

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,831

IN THE MATTER OF:

Served September 26, 2018

Application of LUXURY CARS DC LLC)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2018-149

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. Such applications are governed by Article XI, Section 7(a), of the Compact.

In addition, applicant's owner, Ms. Ivana Ciric, is the owner of ING Chauffeured Transportation Inc., (ICT), WMATC Carrier No. 3157. Applications for approval to control two or more WMATC carriers are governed by Article XII, Section 3(a), of the Compact.

The application is unopposed.

I. CERTIFICATE OF AUTHORITY

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest within the meaning of Article XI, Section 7(a), of the Compact and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

II. COMMON CONTROL RELATIONSHIP

Under Article XII, Section 3(a)(iii), of the Compact, "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." Ms. Ciric's control of ICT implicates this provision of the Compact in that Ms. Ciric will acquire control of another carrier that operates in the Metropolitan District upon the issuance of a WMATC certificate of authority to applicant.¹

Under Article XII, Section 3(c), of the Compact, if the Commission finds that the proposed transaction is consistent with the public interest, the Commission shall issue an order authorizing the transaction. The Commission employs three criteria in determining whether a common-control transaction is consistent with the public interest: (1) the fitness of the acquiring party, (2) the resulting competitive balance, and (3) the interest of affected employees.²

A finding of applicant's fitness permits an inference of the acquiring party's fitness,³ in this case, Ms. Ciric.

The primary concern when assessing competitive balance is whether the transaction will increase the acquiring party's market share.⁴ Issuance of WMATC operating authority to applicant will not in and of itself increase the share of the WMATC-regulated market controlled by Ms. Ciric.

As for the issue of affected employees, when Congress first consented to the Compact in 1960 pursuant to the Compact Clause of the United States Constitution, it attached several conditions to its approval, including the condition that as it relates to the Commission's assessment of whether a merger, consolidation, or acquisition of control is consistent with the public interest, "the term . . . 'public interest' shall be deemed to include, among other things, the interest of the carrier employees affected."⁵ This condition was not animated by any special congressional solicitude for carrier employees or intent to alter the substance of the Commission's inquiry when assessing mergers and acquisitions under the Compact. As explained in the legislative history:

¹ See *in re Arlington National Cemetery Tours, Inc*, No. AP-15-160, Order No. 15,913 (Oct. 20, 2015) (analyzing control as of issuance date of new certificate).

² *Id.* at 2.

³ *Id.* at 2.

⁴ *Id.* at 2.

⁵ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960).

The Supreme Court of the United States, in construing the term "public interest" in [a parallel] section of the Interstate Commerce Act has held that the interest of carrier employees is comprehended within the "public interest" standard. *United States v. Lowden* (308 U.S. 225 (1939))." Thus [this] proviso simply affirms the judicial construction of the "public interest" standard and, therefore, is not to be construed as an amendment of the substance of a compact provision.⁶

For many years, this issue generally was not explicitly addressed by the Commission unless raised by employees.⁷ That changed after the Compact was amended in 1990, effective 1991, when the Commission began routinely placing the burden of proof on this issue on applicants, even though there was nothing in the amendment or legislative history to indicate that the signatories believed the Commission's rules of procedure on this issue had been lacking somehow and even though the parties best situated to ascertain whether a particular transaction is or is not consistent with the interest of affected employees are the employees themselves.

In any event, applicants are not required to routinely address how a transaction subject to Article XII, Section 3, might affect other members the public, such as pedestrians and riders. The impact on a specific segment of the public other than employees receives heightened scrutiny and particularized consideration only if a member of that segment raises the issue by filing a protest in accordance with Commission Rule No. 13 and Regulation No. 54-04.

Therefore, to place the burden of proof on the parties best situated to ascertain whether a genuine issue of fact exists and to develop the record if one does, and to ensure that all members of the public are treated the same, the Commission shall no longer require applicants to specify in their case in chief how a particular transaction under Article XII, Section 3, might impact employees.

As noted at the outset, this application is unopposed, and there is no evidence in the record of an adverse impact on employees from any other source.

⁶ WASH. METRO. AREA TRANSIT REG. COMPACT, H.R. REP. NO. 1621, 86th Cong., 2d Sess. 3, 23-24 (1960); WASH. METRO. AREA TRANSIT REG. COMPACT, S. REP. NO. 1906, 86th Cong., 2d Sess. 27 (1960).

⁷ Compare e.g. *In re Eugene H. George, t/a Silver Star Sightseeing Tours, & Samuel J. Howell*, No. AP-89-23, Order No. 3393 (Aug. 17, 1989) (no consideration of employee interests), and *In re The Airport Connection, Inc., & Airport Baggage Carriers, Inc.*, No. AP-88-27, Order No. 3302 (Mar. 13, 1989) (same), with *In re Atwood's Transport Lines, Inc., & Gray Line, Inc.*, No. AP-78-30, Order No. 1912 (Nov. 6, 1978) (employee interests considered under protest by employee union), and *In re D.C. Transit Sys., Inc.*, No. 46, Order No. 316 (Oct. 9, 1963) (same).

The foregoing analysis leads us to conclude that the proposed control acquisition is consistent with the public interest within the meaning of Article XII, Section 3(c), of the Compact.

III. APPROVAL

Having considered the foregoing, we hereby approve the application before us subject to the conditions below. Luxury Cars DC is admonished to keep its WMATC assets, books, finances and operations completely separate from those of ING Chauffeured Transportation.⁸ Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.⁹

IV. FUTURE PROCESSING UNDER REGULATION NO. 54-07

In closing, we note that placing the burden on employees to come forward with evidence of adverse effect should in the future reduce the processing time for most uncontested applications of the type before us by making most such applications eligible for consideration under Regulation No. 54-07.

Regulation No. 54-07, delegates authority to the Executive Director to approve certain uncontested applications for irregular route authority under Article XI, Section 7, of the Compact, but not uncontested applications for approval of control acquisitions under Article XII, Section 3. Applications decided by the Executive Director under Article XI, Section 7, take less time to process than applications decided by the commissioners under Article XII, Section 3. With the burden shift adopted herein, most uncontested applications of the type before us will no longer require evaluation under Article XII, Section 3, because the only issue before the Commission will be fitness.

As noted above, the three issues under Article XII, Section 3, involve competition, employees, and fitness. And as already discussed, in applications of this type, there is no issue as to competition because the acquisition of control does not in and of itself increase the acquiring party's market share. Also, few, if any, uncontested applications will involve a live employee issue where no employee stands in opposition. That leaves fitness as the sole issue to be heard in most of these uncontested cases going forward. And in such cases, once the fitness of applicant and applicant's controlling party or parties has been determined under the certificate of authority standards of Article XI, Section 7, there will be nothing left for consideration under the merger and acquisition standards of Article XII, Section 3. An application in that posture would not be barred from consideration by the Executive Director under Regulation No 54-07(f) for raising "common control" issues.

⁸ See Order No. 15,913 at 3 (requiring commonly-controlled carriers to keep assets, books, finances, and operations separate).

⁹ *Id.* at 3.

THEREFORE, IT IS ORDERED:

1. That the burden of proof on the issue of employee impact in applications arising under Article XII, Section 3, of the Compact shall be on the parties challenging such applications.

2. That the application of Luxury Cars DC LLC, for a certificate of authority authorizing irregular route operations in vehicles with a seating capacity of less than 16 persons only, is hereby approved, subject to the following conditions.

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 3222 shall be issued to Luxury Cars DC LLC, 6120 Hibbling Avenue, Springfield, VA 22150-3327.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

6. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD, MAROOTIAN, AND HOLCOMB:



William S. Morrow, Jr.
Executive Director