

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

ALASKA AIR GROUP, INC.

and

VIRGIN AMERICA INC.,

*Defendants.*

Case No. 1:16-cv-02377 (RBW)

**PLAINTIFF UNITED STATES OF AMERICA’S RENEWED MOTION AND  
MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff United States moves for entry of the proposed Final Judgment filed on December 6, 2016, and attached as Exhibit 1. The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) also filed on December 6, 2016 explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance with the APPA (“Certificate of Compliance”) setting forth the steps taken by the parties to comply with all applicable provisions.

**I. Background**

On December 6, 2016, the United States filed a Complaint in this matter alleging that the proposed merger of Alaska Air Group, Inc. and Virgin America Inc. would

substantially lessen competition in the provision of scheduled air passenger service in numerous markets throughout the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would have resulted in increased airline fares and fees and reduced service.

At the same time the Complaint was filed, the United States filed the proposed Final Judgment, which is designed to remedy the likely anticompetitive effects of the proposed merger, a Stipulation and Order signed by the parties consenting to entry of the proposed Final Judgment after compliance with the APPA, and the CIS. The proposed Final Judgment requires Alaska to substantially reduce the scope of its codeshare agreement with American Airlines Group Inc. (“American”) in order to enhance Alaska’s incentive to compete with American after the merger.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

## **II. Compliance with the APPA**

The APPA requires a 60-day period for submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on December 6, 2016; published the proposed Final Judgment and CIS in the Federal Register on December 13, 2016, see 81 Fed. Reg. 89979; and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for submission of written comments relating to the proposed Final Judgment, published in the Washington Post for seven days, beginning on December 10, 2016 and ending on December 16, 2016. On March 7, 2017, the Court ordered the

United States to publish the information required by 15 U.S.C. § 16(c) in: (1) newspapers of general circulation in Alaska's hubs and Virgin America's focus cities, and (2) a newspaper of general nationwide circulation. To comply with the first requirement of the Court's Order, the United States had the information required by 15 U.S.C. § 16(c) published for seven days in the San Francisco Chronicle, beginning on March 10, 2017 and ending on March 16, 2017; the Seattle Times, beginning on March 12, 2017 and ending on March 18, 2017; the Los Angeles Times, beginning on March 11, 2017 and ending on March 17, 2017; the Oregonian, beginning on March 12, 2017 and ending on March 24, 2017; the Alaska Dispatch News, beginning on March 10, 2017 and ending on March 17, 2017, and the Dallas Morning News, beginning on March 12, 2017 and ending on March 20, 2017.

To comply with the second requirement of the Court's Order, the United States had the information required by 15 U.S.C. § 16(c) published in the Wall Street Journal for seven days, beginning on March 13, 2017 and ending on March 20, 2017. As all of the required publications were completed as of March 24, 2017, the second 60-day public comment period ended on May 23, 2017. The United States did not receive any public comments related to this matter.<sup>1</sup>

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<sup>1</sup> The United States received one letter that references this case but does not comment on the merits of the proposed settlement or Alaska's acquisition of Virgin America. The letter appears to seek assistance with a completely unrelated lawsuit brought by the author of the letter, which the United States District Court for the Southern District of New York dismissed as frivolous. The author of the letter also enclosed the order dismissing the unrelated case, the docket in the author's appeal of that order, and copies of unrelated articles from the Wall Street Journal. Because the submission does not pertain to the proposed settlement in this case, the United States did not publish it in the Federal Register but attaches a copy of the letter and the enclosures related to the author's lawsuit as Exhibit 2 with personal identifying information redacted. If the Court requests, the United States will provide an unredacted copy under seal

The Certificate of Compliance filed simultaneously with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

### **III. Standard of Judicial Review**

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16 (e)(1). In making that determination, the Court may consider:

- A. the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B. the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)-(B).

In its CIS, the United States sets forth the legal standards for determining the public interest under the APPA and now incorporates those statements by reference. The public has had the opportunity to comment on the proposed Final Judgment as required by the APPA. As explained in the CIS, entry of the proposed Final Judgment is in the public interest.

**IV. Conclusion**

For the reasons set forth in this Motion and Memorandum and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings.

The United States respectfully requests that the proposed Final Judgment be entered at this time.

Dated: June 6, 2017

Respectfully submitted,

/s/ Katherine Celeste

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