

ORIGINAL

Decision S3 CG 020 JUN 1 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MINSTAR ACQUIRING)
CORP. for authority to control The)
Bekins Company and subsidiary)
operating companies through)
acquisition of capital stock of The)
Bekins Company and for authority to)
merge The Bekins Company into Minstar)
Acquiring Corp.)

Application 83-05-17
(Filed May 9, 1983)

O P I N I O N

Minstar Acquiring Corp. (Minstar or applicant), a California corporation which presently holds no operating authority from this Commission, requests authority under Public Utilities (PU) Code § 854 and 3551 to exercise direct control of The Bekins Company (Bekins) through stock acquisition and, in turn, to exercise an indirect control of carrier subsidiaries of Bekins; and for authority for the subsequent merger of Bekins into Minstar.

Bekins is a noncarrier holding company. It controls through ownership of all issued and outstanding shares of stock (1) Bekins Moving & Storage Co., (2) Data Transportation Co., Inc., and (3) Data Air Distribution Systems Co., Inc. Each of these entities holds authority from the Commission as follows:

- A. Bekins Moving & Storage Co.:
 - 1. Household Goods Carrier Permit T-7231.
 - 2. Highway Contract Carrier Permit T-7231.
 - 3. Certificate of Public Convenience and Necessity T-7231.
 - 4. Heavy-Specialized Carrier Permit T-7231.
- B. Data Transportation Co., Inc.:
 - 1. Certificate of Public Convenience and Necessity T-83385.
 - 2. Highway Contract Carrier Permit T-83385.
 - 3. Household Goods Carrier Permit T-112485.

C. Data Air Distribution Systems Co., Inc.:

Freight Forwarder Certificate T-112485.

Applicant is a wholly owned subsidiary of Minstar, Inc., a Minneapolis, Minnesota corporation. Applicant was incorporated in March 1983, for the express purpose of acquiring control of Bekins. It has no operating history. The parent company is engaged in the manufacture and marketing of outdoor recreational products, principally boats and related marine products. Its shares are traded on the "over-the-counter" market.

Applicant proposes to purchase shares of Bekins' stock (no par value) at \$23 per share, net to the sellers in cash. As of March 31, 1983, there were outstanding 3,874,395 shares of Bekins no par value common stock. Applicant's offer to purchase is conditioned upon a minimum of 1,473,000 shares being tendered. In the event 3,489,000 or more shares are tendered, applicant will purchase all shares so tendered. If less than 3,489,000 shares, but more than 1,473,000 shares are tendered, applicant, at its option, will acquire 1,473,000 shares on a pro rata basis or alternately all shares so tendered. The offer to purchase is scheduled to expire on May 23, 1983, unless extended.

On April 21, 1983, there was executed by applicant, Minstar, Inc. and Bekins a Merger Agreement, which provides that subsequent to the stock acquisition, Bekins will be merged with or into applicant, the form of merger to be selected by applicant.

The details of the proposed transaction are embodied in Schedule 13D, a Tender Offer Statement pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934 on file with the Securities and Exchange Commission. A copy is submitted as Exhibit B to the

application. Exhibit B sets forth all pertinent details of the transaction, as well as all documents normally required to be attached as exhibits to an application of this nature. Attached to the application as Exhibit C and D are a comparative balance sheet statement of Bekins as of December 31, 1982 and 1981 and Bekins' statement of consolidated income and expenses for the years 1980, 1981, and 1982.

Applicant believes that no party has any interest in the outcome of this proceeding other than applicant, Bekins and Bekins' shareholders. The application states that in the proposed transaction, time is of critical importance; any delay in granting the sought relief could frustrate the Tender Offer due to inability to meet time commitments. To that end, applicant requests that the Commission exercise its discretion under Rule 87 of the Commission's Rules of Practice and Procedure and shorten the protest period as provided for in Rule 8.3 from 30 to 10 days, and following the expiration of the 10-day period immediately issue an ex parte order.

On May 17, 1983, a protest was filed by Far West Financial Services Corp. (Far West). Far West owns an option to purchase 1,000,000 shares of the common stock of Bekins and had sought to merge with Bekins. Its request to control Bekins in Application 83-04-44 was dismissed at Far West's request in Decision 83-05-040, as Far West's attempt to acquire a controlling interest in Bekins had failed. Far West's protest states that, as a party of significant economic interest in the welfare of Bekins, it believes that Minstar's lack of financial stability and depth might threaten the ability of Bekins and its regulated subsidiary operating companies to survive. Far West alleges that Minstar Inc., applicant's parent, intends to borrow \$85,000,000 for the purpose of acquiring Bekins' shares, and applicant's inability to repay such loans would seriously jeopardize its ability to continue to operate without encumbering or liquidating Bekins' regulated subsidiaries. Far West points out that in December 1981 Minstar, Inc. emerged from a Chapter 11 bankruptcy.

On February 27, 1983 Minstar filed a response to Far West's protest. The response states that Far West has no pecuniary interest in Bekins as Far West voluntarily withdrew its Tender Offer for Bekins; Bekins' Board of Directors has approved Minstar's Tender Offer and recommended acceptance by shareholders; and over 83% of outstanding shares have been tendered.

Minstar's response further states that Far West instituted an action in the United States District Court for the Central District of California (Far West Financial Corp., et al v Bekins Co., et al., No. 83-2711 (KV) (Gx), filed April 29, 1983). The complaint alleged that Minstar and Bekins had violated various provisions of federal security laws, among other things. A preliminary injunction prohibiting consummation of Minstar's tender offer and merger and damages was denied, the Court having found that loans to Minstar to acquire Bekins did not violate the federal margin rules, and that the contention of Far West that liquidation of Bekins was the only realistic method for Minstar to repay the loans was without merit. Attached to Minstar's response is a declaration of Donald M. Nicholson, Vice President and Chief Financial Officer of Minstar, Inc., that demonstrates the ability of Minstar to finance the transaction and to repay the loan.

We have carefully analyzed the protest and the response and find that Minstar has the financial ability to acquire Bekins without impairing the operations of its regulated subsidiaries, and that Far West has no pecuniary interest in Bekins. Therefore, Far West would not be adversely affected if the requested merger and control of Bekins by Minstar is consummated. The protest should be denied. A public hearing is not necessary.

Findings of Fact

1. Applicant, a subsidiary of Minstar, Inc., is fit, willing, and able to exercise control of Bekins.

2. Sufficient shares are tendered to Minstar by Bekins shareholders by May 23, 1983 for the proposed merger to be consummated.

3. As sufficient shares will be acquired, Minstar will hold a controlling interest in Bekins.

4. Minstar holds no present operating authority from this Commission, and conducts no other business.

5. A protest was filed on May 17, 1983 by Far West, which alleged that Far West has a pecuniary interest in Bekins, and that interest would be adversely affected if Bekins' regulated operating subsidiaries are encumbered or liquidated as a result of Minstar's inability to repay loans made to acquire Bekins.

6. Far West has no substantial pecuniary interest in Bekins which would be affected by the merger and control of Bekins by Minstar.

7. Minstar appears to be able to service or refinance existing acquisition loans without impairing the operations of Bekins' operating subsidiaries or causing liquidation or encumbrance of those subsidiaries.

8. The acquisition and control of Bekins by Minstar, the exercise of control over Bekins motor carrier subsidiaries, and the subsequent merger of Bekins into Minstar are not adverse to the public interest.

Conclusions of Law

1. The requested exercise of control of Bekins by Minstar and subsequent merger of Bekins into Minstar should be authorized.

2. The request for a shortening of the protest period outlined in Rule 8.3 should be granted to the extent provided in the order.

3. A public hearing is not necessary.

4. The protest of Far West should be denied.

5. The order should be effective on the date of issuance in order that the merger and control may be promptly exercised.

O R D E R

IT IS ORDERED that:

1. The period provided in Rule 8.3 of the Commission's Rules of Practice and Procedure for filing protests to A.83-05-17 is reduced from 30 days to the date this application is acted on by the Commission.

2. On and after the effective date of this order, assuming completion of the Tender Offer, Minstar Acquiring Corp. (Minstar) is authorized to exercise control over The Bekins Company (Bekins) and its highway carrier operating subsidiaries, and subsequently to merge Bekins into Minstar as proposed in the application.

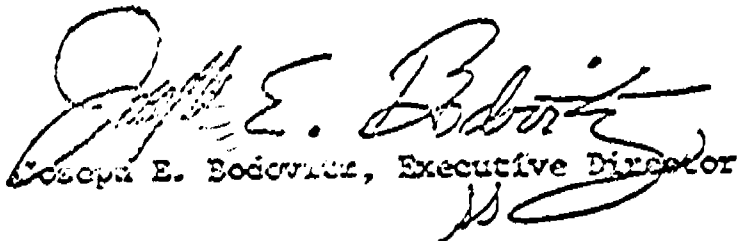
This order is effective today.

Dated JUN 1 1983, at San Francisco, California.

Commissioner Donald Vial, present
but not voting.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovick, Executive Director