCHASE AND ACQUISITION OF CONTROL—ARROW
LINE ACQUISITION, LLC, BONANZA ACQUISITION, LLC,
MAINE LINE, LLC, PAWTUXET VALLEY, LLC, PETER PAN BOSTON, LLC,
AND PETER PAN BUS LINES, INC.

Decided: May 9, 2003

On December 13, 2002, Peter Pan Bus Lines Trust, a noncarrier that controls Peter Pan Bus Lines, Inc., a motor passenger carrier (collectively referred to as Peter Pan), and its subsidiaries, Arrow Line Acquisition, LLC, Bonanza Acquisition, LLC, Maine Line, LLC, Pawtuxet Valley, LLC, and Peter Pan Boston, LLC, applied for approval of an application filed under 49 U.S.C. 14303 to purchase and acquire direct control of five motor passenger carriers that are currently controlled by Coach USA, Inc. (Coach).¹ In a notice served and published in the Federal Register on December 27, 2002 (67 FR 79239), we tentatively approved the application, subject to the filing of opposing comments.

Copies of the notice were served on the U.S. Department of Transportation, Federal Motor Carrier Safety Administration and Office of the General Counsel, and on the U.S. Department of Justice, Antitrust Division. Neither Department filed comments. A comment was filed on February 10, 2003, by Entertainment Tours, Inc. (Entertainment), opposing Peter Pan's purchase and acquisition of control of the five carriers. On February 14, 2003, Peter Pan filed a reply, and on February 21, 2003, Coach also filed a reply.²

¹ The five carriers are: The Arrow Line, Inc. (MC-1934); Bonanza Bus Lines, Inc. (Bonanza) (MC-13028); Brunswick Transportation, Inc., d/b/a The Main Line (MC-109495); Mini Coach of Boston, Inc. (MC-231090); and Pawtuxet Valley Coach Line, Inc. (MC-115432).

² In their replies, Peter Pan and Coach request an expedited decision. Under 49 CFR 1182.6(b)(4), if the applicant, in its reply to opposing comments, has included a request for an expedited decision, then the “[o]pposing commenters may reply to a request for an expedited decision, within 70 days after the notice of the application was published.” On March 4, 2003, Entertainment filed a supplemental comment, in which it urges denial of the request for an expedited decision, arguing

(continued...)

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. Our earlier 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), a procedural schedule for the submission of additional evidence and replies is not necessary here because we are able to address the opposition to the application on the basis of the pleadings already before us.

In its application, Peter Pan asserts that the proposed transaction would have no impact on the adequacy of transportation services available to the public. Peter Pan has created five separate subsidiary corporations, with each subsidiary designed to purchase a corresponding carrier.³ By purchasing the five Coach carriers through these subsidiaries, Peter Pan states that it intends to continue operating the carriers “essentially in the same manner in which they are now being conducted, with the result being the public will not be affected by the change.”⁴ Regarding the additional two factors, Peter Pan states that no fixed charges are associated with the proposed transaction and that no employees would be affected as they would continue to be employed by the newly created Peter Pan subsidiaries.

In its opposing comments, Entertainment challenges the assertion by Peter Pan that acquisition of the five Coach carriers would be consistent with the public interest. Entertainment specifically

²(...continued)

that the Board needs sufficient time to give the matter fair consideration. It gives no reason why we cannot dispense with further proceedings and make a final determination on the basis of the current record. Nevertheless, Entertainment includes with its reply to Peter Pan’s request for expedition additional evidence and argument on the merits of the application, to which Peter Pan has no opportunity to respond. The language of 49 CFR 1182.6(b)(4) limits the scope of the reply solely to the issue of the need for an expedited decision. The additional material, therefore, goes beyond the scope of 49 CFR 1182.6(b)(4) and constitutes a prohibited reply to a reply under 49 CFR 1104.13(c) that we will not consider in this decision.

³ Arrow Line Acquisition, LLC, would acquire Arrow Line, Inc.; Bonanza Acquisition, LLC, would acquire Bonanza Bus Lines, Inc.; Maine Line, LLC, would acquire Brunswick Transportation, Inc.; Pawtuxet Valley, LLC, would acquire Pawtuxet Valley Coach Line, Inc.; and Peter Pan Boston, LLC would acquire Mini Coach of Boston, Inc.

⁴ See Peter Pan’s Application at 14.

focuses its arguments on the first factor: the effect the proposed transaction would have on the adequacy of transportation services available to the public. The thrust of Entertainment's comments is that the transaction would increase Peter Pan's market power, which Peter Pan would then use to engage in anticompetitive behavior, thereby resulting in negative consequences for the public. In its reply, Peter Pan challenges Entertainment's claims regarding Peter Pan's potential for market power abuse, specifically noting that competition in the motor passenger carrier market is strong and would continue to remain strong after the transaction is complete. Coach's reply echoes many of the arguments made by Peter Pan. Based on the record before us, we conclude that Peter Pan's application should be approved.

Entertainment has not substantiated its claim that, if Peter Pan were permitted to acquire the carriers from Coach (which itself is a large company that controls far more bus operations than Peter Pan), Peter Pan's market power would lead to anticompetitive behavior, thereby harming the public. Although Entertainment asserts that Peter Pan already possesses a dominant presence in the market that has allowed it to erect barriers to competition, the record demonstrates otherwise. Entertainment itself is an excellent example of a company that has been able successfully to enter the market and provide competition. As for the possible future effect the proposed transaction would have on the market, because Peter Pan has certified that the operation of the five carriers being acquired would continue in essentially the same manner as before, we fail to see how a mere change in ownership from Coach to Peter Pan would diminish Entertainment's ability to compete effectively.

Entertainment argues that Peter Pan has already used its market power to pressure the Massachusetts Bay Transportation Authority (MBTA) into providing Entertainment with a poor counter space and dock at the South Station terminal in Boston and to prevent Entertainment from acquiring both a counter space and a dock at the Port Authority terminal in New York City. However, Entertainment has provided no evidence to support its bare assertion. Furthermore, as Peter Pan correctly points out in its reply, the decision as to which counter spaces are allocated to carriers is made solely by the operators of the bus terminals, in this case, the MBTA and New York Port Authority, respectively.

Even if Entertainment's assertions regarding counter space were substantiated, as our predecessor, the Interstate Commerce Commission (ICC), stated in GLI Acquisition Company—Purchase—Trailways Lines, Inc., et al., 4 I.C.C.2d 591, 613 (1988) (GLI Acquisition), that “we should not undertake such detailed regulation of the allocation of terminal capacity. If we were to attempt to allocate that capacity to preserve existing market shares, we would undermine a broader goal of preserving carriers. The only alternative would be to undertake a continuing regulatory overview of [bus terminals'] operation[s].” Such continuing regulatory oversight is not practical because it would require the Board to make difficult determinations as to which counter space is

favorable and which is not. Consistent with the ICC's conclusion in GLI Acquisition, we leave such matters to the discretion of terminal operators.

Entertainment further claims that Peter Pan has used its sizable market power to influence other carriers to refrain from entering into pooling arrangements with Entertainment, thus preventing these carriers from selling Entertainment's tickets or Entertainment from selling the tickets of other carriers. To support this claim, Entertainment alludes to an unnamed carrier that allegedly was discouraged from selling Entertainment's connecting tickets. However, Entertainment provides no evidence that, if this occurred, it was a result of Peter Pan's influence. Nor does Entertainment explain how a denial of Peter Pan's application for acquisition of the five Coach carriers would improve Entertainment's ability to enter into pooling arrangements with other carriers.

Entertainment also alleges that, once Peter Pan acquires Bonanza, Peter Pan would likely reduce or eliminate completely the Boston–New York service currently offered by Bonanza, as such runs would duplicate Peter Pan's service and thus be inefficient. Entertainment claims that elimination of such service would be detrimental to the public because customers would have fewer choices of service. This allegation is contradicted by the record. Peter Pan has certified in its application that Bonanza would continue to operate in essentially the same manner as before the transaction. Furthermore, Peter Pan and Coach note that, although Peter Pan and Bonanza would both be offering service between New York and Boston, their services would not duplicate each other because Peter Pan routes its buses through Hartford, CT, while Bonanza routes its buses through Providence, RI. Also, Bonanza's service is non-stop only between Providence and New York City, making it less attractive to Boston-New York City passengers who prefer direct service. Thus, Peter Pan would not be in direct competition with Bonanza. Rather, Bonanza would provide an alternative to Peter Pan's service. As long as a demand remains for Bonanza's service, which appears probable, Peter Pan would keep Bonanza in operation.

Entertainment's final argument is that Peter Pan's acquisition would be detrimental to the public because it would allow Peter Pan to charge customers higher fares. In support of this argument, Entertainment claims that Peter Pan charges customers \$42 for service at times when Entertainment does not offer a competing run, yet only \$25 (the same price charged by Entertainment) at times when Entertainment is offering a competing run. Peter Pan does not dispute the fare disparity. However, it claims that its higher fares are not due to lack of competition, but because Peter Pan offers bus service at all times of the day, even times when the number of passengers is low and offering service is therefore not as profitable. Entertainment can offer reduced fares, Peter Pan argues, because it only offers service at peak hours, when ridership is high. We find this argument convincing, and there is no evidence that this transaction would result in higher fares.

In addition to Entertainment's competing service, other factors limit Peter Pan's ability to raise fares. As the ICC stated in GLI Acquisition, "[w]here the barriers to entry are virtually non-existent, potential entry, together with intermodal competition, exerts pressure on existing firms to price reasonably."⁵ In other words, the threat of entry by new competitors and competition from other modes of passenger transportation are sufficient to keep bus fares low. If Peter Pan were to charge customers excessively high rates, as Entertainment predicts, other motor passenger carriers would recognize an opportunity to profit by entering the market and providing service to those customers at a lower rate (as Entertainment has done), or those customers might decide to travel by another mode of transportation, such as rail, air, or private automobile. Thus, it is in Peter Pan's own best interest to keep fares reasonable.

In conclusion, Entertainment's arguments against the proposed acquisition of the five Coach carriers by Peter Pan do not demonstrate that service to the public would be adversely affected. Furthermore, because the additional factors regarding fixed charges and employee interests are not in dispute, we find that they weigh in favor of approving Peter Pan's application. Under 49 U.S.C. 14303(b), we find that the proposed purchase and acquisition of control of the Coach carriers by Peter Pan is consistent with the public interest and should be authorized. Accordingly, we reaffirm the tentative Board approval that was vacated by the filing of Entertainment's comments.

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

It is ordered:

1. The application for purchase and acquisition of control is approved.
2. This decision is effective on its service date.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary

⁵ See GLI Acquisition at 601.