UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*,	**Civil Action No.: 99 CV 00537 (RCL)**
	Filed:
v.	
SIGNATURE FLIGHT SUPPORT CORPORATION, **AMR COMBS, INC., and AMR CORPORATION,** *Defendants*.	

PLAINTIFF'S RESPONSE TO PUBLIC COMMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("Tunney Act"), the United States hereby responds to the single public comment received regarding the proposed Final Judgment in this case.

I.

Background

On March 1, 1999, the United States Department of Justice ("the Department") filed the Complaint in this matter. The Complaint alleges that Signature Flight Support Corporation's ("Signature") proposed acquisition of AMR Combs, Inc. ("Combs"), a wholly owned, indirect subsidiary of AMR Corporation, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Signature and Combs are fixed base operators (FBOs) located primarily at various airports throughout the United States. FBOs provide flight support services

to general aviation customers. By acquiring the Combs FBO facilities, Signature would eliminate its sole FBO competitor at Bradley International Airport ("BDL") and at Palm Springs Regional Airport ("PSP"). In addition, Signature's proposed acquisition would significantly reduce the likelihood of entry by a third, independent FBO competitor at Denver Centennial Airport ("APA"). As a result, the Complaint alleges, the proposed acquisition would substantially lessen competition for FBO services at APA, BDL and PSP in violation of Section 7 of the Clayton Act. 15 U.S.C. §18.

Simultaneously with the filing of the Complaint, the Department filed the proposed Final Judgment and a Stipulation signed by all the parties that allows for entry of the proposed Final Judgment following compliance with the Tunney Act. The Department also filed a Competitive Impact Statement ("CIS") on March 15, 1999, that was subsequently published in the Federal Register on March 26, 1999. The CIS explains in detail the provisions of the proposed Final Judgment, the nature and purposes of these proceedings, and the transaction giving rise to the alleged violation.

As the Complaint and the CIS explain, the merger as originally proposed was likely to reduce or eliminate competition in three specific markets for flight support services—the APA, BDL and PSP markets. The proposed Final Judgment is intended to prevent the expected lessening of competition the merger would cause in those markets.

As a remedy to competitive harm in the BDL and PSP markets for flight support services, the Department and Signature, Combs and AMR agreed to divestiture of one of the FBO businesses at each airport. In addition, the parties agreed to remedy the competitive harm in the APA market for flight support services by transferring Signature's interest in a new FBO facility

at APA to another FBO or by divesting the existing Combs FBO business to an independent and financially viable competitor. These remedies are intended to protect consumers by ensuring continued vigorous competition in each market.

The 60-day comment period for public comments expired on May 25, 1999. The Department had received only one comment, from Robert A. Wilson, President of Wilson Air Center, an FBO located at the Memphis International Airport in Memphis, Tennessee.[1]

II.

Response to the Public Comment

Wilson opposes the Department's decision to permit Signature's acquisition of Combs subject to the divestiture of FBO facilities or interests in FBO facilities at APA, BDL and PSP. Wilson claims that the Department should have challenged the acquisition in another market that consists of the Memphis International Airport. The Wilson comment indicates that the Memphis International Airport market has only two FBO competitors: Combs and Wilson Air Center. According to Wilson, shortly before the announcement of the transaction between Signature and Combs, Combs had negotiated various agreements with the Memphis and Shelby County Airport Authority that he believes place Wilson Air Center at a competitive disadvantage. In Wilson's view, Signature's purchase of Combs is objectionable because it perpetuates what he considers to be anticompetitive agreements at the Memphis International Airport.

[1] The comment is attached. The Department plans to publish promptly the comment and this response in the Federal Register. The Department will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of final judgment once publication takes place.

The Clayton and Sherman Acts, judicial precedent, and the Horizontal Merger Guidelines[2] govern the Department's review of mergers. The first step in the review is defining relevant product and geographic markets where the merging firms are actual or potential competitors. Once the relevant markets are identified, the analysis turns to the competitive implications of the proposed transaction's elimination of one of the firms. Signature and Combs did not compete with one another at the Memphis International Airport, and there was no indication that Signature planned to become an independent competitor at that airport. Since there was no actual or potential competition and thus, no substantial lessening of competition, that market would not be—and, in fact, was not—one that merited review. Instead, the Department identified three geographic markets where Signature and Combs were actual or potential competitors, and determined that, as a result of the acquisition, competition in those markets would be substantially lessened. Accordingly, the Department brought its case on the basis of those three markets, and obtained as relief divestitures designed to ensure continued competition in each market. In sum, the Wilson comment does not raise competition issues caused by the proposed acquisition.

III.

The Legal Standard Governing the Court's Public Interest Determination

Once the Department moves for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e). In making that determination, the "court's function is not to determine whether the resulting array of rights and liabilities 'is one that will best serve society,'

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[2] FEDERAL TRADE COMMISSION & UNITED STATES DEPARTMENT OF JUSTICE, HORIZONTAL MERGER GUIDELINES (1992, rev. 1997).

but only to confirm that the resulting 'settlement is within the reaches of the public interest.'" *United States v. Western Elec. Co.*, 993 F.2d 1572, 1576 (D. C. Cir. 1993) (citation omitted).[3] The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the proposed Final Judgment if it falls within the government's "rather broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *accord United States v. Associated Milk Producers*, 534 F.2d 113, 117-18 (8th Cir. 1976).

Because Wilson argues for a different case than the one that the Department brought, and does not address the relief ordered by the proposed Final Judgment, the comment raises no issues relevant to this Tunney Act proceeding. The Tunney Act does not contemplate a judicial reevaluation of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case based on the facts and law before it at a particular time, like any other decision not to prosecute, "involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may not look beyond the Complaint "to evaluate claims that the government did not make and to inquire as to why they were not made." *Microsoft*, 56 F.3d at 1459; *see also Associated Milk Producers*, 534 F.2d at 117-18.

Similarly, the government has wide discretion within the reaches of the public interest to resolve potential litigation. *See, e.g., Western Elec.*, 993 F.2d at 1577; *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151-52 (D.D.C. 1982). The Supreme Court has recognized

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[3] The *Western Electric* decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 235-38 (1975); *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971), and "normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation." *Armour*, 402 U.S. at 681. This proposed Final Judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. *Id.; Microsoft*, 56 F.3d at 1459.

Finally, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Thus, defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. If the commenting party has a basis for suing the defendants, it may do so. The legal precedent discussed above holds that the scope of a Tunney Act proceeding is limited to whether entry of this particular proposed Final Judgment, agreed to by the parties as settlement of this case, is in the public interest.

IV.

Conclusion

After careful consideration of the comment, the Department concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The Department will move the Court to enter the proposed Final Judgment after the public comment and this Response have been published in the Federal Register, as 15 U.S.C. § 16(d) requires.

Dated this 21st day of June, 1999.

Respectfully submitted,

"/s/"

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Certificate of Service

I, Marian Honus, hereby certify that, on June 21, 1999, I caused the foregoing document to be served on defendants Signature Flight Support Corporation, AMR Combs, Inc., and AMR Corporation by having a copy mailed, first-class, postage prepaid, to:

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"/s/"
Marian Honus