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SERVICE DATE – APRIL 14, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21106

KELSIAN USA INC.—ACQUISITION OF CONTROL—
AAAHI TOPCO CORPORATION

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On March 15, 2023, Kelsian USA Inc., (Kelsian USA), a noncarrier, filed an application under 49 U.S.C. § 14303 to acquire from AAAHI Holdings LLC (Seller), a noncarrier, the motor carrier assets and direct control of AAAHI Topco Corporation (Topco). Topco is a noncarrier that indirectly wholly owns and controls the following passenger motor carriers: First Class Transportation LLC, Ace Express Coaches LLC, Hotard Coaches, Inc., Lux Bus America Co., Industrial Bus Lines, Inc. d/b/a All Aboard America, and SureRide Charter Inc. d/b/a Sun Diego Charter Co. (collectively, Regulated Carriers). The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments may be filed by May 26, 2023. If any comments are filed, Kelsian USA may file a reply by June 13, 2023. If no opposing comments are filed by May 26, 2023, this notice shall be effective on May 27, 2023.

ADDRESSES: Comments may be filed with the Board either via e-filing at www.stb.gov/proceedings-actions/e-filing/other-filings/ or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. Comments must reference Docket No. MCF 21106. In addition, one copy of comments must be sent to Kelsian USA's representative: Ayelet Hirschorn, Kaplan Kirsch & Rockwell LLP, 450 Seventh Avenue, Suite 1401, New York, NY 10123.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245-0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: According to the application, Kelsian USA is a recently established Delaware corporation and wholly owned subsidiary of Kelsian International Holdings Pty Ltd., which is a wholly owned subsidiary of Kelsian Group Limited (Kelsian). (Appl. 1.) Kelsian, a public company incorporated and domiciled in Australia, controls

numerous subsidiaries that provide integrated multi-modal transport and tourism services in Australia as well as established bus operations in Singapore, London, and the Channel Islands. (Id. at 1-2.) Kelsian USA states that neither it, nor Kelsian, nor any of Kelsian's other subsidiaries currently operate any transportation services in the United States. (Id. at 2.)

Seller is a non-carrier Delaware corporation that wholly owns Topco, which in turn wholly owns AAAHI Tempco LLC, which in turn wholly owns AAAHI Intermediate Holdings LLC, which in turn wholly owns AAAHI Acquisition Corporation, which in turn wholly owns All Aboard America! Holdings, Inc. (Id.) Tensile Capital Partners Master Fund LP is the majority equity holder of Seller. (Id. at 2-3.) According to the application, none of the entities in Seller's ownership chain have any direct or indirect ownership interest in any interstate passenger motor carrier other than the Regulated Carriers. (Id. at 3.) Kelsian states that, through the transaction, it would acquire all of Seller's outstanding stock of Topco, resulting in the placement of Topco and the Regulated Carriers under the control of Kelsian.¹ (Id. at 8.) The Regulated Carriers are as follows:

- First Class Transportation LLC, which provides regional interstate contract and charter passenger services between Texas and points throughout the United States, as well as Texas intrastate charter service and intrastate weekday park-and-ride commuter services in the Houston, Tex., metropolitan area;
- Ace Express Coaches, which operates charter and contract passenger services in both interstate and Colorado intrastate commerce;
- Hotard Coaches, Inc., which provides local and regional contract and charter passenger services within Louisiana and to and from various points within the continental United States;
- Industrial Bus Lines, Inc., d/b/a All Aboard America, which provides local and regional interstate and intrastate contract and charter passenger services in Arizona, Texas, and New Mexico;

¹ Additional information about the Regulated Carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (See Appl. 3-7.) Kelsian USA states that the transaction will also result in Kelsian USA indirectly owning and controlling, in addition to the Regulated Carriers, the following entities that are not subject to the jurisdiction of the Board: (i) Lux Leasing LLC, a California limited liability company that leases vehicles to Lux Bus; (ii) McClintock Enterprises, Inc., a California corporation that no longer provides passenger motor carrier services; (iii) All Aboard America School Transportation, LLC, a Texas limited liability company that no longer provides passenger motor carrier services; and (iv) All Aboard Transit Services LLC, a Delaware limited liability company that no longer provides passenger motor carrier services. (Id. at 7.)

- Lux Bus America Co., which provides interstate and intrastate passenger group charter motor coach and shuttle services in the Los Angeles and San Francisco Bay areas of California; and
- SureRide Charter, Inc. d/b/a Sun Diego Charter Company, which provides regional charter and contract passenger services from its base in National City, Cal.

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result, and (3) the interest of affected carrier employees. Kelsian USA has submitted the information required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), see 49 C.F.R. § 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. § 14303(g) that the aggregate gross operating revenues of the Regulated Carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, see 49 C.F.R. § 1182.2(a)(5).

Kelsian USA asserts that the transaction is consistent with the public interest. Kelsian USA states that the transaction is not expected to have a material, detrimental impact on the adequacy of transportation services available for the public, but rather it anticipates that public services will be improved as “operating efficiencies and innovative solutions are realized and implemented.” (Appl. 10.) Moreover, according to Kelsian USA, there are no significant fixed charges associated with the transaction. (Id.) Kelsian anticipates that the Regulated Carriers will continue to operate without any material impact on existing employment levels resulting from the transaction, as the local general managers of the Regulated Carriers will continue day-to-day operational management of those companies and Kelsian “is committed to maintaining the current workforce of the Regulated Carriers and plans to continue that workforce.” (Id. at 11.) Kelsian USA asserts that that neither competition nor the public interest will be adversely affected by the proposed transaction, as the transaction only involves the transfer of Seller’s holding company (Topco) and ownership and control of the Regulated Carriers to another non-passenger carrier holding company that does not currently have any ownership interests in, or control of, any other passenger motor carrier in the United States. (Id. at 12.) Moreover, Kelsian USA notes that, because it does not currently operate any motor carrier service in the United States, there will be no overlap in the service areas or customer bases of the Regulated Carriers and Kelsian USA. (Id.)

The Board finds that the acquisition as proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6. If no opposing comments are filed by expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective May 27, 2023, unless opposing comments are filed by May 26, 2023. If any comments are filed, Kelsian USA may file a reply by June 13, 2023.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: April 10, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.