

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE MOTOR CARRIER ACT

- and -

IN THE MATTER OF AN APPLICATION by STOCK TRANSPORTATION LTD. o/a NATIONAL PASSENGER SERVICES (CANADA) to amend Motor Carrier License No. P02714

BEFORE: Richard J. Melanson, LL.B., Member

APPLICANT: **STOCK TRANSPORTATION LTD. o/a NATIONAL PASSENGER SERVICES (CANADA)**
Michael Scott and Sarah Emery, Counsel

OBJECTORS: **ABSOLUTE CHARTERS INC. o/a COACH ATLANTIC HALIFAX**
Mary Dempster, Vice-President

BLUENOSE TRANSIT INCORPORATED
Shane Buchan, President

COACH ATLANTIC TRANSPORTATION GROUP INC.
Michael Cassidy, Director
Ryan Cassidy, Operations Analyst

MAC TOURS INC.
Michel Richard, President

WARD L. MARKIE o/a MARKIE BUS TOURS
Ward L. Markie, Owner/Operator

R. DALE HATFIELD o/a MINAS BASIN TRANSIT
R. Dale Hatfield, Owner/Operator

MOLEGA TOURS LIMITED

Marie Malloy, President

HEARING DATE: **October 29 & 30, 2020**

DECISION DATE: **January 27, 2021**

DECISION: **Application is allowed in part. The express license term prohibiting all services other than school services is deleted. The application for a proposed charter service is denied.**

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I SUMMARY

[1] Stock Transportation Ltd. o/a National Passenger Services (Canada) currently holds Motor Carrier License P02714, which allows it to provide school bus services pursuant to contracts with the Halifax Regional Centre for Education (HRCE) and Conseil Scolaire Acadien Provincial. The License formerly had a charter authority allowing it to provide certain transportation services to charter groups throughout Nova Scotia. The Board took disciplinary action against Stock in 2017 because of numerous violations related to transportation services provided under one of its licenses. Amongst other remedies, the Board imposed a condition which only permitted Stock to provide school bus services under the License. The condition specifically prohibited Stock from offering any other service, including charter and contract services, under the License.

[2] Stock applied to the Board, pursuant to the *Motor Carrier Act*, R.S.N.S.1989, c.292 (MCA), to amend the terms of the License by removing the prohibition related to services other than school bus services. In addition, Stock sought approval to amend the License to allow it to provide charter services throughout Nova Scotia with 35 school buses, with a capacity of 72 passengers each, all of which are currently listed in the License. Vehicles which are designed as school buses, but are used for charter purposes, are generally called activity buses. Stock indicated that it had taken steps, as acknowledged by the Board, to ensure that the compliance issues would not occur again. Stock said the financial losses incurred because of the cancellation of the charter authority was significant and sufficient in the circumstances. Finally, Stock's case for the addition of the charter authority was premised on the need for such a service, where other carriers had not stepped in to do the amount of charter work formerly done

by Stock, a demand had been expressed by customers (primarily school entities), and the need for a large fleet under one ownership to develop a relationship with a national and international online booking platform.

[3] Stock's proposal was opposed by seven licensed motor carriers, who took the position that there was currently sufficient available equipment to service the demand. They said there was insufficient evidence to show that the online platform, or the alleged demand from school entities, would really create a viable market for more activity bus charter work. The motor carriers objecting to the application said Stock's proposal would lead to an excess of available equipment and have a negative impact on the sustainability of the motor carrier industry. No motor carrier specifically objected to the removal of the prohibition against charters contained in the License.

[4] The Board has assessed the evidence in light of the submissions made during the hearing and the tests it applies in an application such as this. The Board is satisfied that Stock has shown conduct to sufficiently alleviate its concerns with respect to Stock management as it relates to charter service. In particular, the Board is satisfied that Stock is committed to future compliance such that the complete prohibition related to services other than school buses can be removed as a term of license. Any request to add a charter authority will be considered on a case by case basis.

[5] The Board is not satisfied that Stock has provided sufficient evidence to establish, on a balance of probabilities, that there is sufficient demand for an additional charter service using 35 activity buses, with a capacity of 72 passengers each, in the current market context. The Board accepts the evidence of the objecting motor carriers that this will likely lead to an excess of this type of equipment which creates real issues

with sustainability within the industry. The Board therefore denies the request to add the proposed charter service to the License.

II BACKGROUND

[6] On August 4, 2020, Stock applied to amend the Schedule F authorities in its License as follows:

To remove the following restriction:

Stock may only operate school bus services and is prohibited from operating any other services including, but not limited to, contract and charter services.

To add the following authority:

F(4) SPECIALTY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE

The transportation of any people or groups including, but not limited to, organized groups and/or teams, from any point in Nova Scotia to any point in Nova Scotia, one way, return or the reverse thereof.

[7] As part of the application, Stock proposed to use the 35 school buses, currently listed in the License, to provide activity bus services for its proposed charter service. Furthermore, Stock provided a schedule of rates and charges for approval.

[8] A Notice of Application was advertised in the Royal Gazette on August 12, 2020. As well, it was posted on the Board's website and forwarded to licensed motor carriers by email, fax or mail. Objections to Stock's proposed amendments were filed by Absolute Charters Inc. o/a Coach Atlantic Halifax (Absolute), Bluenose Transit Incorporated (Bluenose Transit), Coach Atlantic Transportation Group Inc. (Coach Atlantic), Mac Tours Inc. (Mac Tours), Ward L. Markie o/a Markie Bus Tours (Markie), R. Dale Hatfield o/a Minas Basin Transit (Minas), and Molega Tours Limited (Molega). On October 29 and 30, 2020, the Board held a virtual hearing on the GoToWebinar platform, with all parties participating.

III ISSUES

[9] There are two issues to be determined in this proceeding:

1. Should the prohibition related to all services other than school bus services be removed as a term of the License?
2. Should the License be amended to allow Stock to provide a charter service throughout Nova Scotia, with 35 school buses, at the proposed rates?

[10] For the reasons that follow, the Board has determined the answer to the first question is yes and the answer to the second question is no.

IV REMOVAL OF THE PROHIBITION RELATED TO ALL SERVICES OTHER THAN SCHOOL BUS SERVICES

1. Evidence

[11] In 2017, after a lengthy hearing which created an extensive record, the Board found that Stock had contravened the *MCA*, the regulations made thereunder and licensing terms and conditions. The Board was very concerned about the number of violations and the attitude displayed, and the culture created, by Stock's regional manager at the time. The Board found that all Stock's charter privileges under three motor carrier licenses should be cancelled. This included a charter authority under the License. That said, the Board allowed Stock to maintain its school bus authorities under the License and another motor carrier license. The Board found there should be a prohibition restricting Stock from providing any service other than school bus service under these two licenses. Stock is asking that this prohibition be deleted from the License.

[12] Darryl Amirault, Stock's Regional Manager for Atlantic Canada, provided oral testimony in relation to this issue, to supplement the written evidence contained in the application. In contrasting the oversight of its Canadian operations with the situation

that existed before 2018, when reporting was primarily directed to the American headquarters, Mr. Amirault discussed the organizational changes within Stock in and around the time the Board revoked its charter licenses, including:

- Full representation in Canada with a head office based in Toronto and three regional offices staffed with regional managers;
- A safety and compliance officer based out of the head office;
- A regional maintenance manager;
- Full Canadian human resources staff;
- Full Canadian financing staff;
- Technological systems allowing for cross-Canada monitoring;
- A Zonar system which manages the health of the bus; drivers' hours of operation; pre-trip and post-trip requirements, and generally all the regulatory compliance issues the company has to fulfill;
- Local managers who review data with department heads, which is then reviewed with regional managers and the Chief Operating Officer, on a weekly basis; and
- A robust whistle blower policy with respect to safety and compliance issues.

[13] The written component of the application stressed the following points:

- In follow up proceedings, the Board indicated the culture and conduct which led to the disciplinary sanctions was not supported by Stock or its parent company nor the senior staff and current regional manager;
- The regional manager who had been the source of most of the compliance issues had been replaced;

- The wrongdoing did not extend to the office out of which Stock provided charter services with its school buses;
- All directives which had been issued following the cancellation of the charter privileges had been addressed; and
- Stock had gross charter revenues which averaged approximately \$1.5 million, on average, in the three years preceding the revocation.

2. Analysis and Findings

[14] Michael Scott, Stock's solicitor, submitted that the company had demonstrated that it currently has a culture and corporate structure which promotes safety and compliance. The issues which resulted in the loss of charter authority were largely confined to the improper use of highway motor coaches and the actions of the former regional manager. The financial loss suffered by Stock was significant and sufficient to deter any future relapse. He submitted Stock had been responsive to all Board directives related to the disciplinary hearing, such that there is no longer any basis to maintain, in the License, the absolute prohibition related to services other than school bus services.

[15] None of the objectors took any specific position on this aspect of the application. That said, as the prohibition was as a result of a Board order following a disciplinary proceeding, the lack of objection from the parties to this proceeding does not carry significant weight. Rather, it is the evidence of a corporate culture which addresses the Board's concerns about future compliance which is central to its analysis.

[16] In this regard, while the financial loss to Stock is obviously not measured by gross revenue, the Board can infer from the quoted figure that it was not insignificant. It would certainly impress upon Stock the importance of ensuring compliance with a

regulatory model which encompasses both safety and economic regulation. The Board is satisfied these financial repercussions will have an impact on future conduct.

[17] Stock has shown a willingness to work with the Board to address concerns related to corporate culture and oversight. As a result of the proceedings related to Stock's loss of its charter service, and to address any issues related to its school bus services, with input from Stock, the Board issued 18 directives. Stock responded to these directives in a timely manner to the satisfaction of the Board, as set out in its March 28, 2019 letter.

[18] The Board is further satisfied that the conduct which resulted in the loss of charter service was largely related to the attitude and actions of the former regional manager and a lack of oversight in this regard. The Board notes that most of the violations and impugned conduct related to the operation of certain highway motor coaches with restricted licenses, and not to the operation of Stock's activity bus charter service. The Board is satisfied that Stock has made significant strides to address the issues arising from the disciplinary hearing.

[19] Based on the foregoing, the Board finds that the express prohibition against services other than school bus services contained in the License is no longer required. As with any licensee or applicant, the Board has tools to address any future compliance issues. In the context of applications, the fitness of an applicant to provide the service can always be considered, whether there is an express prohibition or not. Therefore, the Board agrees with Stock's request to delete the prohibition in question from the License. That said, the application to add a charter service to a License where none currently exists

must be considered in light of the relevant statutory factors, which the Board will now consider.

V THE PROPOSED CHARTER SERVICE

1. Evidence

[20] Stock's Counsel called two witnesses: Wolf Kohlberg, the Chief Operating Officer of Bus.com and Mr. Amirault, Stock's Regional Manager for Atlantic Canada. The purpose of their testimony was to support the proposition that the activity bus service proposed in the application was needed and could not be provided, or was not being provided, by existing licensees. The position advanced was that the motor carrier industry would be enhanced by the availability of additional activity buses licensed under one carrier, and that new demand would also be created.

[21] Bus.com is an online platform formed in 2015 that assists customers in booking charter buses. It provides services throughout Canada and the United States. The company has two business lines. It offers an online booking tool where a customer can do a complete booking online in a relatively instantaneous manner. This accounts for approximately 40% of its business. The majority of its business is generated through a travel agent model business line, which assists clients to connect with motor carriers, as part of the organization of events requiring a bus charter. Bus.com had established a relationship with Stock prior to the cancellation of its charter authorities. Bus.com ceased to actively market in Nova Scotia after Stock was no longer able to partner with the company in the charter market. Mr. Kohlberg was unable to provide any meaningful data as to the extent of business generated by the relationship with Stock, keeping in mind the company only started operating in 2015 and its data platform was only completed in 2017.

[22] Mr. Kohlberg testified its data shows that approximately 45% of its customers are first-time bookers, meaning they had no previous experience booking charters. He said price points were important to this type of customer. Mr. Kohlberg said there was a high proportion of requests for activity or school buses. For the platform to work at its best, Mr. Kohlberg was of the view that a large number of various types of vehicles was required. From Mr. Kohlberg's perspective, a single partner offering a large fleet of any specific type of vehicle created the ideal situation. It allowed for a seamless and quick process, requiring little coordination in the booking process, which is very important for an online platform. This avoided some of the issues that can arise related to scheduling and availability if more than one operator is used. Mr. Kohlberg indicated that the information he had received from his staff was that Bus.com would not be able to establish a partnership with a motor carrier with sufficient availability in Nova Scotia to make the business model work, once Stock was forced to leave the charter market. While carriers can apply to obtain temporary authorities under the *MCA*, Mr. Kohlberg said this would not alleviate the concern, as the online platform required immediate availability.

[23] Mr. Kohlberg had no actual data related to the Nova Scotia marketplace. The possibility of partnering with Stock, if the application was granted, was premised on macro projections related to experience in other markets. No examples of similar markets were discussed. Mr. Kohlberg had only limited knowledge of the capacity of Nova Scotia carriers, including the objectors, to provide school buses for large events. He acknowledged it might be possible to forge a relationship with a partner other than Stock. As well, because charter rates are regulated in Nova Scotia, the more standard model used by the company, of a volume discount, might not be available, but there were other

fee models used by the company. Mr. Kohlberg could not estimate how many times a large fleet of buses would be required in Nova Scotia. He acknowledged the company had probably worked with smaller Nova Scotia carriers in the past.

[24] Mr. Amirault provided evidence on behalf of Stock. As discussed above, he indicated that, prior to the loss of its charter authorities, Stock generated \$1.5 million annually from 2015 to 2016 from its charter business. This was exclusive of longer-term contract work for two large clients. Stock operated 53 school buses as activity buses for charters and had just under 400 customers. These customers included university sports teams, non-profit organizations, professional associations, law firms and other organized groups. Approximately 50% of the charter work consisted of larger events and 50% related to smaller types of events.

[25] Stock held the school bus contract for the entire HRCE system until 2019, when HRCE awarded contracts to more than one carrier. Stock had just renewed its school bus fleet with 2019 vehicles with a capacity of 72 passengers each. It now has a large number of buses that are not required for school contract work. It seeks to put 35 of these buses to work with this application. Mr. Amirault said that if the application was not granted, the buses would likely be moved to other parts of Stock's operation.

[26] Based on conversations with the HRCE Superintendent, Mr. Amirault was led to believe that there was a gap in the ability to organize larger school trips. Carriers generally need all their school buses for the morning and afternoon runs. Assistance must be sought from the charter motor carrier industry for any school trips which overlap these runs. Mr. Amirault was advised there was a lack of activity-type school bus vehicles for such trips. He was further advised that hiring highway motor coaches, which were

generally more expensive, was often not within a school's budget. Mr. Amirault was therefore of the view that this was an untapped market not presently served by the existing motor carriers. He provided 17 identical letters of support from principals in the HRCE system which he said supported this proposition. They all stated:

Over the last number of years, when our school wanted to take a full day charter, one of the only options that were available were motor coaches.

In Halifax, there are a very limited number of options to allow for this to occur and the expense is significant.

I understand that National Passenger Services intends on providing an alternate service to motor coach at a much lower cost to schools.

As principal, I can confirm that there is there is a need for this service and we would utilize it given the opportunity.

A dedicated fleet of school buses from National Passenger Services being available for school events is something that would be appreciated and economically advantageous for our school.

[Exhibit S-1, Tab D]

[27] Mr. Amirault also discussed what he perceived as the lack of ability of the existing licensed motor carriers to service larger events. He pointed to the example of the Indigenous Games which had been planned for HRM. He said organizers had approached Stock because they wanted to deal with one operator to supply a large number of buses. As Stock was no longer licensed to offer charter services, consideration was given to trying to obtain a temporary authority. In the end, the company decided against it because one-time events were not a viable business model.

[28] Mr. Amirault indicated that Stock would require in the range of \$20,000 to \$25,000 of business per week to sustain a fleet of 35 activity buses. These buses would no longer form part of the fleet used to service the HRCE contract and therefore would have to be viable on a stand-alone basis. He summarized the manner in which he had estimated the available business as follows:

So based on the number of schools within the HRM ... which at that point in time I believe was upward of 152. We took our monthly revenue as it existed doing field trips and based the revenue projections on the statements made by the school superintendent that the principals all felt they would do three to five trips versus one to two.

So we took it on the low end of the scale of increasing by an additional two ... two trips for each school and determined the 12 additional revenue it would generate.

[Transcript, p.141]

[29] Mr. Amirault acknowledged that it was likely the revenues would fall approximately \$300,000 short in the first year of operation, but he felt that eventually the business could be sustainable. The precise details of how shortfalls would be financed or absorbed until sustainability was achieved would be up to the head office.

[30] While the plan is to target new business opportunities with Bus.com and the perceived untapped market with respect to school trips, Mr. Amirault was forthright in acknowledging that like any motor carrier, it would accept any charter within its license authority. While this had the potential of moving clients away from existing carriers, this was not the business model Stock was pursuing.

[31] The objecting motor carriers, with the exception of Absolute and Molega, all have licensed activity buses. The motor carriers' activity buses are operating at low utilization rates, meaning they sit idle without any work for much of the time. The breakdown of the number of buses and respective utilization rates is as follows:

- Coach Atlantic – 10 units - 26% utilization;
- Mac Tours – 3 units - 23% utilization;
- Markie – 5 units - 24% utilization;
- Minas – 2 units - 6% utilization; and
- Bluenose Transit – 8 units -18% utilization.

[32] Coach Atlantic, which has the most licensed activity buses, generates approximately \$100,000 in annual revenues from services provided under this authority. Its total annual revenue, prior to the COVID-19 pandemic, was in the range of \$26 million. Activity buses form a significant part of the equipment operated by Minas, Mac Tours and Markie.

[33] Bluenose Transit is operated by Shane Buchan. Bluenose Transit only has activity buses. Mr. Buchan owned and operated Perry Rand Limited prior to selling the business to Stock. This included the 53 activity buses Stock used for charter services prior to losing this authority. Bluenose Transit has been unable to recapture any significant market after it was granted a license for eight activity buses in the wake of Stock's loss of charter licensing.

[34] The Board has granted 14 additional activity bus licenses since Stock's charter authority was cancelled. Despite direct marketing efforts with school entities, the motor carriers with activity bus authorizations have not generated revenue comparable to what Mr. Amirault indicates Stock experienced. It was estimated by Mary Dempster, a Vice-President with Absolute, that annual revenue of all the current licensees combined was under \$700,000.

[35] The objecting motor carriers with existing activity bus authorities have provided this type of service to 71% of the schools where principals provided the letters of support included in the application. As well, these motor carriers have received no complaints from school entities or the Department of Education concerning the lack of activity buses. They have been able to deliver the service when requested.

[36] Some of the motor carriers who participated in the hearing had received requests for service from Bus.com. This did not necessarily translate into bookings. As well, some of the customers had contacted the carriers directly to arrange contracts after having used the Bus.com platform.

2. Law

[37] As is often the case where lay litigants appear before the Board, the distinction between submissions and evidence is not fully appreciated. The Board has had considerable experience in assessing the weight to be placed on these types of presentations. As well, Section 19 of the *Utility and Review Board Act*, S.N.S.1992, c.11, provides that the Board is not bound by the strict rules of evidence. Not surprisingly, therefore, no objection was taken to hearsay evidence, which was presented, to some extent, by all the parties. Finally, the state of the motor carrier industry arises in many cases before the Board. The objecting carriers' evidence is generally consistent with previous matters determined by the Board,

[38] The Board has on many occasions set out the principles and tests it applies with respect to this type of application. These are well summarized in *Re Pengbo Fu o/a Pengbo Shuttle*, 2020 NSUARB 87, affirmed 2020 NSCA 83, at paras. [44] to [47] and [51]:

[44] In Nova Scotia, motor carrier transportation services are regulated under the *Motor Carrier Act (MC Act)*. In general, the *MC Act* regulates motor carrier operators in Nova Scotia to ensure there is a quality, safe, sustainable industry in the Province. To accomplish this, the Board has been given the jurisdiction to regulate virtually all aspects of the industry.

[45] The *MC Act* provides the following guidance to the Board on matters it may consider:

Factors Considered

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

These apply equally to amendment applications, ss.12 and 19.

[46] Thus, in assessing an application, the Board considers, among other factors in s. 13, the public interest; the quality and permanence of service to be offered; general effect on other transportation services; and the sustainability of the industry including whether there is need for additional equipment in the area. In addressing whether there would be an excess of equipment under s. 13(a) above, the Board must consider whether there are vehicles currently licensed which could provide the services applied for. In other words, is there a need for the services and/or equipment sought by the Applicant?

[47] The *MC Act* requires the Board to balance, in each case, the various relevant issues and interests which may overlap and, at times, conflict. In the *Trius Inc.* Decision, dated September 22, 1993, the Board described the s. 13 considerations as follows:

The Board has noted in previous decisions that the various considerations are not mutually exclusive. They tend to overlap and it is difficult at times to isolate one from another. The considerations will not be of equal importance in every application. The weight to be put on various considerations will depend on the facts of each application.

...

[51] In each case, the applicant must prove to the Board that, after taking all factors into consideration, the Board should grant the application, *Molega Tours Limited*, 2013 NSUARB 243, para. 23.

3. Submissions

[39] The Board notes that there was no evidence presented that the proposed service would have any impact on regular route public passenger service, generally

known as line runs in the industry. While Stock's willingness and ability to provide proper service was put into serious question in the circumstances leading up to the revocation of its charter authorities, the Board's discussion with respect to deleting the express prohibition in the License is generally applicable to this factor, which was not really advanced as a reason for objections. Therefore, the main focus of the hearing and the issues upon which this application turn relate to ss.13(a) and (b) of the *MCA*.

[40] Stock's argument in favour of granting the application can be summarized as follows:

- Prior to the revocation of its charter authorities, Stock was generating approximately \$1.5 million annually with 53 licensed activity buses. The current licensees were generating less than half of this amount with approximately 28 units. It is unreasonable to think the market simply vanished shortly after Stock's authorities were revoked. It must follow, according to Stock, that there is a large untapped market which is currently not being serviced;
- Evidence of this untapped market in relation to school field trips is provided by Mr. Amirault's conversations with the HRCE school superintendent and confirmed by the letters from the school principals;
- Another potential new activity bus market relates to a proposed partnership with Bus.com, which requires a large fleet of activity buses for its business model to work. The other carriers are not in a position to provide this type of fleet. Stock has the available equipment. In addition, Stock received numerous unsolicited requests for service from other potential clients;

- As activity buses are of a different character and attract a different clientele than highway motor coaches, it is unlikely granting the license amendment will have any significant impact on that component of existing carriers' business;
- The goal of the relevant factors in the *MCA* is not to protect the businesses of the existing carriers in and of itself. The public interest is wider than that. Sustainability relates to having a viable motor carrier industry which meets the various needs of customers at a reasonable price. Where customer needs are not being met by current motor carriers, regardless of their own utilization rates, an applicant should be allowed to fill the gap;
- Focussing on Coach Atlantic, which has the most activity bus licenses, revenue generated from this source is only a small fraction of its total revenue. It cannot reasonably be argued that even if there is some loss of business it will have an impact on Coach Atlantic's sustainability. For other carriers, given the low utilization rates, sustainability of their business model is already in issue if a loss of some business would have a significant impact; and
- There is a limit to the extent any applicant can provide evidence of potential bookings or business when it has no license from which to generate requests. Stock has provided cogent evidence of a potential to create a sustainable business which will primarily be new business for the Province. Granting the application is in the public interest of both the motor carrier industry, its customers and the Province as a whole.

[41] The objecting motor carriers say granting the application will impact negatively on existing carriers, and the sustainability of the industry, by creating an excess

of equipment where they have the capacity and the willingness to provide the type of service described by Stock. Their main arguments can be summarized as follows:

- There is insufficient evidence to establish that the Bus.com opportunity for additional business actually exists. Mr. Kohlberg had no analysis or data related to the Nova Scotia market. Macro economic analysis with a business model where the usual size of a sufficient fleet is much larger than proposed by Stock simply does not translate to the Nova Scotia setting;
- The current carriers have worked, and can in the future work, in concert to answer the needs of any large events, which are rare and cannot form the basis for a sustainable business. These carriers can individually respond to smaller events, given the usual availability of their activity buses. No evidence was presented that they had ever denied a request from Bus.com.
- While acknowledging that generally the clientele who seek highway motor coaches and those who seek activity buses can be different, there can also be overlap. There is a definite concern there will be a loss of business if a large fleet of activity buses is approved. This will create sustainability issues for existing motor carriers operating in a finite market with tight margins;
- With respect to school trips, five of the motor carriers expanded their fleet by a combined total of 14 activity buses in anticipation of additional work when Stock was forced to leave the market. Despite best efforts, this has yet to materialize and they disagree there is an untapped market. It is unreasonable to suggest the existing carriers are simply not pursuing this alleged untapped market;

- The objectors say the letters from the principals are insufficient evidence of an untapped market, being general in nature and failing to provide any specifics as to the magnitude of the alleged demand. This is particularly salient in light of the statements related to the availability of activity buses being limited, when many of the principals' schools are familiar with, and have used the services of these carriers. As well, Bluenose Transit, which made projections about obtaining a large part of Stock's former clients, given Mr. Buchan's prior experience in this area, was unable to generate significant business; and
- The business model based on unsubstantiated projections will either not materialize or will be significantly less than anticipated. This will result in an unsustainable business unless Stock acquires a significant portion of the existing carriers' business. This is what some parties refer to as trading dollars which they say will only lead to a less sustainable industry within a finite market.

4. Analysis and Findings

[42] Unlike the situation with line runs, there are a number of companies who offer charter services in the Province. The economic regulation of a competitive industry creates conceptual challenges. It means standard economic concepts related to competition determining the outcome of the supply/demand equation has been legislatively modified. This requires a balancing of interests which are not always easy to reconcile. The interests of the currently licensed motor carriers, applicants who wish to enter the market or expand their operations, the existing and potential motor carrier clientele, and the general public interest in having a viable and safe industry to support tourism and travel must be considered. While there are no stated objects in the *MCA*, the

Board has considered this issue in the *Interim Discount Review Decision*, 2013 NSUARB

21:

[84] There are no stated objects within the *MC Act*. In summary, however, in reviewing the Legislation as a whole and giving it a broad, liberal and purposive interpretation, the Board has found that the objects of the *MC Act* are to ensure there are safe, quality and sustainable motor carrier public passenger services which best meet the interests of the traveling public within, to, and from Nova Scotia. (See Absolute 2010 NSUARB 171, para. 42.) Absolute and Murphy concur. Furthermore, the sustainability of this service for the public is one of the Legislation's overriding directives. In balancing the various and sometimes competing interests, the Board must do what is in the best interests of the public, giving specific consideration to the line run services, s.13(ca). Finally, the process is to be public. [Emphasis added]

[43] The Board has on numerous occasions commented that the circumstances which exist in Nova Scotia are an important consideration. In the *Interim Discount Review* decision, the Board made the following comments at para. [87], when discussing sustainability, which continue to be applicable:

The population is scattered and demand for services is low in comparison to more densely populated regions of the country. Tourism is important, but it is a short season. Capital investment is high, but must be paid year round.

[44] While the *Interim Discount Review* decision related to rates, as pointed out in *Pengbo*, sustainability is also important in the context of excess equipment, which can threaten the sustainability of carriers who have already made their investment to service the market. The Board has also commented in the past that there is need to maintain viable carriers in different parts of the Province, so that local needs do not suffer from excess consolidation. It is the very dynamics of market size, limited peak season, high capital investment and the need for province-wide service which provides a foundation for economic regulation, in this Province, of an industry which has largely been de-regulated in many other jurisdictions.

[45] While the Board agrees that the preservation of the existing carriers' business is not, in and of itself, the goal of the *MCA*, the particular reference to an excess

of equipment means that close attention must be paid to this factor. The Board is not satisfied the evidence shows there is a need for the service proposed by Stock which cannot be met by existing carriers. In this regard, the Board's decision in *Re Bluenose Transit Incorporated*, 2018 NSUARB 170, is instructive. In particular, in that hearing, Mr. Buchan, on behalf of Bluenose Transit, advanced much of the same type of evidence as Stock did in this proceeding related to a previous relationship with customers generating approximately \$1.4 million dollars in revenue and general letters of support in relation to the need for a lower cost alternative to highway motor coaches. While the Board commented on the fact it appeared Stock was only authorized to operate 39 activity buses, it held the loss of Stock's capacity, coupled with a general move by other carriers into this market space, and Mr. Buchan's evidence, warranted the granting of a license for eight activity buses. The Board notes the Bluenose Transit request was for considerably fewer licensed activity buses than the current one, which would therefore have less potential impact on other carriers.

[46] It is axiomatic that all cases must be based on the proposal and evidence in a particular proceeding. That said, the actual experience of Bluenose Transit, which, based on its utilization rates, has failed to experience the anticipated market demand, causes the Board to assess Stock's evidence with some trepidation. This is particularly the case where the written evidence related to the alleged need, as expressed in the letters of support from principals, are form letters appearing to come from one source. This is different than the variety of letters obtained by Mr. Buchan in the *Bluenose Transit* matter. In addition, the letters do not explain why these principals assert that activity buses are not currently an available option, when the evidence before the Board

establishes that activity buses are clearly available and that a large number of the schools involved have used the services of existing licenses. The Board agrees with the objecting carriers that, in such circumstances, the letters cannot be accepted at face value, as urged by Stock. Based on the letter from 17 principals and oral discussions with others, including the HRCE Superintendent, Stock has extrapolated a large untapped market. The Board is not convinced this market exists.

[47] Various theories were advanced as to why there was a disconnect between the period prior to Stock's loss of charter authorities and the current state of activity bus usage. Stock suggested existing carriers might be trying to upsell to motor coaches, which was denied. Stock also suggested the existing motor carriers had not adequately marketed their product. The objectors pointed to a possible change in patterns related to car pooling and budgetary constraints in general. There was also a suggestion the majority of this work can be done by the carriers with school bus licenses who have contracted with HREC, although Stock indicated this was not the case under its contract. The Board notes this entire discussion related to a pre-COVID 19 pandemic period. The foregoing are speculative propositions. The school principals and the HRCE superintendent might be able to shed light on this, as well as why they are not using the current carriers to a greater degree. They could potentially provide more verifiable numbers with respect to unmet demand, if any. They might be able to enlighten the Board on how the COVID-19 pandemic factors into the equation on a go-forward basis. That evidence is not before the Board. The Board is not satisfied that on the evidence before it there is a large unsatisfied demand for activity buses to provide services for school field trips to the extent it cannot be met by existing carriers.

[48] The Board is also not satisfied that the evidence establishes a need for the proposed service based on the proposed business association with Bus.com. This is an entirely speculative proposition, given the lack of any specific data related to the Nova Scotia context. As well, the 35 activity buses proposed in the application are clearly at the low end of what Bus.com generally requires to make its business model work. This is indicative of the size of the usual market where Bus.com works with strategic partners. While Bus.com can clearly choose who it does business with, and had an existing relationship with Stock, with potential national and international business connections, the Board is tasked with regulating the Nova Scotia motor carrier industry.

[49] The proposed relationship does not establish there is a sufficient market for the size of fleet requested by Stock, even when coupled with the school entity evidence. In fact, it adds little to the equation. As the objecting motor carriers indicated, large one-off events such as the Indigenous Games, which require a large number of buses, are not a regular occurrence. Like the cruise ship season, large increases in fleet capacity to meet a demand that only rarely cannot be met create a situation where the equipment often otherwise sits idle the remainder of the year. Based on the information provided by the objectors, the existing activity bus licensees likely have sufficient capacity to meet smaller bookings. The Board also finds that the unsolicited requests for service do not establish a market need. As indicated during the hearing, there is a large discrepancy between requests and actual bookings. While the Board acknowledges that Stock could not have converted these requests into bookings, given its lack of a charter license, the requests are not sufficient proof of a market demand that cannot be met by existing licensed carriers.

[50] The situation has changed since the Board awarded additional activity bus authorities to some of the motor carriers who participated in the hearing, including at the time of the *Bluenose Transit* decision. The Board finds that the evidence does not support what appears to be at least a doubling of the activity bus fleet in Nova Scotia, which would require in the range of \$1.3 million in annual revenues to be self-sustaining. While Stock focused on the HRCE school market and Bus.com in its evidence, it did not seek to limit the reach of the License.

[51] While Stock focused on the HRCE school market and Bus.com in its evidence, it did not seek to limit the reach of the License. As would be expected, Mr. Amirault acknowledged Stock would accept any work under its proposed authority. The Board agrees with the objectors that, based on the evidence before it, it is more likely than not that Stock will require market share currently serviced by many of them. While the Board agrees that the impact on Coach Atlantic, at least from a pre-COVID-19 perspective, might not be significant, there are other carriers such as Markie, Bluenose Transit, Mac Tours and Minas who have limited fleets. The excess of equipment which would likely occur if the application is granted would be a threat to their sustainability.

[52] While most of the case was argued without really placing reliance on the COVID-19 pandemic, it escapes no one's attention that the motor carrier industry has lost extensive business in 2020 and the requirements for the 2021 season remain unknown. While not key to this decision, it would appear prudent to at least have some indication of where the market is going before large-scale fleet increases are contemplated.

[53] The Board does have some concerns about the apparent failure of the motor carrier industry to at least maintain the market share in activity bus work after Stock

lost its charter authorities. If it had more cogent evidence on this aspect, it might impact the results of any application before it.

[54] Based on the evidence before it in this matter, the Board finds Stock has not met the burden of establishing the need for the requested service cannot be met by the existing licensees. The granting of the application will likely cause an excess of equipment in this market impacting on the sustainability of an important part of the motor carrier industry represented by the smaller carriers. The application to amend the License is therefore denied.

VI CONCLUSION


[55] After considering all the evidence and submissions in the context of the applicable law, the Board is satisfied that Stock has shown it is committed to compliance with the regulatory regime under the *MCA*. The Board further finds the Board's determination in the disciplinary proceedings resulted in a significant financial loss incurred by Stock. The Board's orders have accomplished their purpose with respect to deterrence. The Board finds that the express prohibition in the License related to any service, other than a school bus service, can be deleted from the terms of the License. Stock's future conduct and the extent it is allowed to offer services can be regulated and administered under the legislative regime of the *MCA*.

[56] Stock has failed to show, on a balance of probabilities, that the factors set out in s.13 of the *MCA* favour the granting of its request for a charter authorization throughout the Province using 35 activity buses with a capacity of 72 passengers each. The Board is not satisfied there is sufficient demand for this service or that it cannot be provided by existing motor carriers. The Board finds the granting of the application would

create an excess of equipment and be detrimental to the sustainability of the motor carrier industry as a whole. This part of the application is therefore denied.

[57] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 27th day of January, 2021.



Richard J. Melanson