

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SABRELINER CORPORATION,

Defendant.

Civil Action No. 1:95cv00241

Filed: 2/6/95

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16(b) - (h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Sabreliner Corporation in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On February 6, 1995, the United States filed a Complaint alleging that the acquisition of Midcoast Aviation, Inc. (hereinafter "Midcoast") by Sabreliner Corporation, (hereinafter "Sabreliner") was a violation of Section 7 of the Clayton Act (15 U.S.C. § 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition for the sale of jet fuel by fixed base operators ("FBOs") to general aviation aircraft at St. Louis-Lambert International Airport. Sabreliner

and Midcoast are the only two providers of jet fuel for transient general aviation customers at Lambert Field.

On February 6, 1995, the United States and defendant also filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, Sabreliner would be required to sell or assign, by May 1, 1995, certain assets and leasehold interests. If it should fail to do so, a trustee appointed by the Court would be empowered to divest these assets.

The United States and Sabreliner have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On November 2, 1994, Sabreliner, Midcoast, and Trans World Airlines, Inc. (the parent of Midcoast) entered into an agreement under which Sabreliner would acquire all of the stock of Midcoast for approximately \$7.2 million.

Sabreliner, engaged primarily in the business of repairing and overhauling jet aircraft, also operates a FBO service at Lambert Field in St. Louis. Sabreliner's total revenues for

fiscal 1994 were over \$100 million.

Midcoast has FBO facilities at Adams Field in Little Rock, AK, Bi-State Parks in Cahokia, IL, and St. Louis-Lambert in St. Louis, MO. From these facilities, Midcoast performs repairs, maintenance, and overhauls in addition to other FBO services, including jet fueling. Midcoast had revenues of \$41 million in 1993.

FBOs provide aircraft terminaling services to general aviation aircraft customers, typically charter operators or other private operators that provide transportation for business executives. These services principally involve aircraft fueling services and maintenance services, such as aircraft cleaning and de-icing, and also the provision of such facilities as lounges for passengers and flight crews, ground transportation, and canteens. Last year, general aviation customers purchased around \$1 billion of jet fuel from FBOs nationwide.

General aviation customers flying into airports other than the airport where they are based are called "transients." If transient general aviation customers need to purchase fuel away from home, they must purchase fuel from an FBO.

Pilots of corporate and charter jets select the airports to which they will fly based on where their passengers need to go, or where their passengers need to be picked up. The pilots will then choose the FBO at that airport offering the most favorable combination of fuel prices and services. There are no alternative sources to which the pilots would switch to obtain

jet fuel if the FBOs raise prices.

Although Lambert Field is one of several airports in the St. Louis area servicing general aviation aircraft, Lambert is the only airport in St. Louis that provides commercial scheduled domestic and international service. In addition, Lambert offers close proximity to downtown St. Louis. Both of these features make Lambert attractive to general aviation passengers.

Because of the large volume of commercial traffic served by Lambert, however, the airport is frequently very congested. To avoid this congestion, general aviation pilots prefer to use other airports in the St. Louis area, which accommodate primarily general aviation traffic. General aviation aircraft usually will fly into Lambert only if it is necessary to satisfy a passenger's travel requirements. Those pilots that select Lambert as their destination airport, therefore, are not likely to change their flight plan to obtain lower fuel prices at other airports.

The Complaint alleges that the sale of jet fuel to transient general aviation customers is a relevant product market for antitrust purposes. The Complaint further alleges that Lambert-St. Louis International Airport is a relevant geographic market within the meaning of Section 7 of the Clayton Act. The Complaint refers to the relevant market as the "Lambert transient general aviation jet fuel market."

Sabreliner and Midcoast have been the only two FBOs providing, and capable of providing in the future, fueling services to general aviation aircraft at Lambert Field. Based on

jet fuel sales revenue, Sabreliner has 15% of that market and Midcoast has 85%. Transient general aviation customers have benefited from competition between these two firms, receiving lower jet fuel prices and improved FBO services. As a result of its acquisition of Midcoast, Sabreliner now has a monopoly of the Lambert transient general aviation jet fuel market, which, absent relief, will likely cause general aviation customers to pay higher prices for jet fuel and receive diminished services.

The St. Louis Airport Authority has committed to expanding the amount of space available at Lambert for scheduled commercial traffic and is unlikely to allocate more space to accommodate another FBO in the near future. Therefore, an increase in the price of jet fuel to transient general aviation customers will not be defeated by a new entrant.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the acquisition of Midcoast by Sabreliner may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the Lambert transient general aviation jet fuel market. The risk to competition posed by this acquisition, however, would be eliminated if the assets and leases currently held by Sabreliner to operate its Lambert transient general aviation fueling business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor.

To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Sabreliner, by May 1, 1995, to divest either its Transient Fuel Service Business as defined in Section II. D, or its Cargo and General Aviation Business, as defined in Section II. E of the proposed Final Judgment. Divestiture of one of the two groups of assets and leaseholds will cure the potential anticompetitive consequences of Sabreliner's acquisition of Midcoast.

The first group, Sabreliner's Transient General Aviation Business, includes the assets and leases a prospective purchaser would need to effectively operate a stand-alone transient general aviation fueling business. Should a purchaser elect to acquire and operate these assets, the competition lost through Sabreliner's acquisition of Midcoast would be restored. However, Sabreliner's current revenue stream from its transient general aviation fueling business may be too small to attract, or viably support, a satisfactory purchaser. Accordingly, the second group, Cargo and General Aviation Business, is a broader package that includes assets that Sabreliner currently operates to provide fuel and other services to both cargo and general aviation aircraft at Lambert Field.

Under the proposed Final Judgment, Sabreliner must take all reasonable steps necessary to accomplish quickly the divestiture

of one of the two specified groups of assets, and shall cooperate with *bona fide* prospective purchasers by supplying all information relevant to the proposed sale. Should Sabreliner fail to complete its divestiture by May 1, 1995, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. The United States will have the discretion to delay the appointment of the trustee for up to an additional two months should it appear that the assets can be sold in the extended time period.

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Sabreliner will be required to pay for all of the trustee's sale-related expenses. It will be in the sole discretion of the trustee to sell either package of assets, or any combination of those assets, necessary to accomplish a timely divestiture of Sabreliner's Transient Fuel Service Business.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Sabreliner or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of the divestiture assets by the defendant Sabreliner, a proposed divestiture may not be completed. Should the United States object to a sale of the divested assets by the trustee, that sale shall not be consummated unless approved by

the Court.

Pursuant to Section V.G., should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

Under Section IX of the proposed Final Judgment, defendant Sabreliner must take certain steps to ensure that, until the required divestiture has been completed, the divestiture assets-- Sabreliner's cargo and general aviation business -- will be maintained as a separate, ongoing, viable business and kept distinct from Midcoast's assets and facilities at Lambert. Until such divestiture, Sabreliner must also continue to maintain and operate the business as a viable, independent competitor at Lambert Field, using all reasonable efforts to maintain and increase transient fuel sales. Sabreliner must maintain the business, so that it continues to be salable, including maintaining all records, loans, and personnel necessary for its operation.

Section X requires the defendant to make available, upon request, the business records and the personnel of its business. This provision allows the United States to inspect and ensure that the defendant is complying with the requirements of the proposed Final Judgment. Section XII of the proposed Final Judgment provides that it will expire on the tenth anniversary of

its entry by the Court.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V.

PROCEDURE FOR COMMENTING ON THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding

the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Roger W. Fones, Chief
Transportation, Energy &
Agriculture Section
Antitrust Division
Judiciary Center Building
555 4th Street, N.W., Room 9104
Washington, D.C. 20001

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires that the divestiture assets be sold to a purchaser with the capability and present intent of operating them as part of a viable, ongoing business capable of providing transient general aviation fueling services at Lambert Field. Thus, compliance with the proposed Final Judgment and the completion of the sale required by the Judgment should resolve the competitive concerns raised by the acquisition.

Litigation is, of course, always an alternative to a consent decree in a Section 7 case. The United States rejected this alternative because the sale required under the proposed Final Judgment should prevent the acquisition by Sabreliner of Midcoast

from having a significant anticompetitive effect in the relevant market alleged.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed merger alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (15 U.S.C. §§ 16(b) - (h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendant has stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final

Judgment. Accordingly, none are being filed with this
Competitive Impact Statement.

Dated: February 6, 1995

Respectfully submitted,

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