

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,729

IN THE MATTER OF:

Served December 4, 2008

Application of FIRST TRANSIT, INC.,) Case No. AP-2007-194
WMATC No. 157, for Approval of)
Parent Acquisition of LAIDLAW)
TRANSIT, INC., WMATC No. 100, and)
GREYHOUND LINES, INC., WMATC)
No. 139)

This is an application to consolidate control over one WMATC carrier with control over two other WMATC carriers.

Applicant, First Transit, Inc., WMATC No. 157, requests Commission approval of the acquisition of control of Laidlaw Transit, Inc., WMATC No. 100 (Laidlaw), and Greyhound Lines, Inc., WMATC No. 139 (Greyhound), by applicant's parent, FirstGroup plc, a public limited company organized under the laws of Scotland, U.K. The application is unopposed.¹

Prior to October 1, 2007, FirstGroup plc controlled First Transit through various subsidiaries. Laidlaw International, Inc., controlled Laidlaw and Greyhound through various subsidiaries. Laidlaw International became a wholly-owned subsidiary of FirstGroup on or about October 1, 2007, resulting in the consolidation of FirstGroup's control over First Transit with Laidlaw International's control over Laidlaw and Greyhound.

This transaction is governed by Title II of the Compact, Article XII, Section 3(a)(iii), which provides: A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.² The public interest analysis focuses on the

¹ This is the second application filed in connection with this transaction. The first application was filed in May 2007, but the application was dismissed without prejudice for want of prosecution. *In re First Transit, Inc., & Greyhound Lines, Inc.*, No. AP-07-095, Order No. 10,566 (June 19, 2007).

² Compact, tit. II, art. XII, § 3(c).

fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.³

The Commission finds FirstGroup's acquisition of control consistent with the public interest. First, an acquiring party already controlling an existing WMATC carrier is entitled to a presumption of fitness.⁴ There is nothing in the record to rebut that presumption in this case.

Second, applicant states that the transaction will not adversely impact the interests of carrier employees. According to documents filed with the United States Surface Transportation Board as part of an application for approval of this same transaction, applicant states that no layoffs are contemplated as a consequence of this transaction and it expects all drivers, terminal personnel and mechanics working for Greyhound to continue in their current positions. Applicant further states that to the extent that any of the operating personnel may be adversely affected, such employees will be accommodated in accordance with existing collective bargaining agreements.⁵

Finally, the primary concern when assessing the effect on competition of a transaction under Article XII, Section 3, is whether the transaction will increase the acquiring party's market share.⁶ Transactions which do not increase market share give little pause for concern, and the Commission will approve even those transactions which tend to increase market share as long as there is sufficient post-transaction competition to check any adverse effects that such transactions otherwise might produce.⁷ By this standard, it does not appear that FirstGroup's acquisition of control of Laidlaw and Greyhound will have a substantial adverse effect on competition in the Metropolitan District.

First Transit primarily conducts mass transit contract charter operations in the Metropolitan District using dedicated city transit buses. There is no evidence in the record that either Laidlaw or Greyhound conduct contract charter operations in the Metropolitan District. First Transit also offers public charter service, but there are no vehicles reported to the Commission at this time for that purpose. Laidlaw offers public charter service in the Metropolitan District, as well, but, like First Transit, currently has no vehicles

³ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE ANN. § 9-1103.04 (2007)); *In re Veolia Transportation on Demand, Inc., & Washington Shuttle, Inc., t/a SuperShuttle*, No. AP-07-006, Order No. 11,580 (Sept. 18, 2008).

⁴ *In re Laidlaw, Inc., & Greyhound Lines, Inc.*, No. AP-98-53, Order No. 5504 (Jan. 22, 1999).

⁵ See Order No. 5504 (transaction would not have an adverse effect on affected employees where collective-bargaining agreements would be honored following merger).

⁶ Order No. 11,580.

⁷ *Id.*

reported to the Commission for that purpose. Greyhound, on the other hand, has reported numerous vehicles to the Commission for the purpose of conducting public charter operations in the Metropolitan District. The transaction at issue, therefore, would substantially increase the share of the public charter market within FirstGroup's control. Given the apparent dormancy of First Transit's public charter operations, however, we find that this transaction is unlikely to result in any significant increase in public charter market concentration.⁸

Indeed, Commission records reveal that the public charter market in the Metropolitan District is served by well over one hundred WMATC carriers that collectively operate approximately 2000 vehicles. We thus find that there is sufficient competition from other carriers to check any adverse effects that might be produced by the transaction before us.

THEREFORE, IT IS ORDERED that the the acquisition of control of Laidlaw Transit, Inc., WMATC No. 100, and Greyhound Lines, Inc., WMATC No. 139, by FirstGroup plc, is hereby approved.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁸ See federal Horizontal Merger Guidelines (discussing same), available at <http://www.usdoj.gov/atr/public/guidelines/hmg.htm>.