

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTUIT INC.

and

CREDIT KARMA, INC.,

Defendants.

Civil Action No.: 1:20-cv-03441-ABJ

JOINT NOTICE OF AMENDED PROPOSED FINAL JUDGMENT

Pursuant to Paragraph V.D. of the Asset Preservation and Hold Separate Stipulation and Order (Dkt. 3) entered by the Court on December 1, 2020, Plaintiff, United States of America (“United States”), and Defendant, Intuit Inc. (“Intuit”), jointly provide notice to this Court regarding a technical clarification to the proposed Final Judgment related to Intuit’s obligations under the IRS Free File Program. An Amended Proposed Final Judgment is [attached hereto as Exhibit 1](#). The amendment to the proposed Final Judgment does not affect the substance of the remedy contained in the original proposed Final Judgment. For the Court’s convenience, a redline comparison to the November 25, 2020, proposed Final Judgment is [attached hereto as Exhibit 2](#).

I. Background

On November 25, 2020, the United States filed a civil antitrust Complaint (Dkt. 1), Asset Preservation and Hold Separation and Order (“Stipulation and Order”) (Dkt. 2-1), and a proposed Final Judgment (Dkt. 2-2) designed to address the anticompetitive effects alleged in the

Complaint. Under the Stipulation and Order, Intuit was allowed to consummate its acquisition of Credit Karma, but was required to abide by the proposed Final Judgment pending its consideration by the Court, including by divesting Credit Karma Tax, Inc. (“CKT”) to remedy the alleged anticompetitive effects of the transaction.¹ Specifically, the proposed Final Judgment required Intuit to divest CKT to Square, Inc. (“Square”) or another acquirer acceptable to the United States.²

In accordance with the Stipulation and Order, pending entry of Final Judgment by the Court, Defendants must comply with the proposed Final Judgment and with “any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.” Stipulation and Order ¶ V.D. Because the parties’ obligations under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, are ongoing, this Court has not yet entered the proposed Final Judgment.

II. The Proposed Amended Final Judgment

Paragraph IV(O)(2) of the proposed Final Judgment states that “For the duration of both the Year 1 Period and the Year 2 Period, Defendants...must not market or promote to any CKT Actual Filers any products or services that compete, either directly or indirectly, with the CKT Products, via electronic mail marketing that is (a) deliberately directed at such CKT Actual Filers based on their statuses as CKT Actual Filers or (b) delivered to CKT Actual Filers at the email addresses associated with such CKT Actual Filers’ accounts with Credit Karma.”

Paragraph IV(O)(2) prevents Intuit from marketing or promoting digital do-it-yourself (“DDIY”) tax preparation products that compete with CKT to CKT Actual Filers, defined as customers who, at any time on or before October 16, 2021, have successfully electronically filed

¹ See Proposed Final Judgment § IV.

² See Proposed Final Judgment § IV.A.

federal or state income tax returns using the CKT Products.³ The provision limits Intuit's ability to steer prospective customers away from Square's tax business to Intuit's own TurboTax product to help ensure the competitiveness of the divested business while Intuit is providing transitional services to Square.⁴

This provision, as written, did not account for Intuit's participation in the IRS Free File Program, through which participating tax preparation providers make available free online tax software to lower- and middle-income taxpayers. The IRS establishes rules for the Free File Program in a Memorandum of Understanding ("IRS MOU"), currently in its eighth iteration.⁵ Under the IRS MOU, Intuit (and all other tax preparation companies that participate in Free File Program) must send one email to its taxpayer customers who used its software under the Free File Program in the immediately preceding tax year to remind the taxpayer of the free offering and invite them to use the company's free offering again.⁶ In assessing its obligations under the IRS MOU, Intuit identified fewer than 23,000 taxpayers used Intuit's Free File Program to prepare their taxes during the last tax year (TY 2019) but qualify as "CKT Actual Filers" under the proposed Final Judgment because they used Credit Karma's products in prior years. Under the IRS MOU, Intuit is required to send these taxpayers an email, but under the proposed Final

³ Proposed Final Judgment § II.I.

⁴ Competitive Impact Statement § III.C.

⁵ See Eighth MOU on Service Standards & Disputes (Oct. 31, 2018), *available at* <https://www.irs.gov/pub/irsutl/Eight%20Free%20File%20MOU.pdf>.

⁶ Eighth MOU § 4.32.4 ("Email Communication with Free File Taxpayers. Free File Members shall communicate not less than once annually via email with their taxpayer customers who used Free File services and completed their returns through Free File in the immediately preceding tax year prior to the opening of the following tax season. The content of this email(s) shall only remind the taxpayer about the availability of the Member's Free File offer and invite them to return to the Member's Free File Landing Page. Free File Members shall not use these communications to communicate with the taxpayer about any non-Free File commercial products or services. No marketing, soliciting, sale or selling activity, or electronic links to such activity, will be permitted in these email(s).").

Judgment it is prohibited from doing so.

Consequently, as set forth in the attached Amended Proposed Final Judgment, the United States and Intuit have agreed to modify Paragraph IV(O)(2) as follows:

For the duration of both the Year 1 Period and the Year 2 Period, Defendants...must not market or promote to any CKT Actual Filers any products or services that compete, either directly or indirectly, with the CKT Products, via electronic mail marketing that is (a) deliberately directed at such CKT Actual Filers based on their statuses as CKT Actual Filers or (b) delivered to CKT Actual Filers at the email addresses associated with such CKT Actual Filers' accounts with Credit Karma. Notwithstanding the foregoing, Defendants may communicate via email to any CKT Actual Filers who used Defendants' Free File tax software for federal income tax returns and tax payments for the prior tax year for the purpose of complying with Defendants' obligations under the IRS Free File Program.

The Amended Proposed Final Judgment is identical in all respects to the original proposed Final Judgment filed with the Court except for this change to Paragraph IV(O)(2), which has been made for the limited purpose of permitting to Intuit to send the email as required by the IRS MOU. The Amended Proposed Final Judgment would maintain all other prohibitions against marketing and promoting competing products. This amendment will serve the overall public interest of the proposed Final Judgment in enhancing competition for DDIY tax preparation products because Intuit will not obtain any ability to market or promote competing products to CKT customers. At the same time, the amendment will ensure that customers who utilized the IRS's Free File Program offering are aware that free tax preparation services remain available to them. Square, the acquirer of CKT, has no objection to this proposed amendment.

The amendment to the proposed Final Judgment does not affect the substance of the remedy contained in the original proposed Final Judgment. Accordingly, the United States does not seek to re-open the Tunney Act comment period. Under the APPA, after the United States has published its response to any comments received, the Court may enter the Amended Proposed Final Judgment without further proceedings if the Court determines entry is in the

