

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CASE NUMBER 1:95CV01852
)	
vs.)	JUDGE: Royce C. Lamberth
)	
GREYHOUND LINES, INC.)	DECK TYPE: Antitrust
)	
Defendant.)	DATE STAMP: 09/28/95
)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Greyhound Lines, Inc. in this antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On September 28, 1995, the United States filed a Complaint alleging that Greyhound Lines, Inc. ("Greyhound") had violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint challenges a provision in Greyhound's bus terminal leases that prohibit tenant bus companies from selling tickets for intercity bus transportation within a 25-mile radius of Greyhound's terminals. The effect of this provision, commonly known as the "25-mile rule," has been to restrict competition in the provision of intercity bus transportation service and in the sale of tickets for such service.

On September 28, 1995, the United States and Greyhound filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the 25-mile rule and prevent Greyhound from using any similar restriction. Under the proposed Final Judgment, Greyhound would be required to remove the 25-mile rule from existing terminal leases and would be enjoined from taking actions to impose similar restrictions on tenants in the future.

The United States and Greyhound have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Final Judgment, and to punish violations of the its provisions.

II.

DESCRIPTION OF THE ALLEGED VIOLATION

Greyhound is the only nationwide intercity bus company providing bus transportation services for passengers and package express. Greyhound's total operating revenues for 1994 were approximately \$616 million.

Greyhound operates approximately 200 bus terminals throughout the United States. Many smaller bus companies operate out of Greyhound's terminals pursuant to agreements known as Bus Terminal License ("BTL") agreements. Currently, Greyhound has approximately 200 BTLs in effect with tenant bus companies in approximately 135 cities.

Under the terms of the BTLs, Greyhound acts as the tenant bus companies' exclusive ticket agent, and also provides other services, including baggage handling, package express handling, and maintenance of the terminal facilities. The tenant bus companies pay rents based on ticket sales, either in the form of a set commission on each ticket sold or a pro rata share of the costs of operating the terminal. If a tenant's sales fall below a certain level, it pays a minimum rental fee specified in the BTL. The BTLs are terminable by either party on 30-days notice.

In August of 1992, Greyhound notified its tenants that all existing BTLs were to be terminated effective September 30, 1992, and that those bus companies wishing to remain tenants of Greyhound would be required to execute a new standardized BTL. Following several months of negotiations, Greyhound and its tenants executed new BTLs, most of which became effective in the first half of 1993.

One of the new provisions contained in the current BTL agreements between Greyhound and its tenants is the 25-mile rule. The provision reads as follows:

Subject to Section 1, Licensee agrees that during the term hereof, it will use the Terminal as its major terminal in the City of _____ for the aforesaid operations and will not without the prior written consent of Company allow or permit any tickets or busbills to be sold at any other place within a twenty-five (25) mile radius of the Terminal, other than the Terminal, or honor the tickets or busbills of any other carrier for such transportation which are sold within the said twenty-five (25) mile radius. Notwithstanding the foregoing, tickets or busbills of Licensee may continue to be sold, and Licensee may honor the tickets or busbills of other carriers which are sold, at any place within the twenty-five (25) mile radius where they are being sold as of the date of this

Agreement. A list of such places where tickets or busbills of Licensee are sold within the twenty-five mile radius of the Terminal is appended to this Agreement as Appendix 3. If Licensee wishes to change any such place of sale of its tickets or busbills to another place within five (5) miles of such place and within the said twenty-five (25) mile radius of the Terminal, Licensee may make such change upon thirty (30) days written notice to Company. It is further understood that in all of Licensee's bus schedules and advertising pertaining to its aforesaid operations, the Terminal shall appear as the only place in the City of _____ where tickets or busbills are on sale.

The 25-mile rule prevents the tenant bus companies from selling bus tickets within a 25-mile radius of the Greyhound terminal in which they are a tenant, unless the location was grandfathered-in at the time the BTL was negotiated. The tenant bus companies are also prohibited from accepting bus tickets sold by any other carrier within the 25-mile area. Thus, tenant bus companies are prohibited from selling tickets at other bus terminals or stops, through travel agents, or by telephone from locations within the 25-mile radius.

The rule has anticompetitive effects in two types of markets: intercity bus service and ticket distribution services. The effects on intercity bus service are of great concern and occur when the tenant is an actual or potential competitor of Greyhound in the provision of intercity bus service (either alone or, more commonly, through interlining with another carrier) in at least some city-pairs. In addition, the rule eliminates competition in the distribution of bus tickets, making Greyhound the exclusive ticket agent in the 25-mile area.

Although most cities and towns are served by only the

Greyhound terminal, in some larger metropolitan areas a second terminal exists. Bus companies often wish to serve more than one terminal in the same city in order to increase their opportunities to interline (exchange passengers) with other bus companies. Interlining benefits consumers by both increasing the number of destinations to which they have convenient connecting service and, in some cases, by giving consumers a choice between competing bus companies for at least part of their trip. Because bus companies generally find it undesirable to operate out of a terminal if originating passengers cannot purchase tickets there, the 25-mile rule effectively prevents the tenants from operating from the second terminal. Indeed, by preventing Greyhound tenants from operating out of multiple terminals, the 25-mile rule may inhibit establishment of a second terminal. In addition, the 25-mile rule prevents tenant carriers from operating from non-terminal facilities that may be convenient for consumers, such as stops at airports, train stations, or college campuses. The 25-mile rule thus acts to prevent Greyhound's tenants from expanding their operations in ways that would significantly benefit consumers.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to eliminate the 25-mile rule from existing BTLs and to prevent future actions by the defendant to place similar restrictions on ticket sales or interlining by tenant bus companies. Greyhound is required to

remove the 25-mile rule from each BTL within 60 days of the entry of the Final Judgment (Section IV(A)). Greyhound is enjoined from conditioning access to its terminals, directly or indirectly, on an agreement not to sell tickets outside the Greyhound terminal (Section IV(B)1), terminating or threatening to terminate a BTL where the purpose or effect is to prohibit outside ticket sales (Section IV(B)2), or discriminating against a tenant carrier in the terms and conditions of terminal access where the purpose or effect is to prohibit outside ticket sales (Section IV(B)3). Greyhound is also enjoined from refusing to interline with a carrier unless that carrier agrees to interline exclusively with Greyhound (Section IV(B)4).

Aside from the prohibition of the 25-mile rule or any similar restriction, the proposed Final Judgment does not limit Greyhound's ability to negotiate rents and other BTL terms with its tenants and to control terminal access (Section IV(C)). Within 60 days of entry of the proposed Final Judgment, Greyhound must provide each tenant bus company with a copy of the Final Judgment along with a written statement that the 25-mile rule is no longer in effect (Section V). The proposed Final Judgment further requires Greyhound to establish an antitrust compliance program (Section VI) and file an annual certificate of compliance with the Government (Section VII). The plaintiff may also obtain information from the defendant concerning possible violations of the Final Judgment (Section VIII).

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured in his business or property as a result of conduct forbidden by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought.

V.

PROCEDURE AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment

should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Roger W. Fones, Chief
Transportation, Energy &
Agriculture Section
Antitrust Division
U.S. Department of Justice
Judiciary Center Building
555 Fourth Street, N.W., Rm. 9104
Washington, D.C. 20001

VI.

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case against Greyhound. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides relief that will remedy the violations of the Sherman Act alleged in the Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the United States

considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: September 28, 1995

Respectfully submitted,



Michael D. Billiel
(D.C. Bar #394377)
Michele B. Felasco
Attorneys
U.S. Department of Justice
Antitrust Division
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 307-6666.

CERTIFICATE OF SERVICE


I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendant in this matter in the manner set forth below:

By hand:

Mark F. Horning, Esquire
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036-1795

for defendant Greyhound Lines, Inc.

Dated: September 28, 1995


Michael D. Billiel
Antitrust Division
U.S. Department of Justice
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 307-6666