

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36780

GRUPO MÉXICO, S.A.B. DE C.V. AND GMÉXICO TRANSPORTES, S.A.B. DE C.V.—
ACQUISITION OF CONTROL EXEMPTION—CG RAILWAY, LLC

Digest:¹ This decision grants Petitioners authority to acquire indirect control of CG Railway, LLC.

Decided: August 8, 2024

On May 15, 2024, GMéxico Transportes, S.A.B. de C.V. (GMXT), a noncarrier railroad holding company, filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 11323-24 to allow GMXT to acquire an indirect controlling ownership interest in CG Railway, LLC (CGR), a Class III carrier.² The Board will grant the petition for exemption, subject to standard employee protective conditions.

BACKGROUND

CGR is wholly owned by Golfo de México Rail Ferry Holdings LLC, a 50/50 joint venture (JV) between Seacor Holdings, Inc. (through its wholly owned subsidiary, Rail Ferry Investment Holdings Inc.) (Seacor) and Genesee & Wyoming, Inc. (through its wholly owned

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The petition identifies GMXT as the entity seeking Board authority to acquire a controlling ownership interest in CGR. However, because Grupo México, S.A.B. de C.V. (Grupo México) is the ultimate parent company of GMXT, this proceeding has been recaptioned to include Grupo México. GMXT and Grupo México are collectively referred to as Petitioners.

GMXT’s initial petition, filed in Docket No. FD 36701, was rejected as incomplete and for failing to provide adequate supporting information. See GMéxico Transportes, S.A.B. de C.V.—Acquis. of Control Exemption—CG Ry. (April 2024 Decision), FD 36701, slip op. at 2-4 (STB served Apr. 4, 2024). The Board also required CGR and its owners to respond to questions concerning, respectively, authorization for CGR’s current operations and for the transaction in which they acquired CGR. Id. at 4-5; see also infra notes 3 & 4.

subsidiary, G&W Agave Holdings Inc.) (GWI).³ (Pet. 2-3.) CGR provides rail carrier service in the Port of Mobile, Ala., and rail ferry service between the Port of Mobile and the Port of Coatzacoalcos, Mexico, where the rail ferry operation connects to the Ferrosur Railway, a rail carrier subsidiary of GMXT located in Mexico.⁴ (Pet. 3.)

GMXT, a subsidiary of Grupo México (a noncarrier holding company), controls, through indirect ownership, Florida East Coast Railway, L.L.C. (FECR), a Class II carrier in Florida, and Texas Pacifico Transportation, Ltd. (Texas Pacifico), a Class III carrier in Texas.⁵ (Pet. 3); see Grupo México, S.A.B. de C.V.—Control Exemption—Fla. E. Coast Holdings Corp., FD 36109, slip op. at 1 (STB served May 9, 2017). As explained in the petition, FECR and Texas Pacifico are in the same corporate family as the Copper Basin Railway, Inc., a Class III carrier in Arizona that Grupo México controls through a different indirect subsidiary, ASARCO LLC. (Pet. 3-4).⁶

As described in the petition, GMXT has reached agreements with Seacor and GWI under which GMXT would acquire an indirect 60% ownership interest in the JV, “which includes the railroad equipment and trackage rights over 0.583 miles of line of railroad in the Port of Mobile, Ala[.] known as tracks 14 and 15, and the rail ferry service between the docks and the U.S. maritime territorial border.” (Id. at 4.)⁷ Specifically, GMXT (through GMXT Marine LLC, an

³ In response to questions raised in the April 2024 Decision in Docket No. FD 36701, GWI and Seacor jointly submitted a letter explaining that neither GWI nor Seacor “controlled” CGR within the meaning of 49 U.S.C. 10102(7) and 11323(a) due to their 50/50 ownership split and provisions in the agreement governing the JV requiring that decision-making authority is shared equally between the parties. See Letter, May 7, 2024, GMéxico Transportes, FD 36701. In the absence of any countervailing evidence, the Board finds this explanation satisfactory and supported by the agreement governing the JV.

⁴ Following the April 2024 Decision in Docket No. FD 36701, CGR obtained after-the-fact authority to operate the rail ferry service between the Port of Mobile and the U.S. maritime boundary line in the Gulf of Mexico. See CG Ry.—Operation Exemption—Rail Ferry Serv., FD 36775 (STB served May 23, 2024). It had previously sought and received authority to operate certain tracks within the Port of Mobile, but not to operate the broader ferry service. Id. at 1-2.

⁵ As requested in the April 2024 Decision, charts showing the intra-corporate relationships between and among the Grupo México companies before and after the proposed acquisition of CGR are attached to the petition as Exhibit A. See April 2024 Decision, FD 36701, slip op. at 2-3 (requiring information about corporate structure and holdings).

⁶ Grupo México also obtained after-the-fact authority to acquire Copper Basin in response to questions raised by the Board in the April 2024 Decision in Docket No. FD 36701. See Grupo México, S.A.B. de C.V.—Acquis. of Control Exemption—Copper Basin Ry., FD 36767 (STB served June 14, 2024).

⁷ Copies of the agreements are attached to the petition as Exhibit C. On July 3, 2024, GMXT filed an amendment to the agreement with Seacor modifying certain dates specified in the agreement. GMXT states that the amendment was filed for completeness and affects no substantive provision of the agreement. (GMXT Suppl. 3.)

indirect wholly owned subsidiary) will acquire all of Seacor's 50% ownership interest in the JV, and 20% of GWI's 50% ownership interest, resulting in GMXT having an indirect 60% ownership interest in the JV and control of the JV and CGR. (Pet. 4.) GMXT states that Seabulk Fleet Management LLC, an affiliate of Seacor, will remain as ferry operator on a contract basis with CGR. (Id.)

In support of its petition, GMXT states that CGR will continue to operate in the same manner as it currently does. (Id. at 6.) GMXT notes that concentrating ownership of CGR in GMXT, a frequent user of the rail ferry service, will ensure that revenue from the service is used for railroad purposes and provide GMXT with both greater incentive and ability to invest in the rail ferry and improve operations. (Id.) GMXT asserts that granting the exemption will promote several goals of the rail transportation policy (RTP) of 49 U.S.C. 10101. (Id. at 6-7 (listing provisions).) GMXT further contends that the grant of an exemption will not adversely affect any of the remaining elements of the RTP. (Id. at 7.) Finally, GMXT asserts that the transaction is limited in scope and that application of the requirements of sections 11323-24 is not necessary to protect shippers from the abuse of market power, and it explains the reasons for this contention. (Id. at 7-11.)

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval from the Board under 49 U.S.C. 11323(a)(5). Under section 10502(a), however, the Board shall, to the maximum extent consistent with 49 U.S.C. subtitle IV, part A, exempt a transaction or service from regulation when it finds that: (1) regulation is not necessary to carry out the RTP of 49 U.S.C. 10101; and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of 49 U.S.C. 11323-24 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of the proposed transaction through an application for review and approval under sections 11323-24 is not necessary here to carry out the RTP. Under these circumstances, and given GMXT's representations, approval of the transaction would result in a change in ownership and control of CGR with no lessening of competition. GMXT asserts that concentrating ownership of CGR in GMXT, a frequent user of the rail ferry service, will ensure that revenue from the service is used for railroad purposes and provide GMXT with greater incentive and ability to invest in the rail ferry and to improve operations. (Pet. 6.) Therefore, an exemption would further the RTP by promoting a safe and efficient rail transportation system, 49 U.S.C. 10101(3); ensuring the development and continuation of a sound rail transportation system to meet the needs of the public, 49 U.S.C. 10101(4); fostering sound economic conditions in transportation, 49 U.S.C. 10101(5); and encouraging efficient management of railroads, 49 U.S.C. 10101(9). An exemption would also promote the RTP by minimizing the need for federal regulatory control over the transaction, 49 U.S.C. 10101(2); reducing regulatory barriers to entry, 49 U.S.C. 10101(7); and providing for the expeditious resolution of this proceeding, 49 U.S.C. 10101(15). Other aspects of the RTP would not be adversely affected.

Nor is detailed scrutiny of the proposed transaction necessary to protect shippers from an abuse of market power.⁸ As noted in the petition, the market for the transportation of goods between the U.S. and Mexico is robust; shippers have many transportation choices, and CGR's rail ferry service is a small component of that dynamic market. (Pet. 8.) Moreover, the transaction does not prevent other rail carriers—or any entity except Seacor and its affiliates (for a period of five years)⁹—from entering the market to compete with CGR by offering rail ferry service between Mobile and Coatzacoalcos or between other port locations on the Gulf of Mexico in either country. (*Id.* at 8-10.) GMXT states that no shippers would experience a reduction of competitive options. (*Id.* at 8.)¹⁰ GMXT also explains that CGR must interchange traffic moving into and out of its two tracks at the Port of Mobile; that the transaction agreements do not limit its ability to interchange with any of several third-party connecting carriers; and that the proposed transaction involves the common control of carriers that have only one direct connection and do not compete with each other.¹¹ GMXT further represents “that it will not use the connection between CGR and Ferrosur to foreclose vertical competition over efficient joint line routes with unaffiliated carriers,” (Pet. 9 n.9), and the Board will hold GMXT to that statement.¹² See Genesee & Wyo.—Acquis. of Control Exemption—Atl. W. Transp. & Heart of

⁸ Given this finding, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a).

⁹ In response to questions raised in the April 2024 Decision in Docket No. FD 36701 regarding the competitive impact of a non-compete provision in the GMXT-Seacor agreement, the petition explains that the provision restricts Seacor and its affiliates from providing or supporting a competing rail ferry service for five years between U.S. and Mexican ports in the designated area in which CGR will provide service. (Pet. 10.) It emphasizes that other companies can provide rail ferry service in CGR's territory, and that any company, including Seacor, can ship freight between the U.S. and Mexico by land. (*Id.*) The petition further contends that such a provision is necessary to protect GMXT's investment in CGR, including acquisition of CGR's goodwill and relationship with customers, which may be imperiled if Seacor commences new rail ferry operations that replicate CGR's current service. (*Id.*) After a review of the contractual provision, and based on the information submitted in the petition, the Board finds that the clause will not have an anticompetitive effect, on balance, in the market in which CGR operates.

¹⁰ (See also *id.* at 8 (stating that “shippers will have the same service options available to them as they have now”; that “[n]o shipper will lose an existing transportation option”; and that “CGR will continue to provide common carrier rail service”).)

¹¹ GMXT's assertion that the Board “has consistently rejected the notion that new single-line movements created through merger would lead the merged carrier to vertically foreclose competition over efficient routes by refusing to cooperate with unaffiliated carriers,” (Pet. 8-9 (quoting a 2007 decision in a control proceeding)), is mistaken. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 44-47 (STB served Mar. 15, 2023) (concluding that the one-lump theory does not justify a presumption that a vertical combination will not result in competitive harm).

¹² GMXT states that it does not concede that competitive effects of interchange in Mexico fall within the Board's jurisdiction but makes this representation in the event the Board

Ga. R.R., FD 36105, slip op. at 3 (STB served Apr. 18, 2017) (holding carrier to similar representation in exemption proceeding). Moreover, no shipper (or any other entity) has objected to this control transaction. Based on the record, the Board finds that the transaction does not shift or consolidate market power and that regulation is not needed to protect shippers from an abuse of market power.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979).

The control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(1)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because GMXT states that it has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

In its July 3, 2024 filing, GMXT asks that the exemption be made effective no later than August 27, 2024. (GMXT Suppl. 4.) GMXT's rationale is not persuasive, particularly given the questions raised in the April 2024 Decision in Docket No. FD 36701 and the complexities of this proceeding, which counsel in favor of giving interested parties time to review this decision prior to the exemption's effective date.¹³ The Board will retain the 30-day period prescribed by 49 CFR 1121.4(e). The exemption will be effective September 12, 2024. Petitions to stay must be filed by August 23, 2024. Petitions for reconsideration or petitions to reopen must be filed by September 3, 2024.

concludes otherwise. (Pet. 9 n.9.) The Board has jurisdiction over transportation in the United States between a place in the United States and a place in a foreign country. See 49 U.S.C. 10501(a)(2)(F); see also, e.g., Can. Packers, Ltd. v. Atchison, Topeka & Santa Fe Ry., 385 U.S. 182 (1966) (upholding ICC's determination that it had jurisdiction to determine the reasonableness of a joint through international freight rate from New Mexico to Canada and to order reparations, including for the overcharge on the Canadian portion of the trip); Canadian Pac. Ry.—Control, FD 36500, slip op. at 54 & n.77 (Board may consider U.S.-related impacts of potential rate manipulation or other post-transaction conduct that adversely affects interline optionality at international gateway and, if warranted, remedy the situation).

¹³ GMXT requests expedited consideration “to allow the parties to complete all necessary actions required to accomplish the postponed closing [of the agreement with Seacor] without any further delay.” (GMXT Suppl. 4; see id. at 3 (stating that closing was postponed “to align with [the agreement between GMXT and GWI], which includes a similar date”.) Petitioners' desire to meet their chosen closing date(s) is not, by itself, a sufficient basis for shortening the 30-day period (and, potentially, the related interim deadlines for stay, reconsideration, and reopening requests) identified in 49 CFR 1121.4(e) before an exemption may take effect, particularly given the circumstances of this proceeding.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323-25 the control transaction described above, subject to the employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979).
2. Petitioners must adhere to GMXT's statement that it will not use the connection between CGR and Ferrosur to foreclose vertical competition over efficient joint line routes with unaffiliated carriers.
3. Notice of the exemption will be published in the Federal Register.
4. The exemption will become effective on September 12, 2024. Petitions for stay must be filed by August 23, 2024. Petitions for reconsideration or petitions to reopen must be filed by September 3, 2024.

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