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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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R. MAYER-WHITTINGTON
CLERK
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

SIGNATURE FLIGHT SUPPORT
CORPORATION, AMR COMBS, INC.,
and AMR CORPORATION,
Defendants.

Civil Action No.: 99 CV 00537 (RCL)

Filed: March 15, 1999

COMPETITIVE IMPACT STATEMENT

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

I.

NATURE AND PURPOSE OF THE PROCEEDING

On March 1, 1999, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation ("Signature") of the flight support operations 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 own and operate fixed base operator ("FBO") businesses at various airports around the country. Combs owns and operates eleven FBOs in the United States, including FBOs at Palm Springs Regional Airport ("PSP Airport"),

Bradley International Airport ("BDL Airport"), and Denver Centennial Airport ("APA Airport"). The Complaint alleges that Signature and Combs are the only two providers of FBO services for general aviation customers at PSP Airport, located two miles east of Palm Springs, California, and BDL Airport, located near Hartford, Connecticut. The Complaint further alleges that the proposed acquisition will create a monopoly for Signature at those two airports, giving it significant power to raise prices and lower the quality of service. Thus, the proposed acquisition would have likely lessened competition substantially in the market for FBO services at PSP Airport and BDL Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

The Complaint also alleges that the proposed acquisition would deny general aviation customers at APA Airport, where there are currently two competing FBOs, the benefits of additional competition at the airport. In 2000, when a new FBO facility is built, Signature was to enter the market as the third FBO. The likely benefits to general aviation customers at APA Airport from competition among three FBOs would have been increased choice and lower prices for fuel and hangar rentals. Signature's proposed acquisition of the Combs FBO at APA Airport would have eliminated the likelihood of anticipated additional competition because entry by a different FBO is not likely. Signature is one of only a few firms positioned to make the necessary commitment for a start-up operation on the scale desired by the airport board. Accordingly, Signature's proposed acquisition would have lessened potential competition in the market for FBO services at APA Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed

acquisition would violate Section 7 of the Clayton Act; and (2) a preliminary and permanent injunction preventing Signature and Combs from consummating the proposed acquisition.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Signature to complete its acquisition of Combs, but requires divestitures that would preserve competition for general aviation customers at PSP Airport and at BDL Airport. With regard to APA Airport, the proposed settlement would require a divestiture unless another firm replaces Signature as the operator of the new FBO facility, thereby preserving the potential for competition among three FBOs for general aviation customers at APA Airport.

This settlement consists of a Hold Separate Stipulation and Order ("Hold Separate Order"), and a proposed Final Judgment. The proposed Final Judgment orders Signature to sell the FBO assets at two of the airports -- PSP Airport and BDL Airport-- to purchasers who have the capability to compete effectively in the provision of FBO services to general aviation customers at those airports. Signature will divest the existing Signature assets located at PSP ("the PSP Assets"). At BDL Airport, Signature will divest the existing Combs assets except for Combs' interests in a bulk jet fuel storage facility and a fuel farm, which are located in different parts of the airport from the Combs FBO facility ("the BDL Assets"). Signature must complete the divestitures of the PSP Assets and the BDL Assets before the later of one hundred and eighty (180) calendar days after filing of the Complaint, or five (5) days after entry of the Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. If Signature should fail to accomplish the divestitures, a trustee appointed by the Court would be empowered to divest these assets.

With regard to APA Airport, the proposed Final Judgment takes into account two facts: the third FBO facility has not yet been built and Signature would occupy it as a tenant of the builder, a real estate developer called SunBorne Development Company ("SunBorne"). Accordingly, the proposed settlement permits Signature to occupy and operate the existing Combs FBO Facility at APA Airport ("the APA Assets") pending SunBorne's construction of the new FBO. Within ten days of presentation of a certificate of occupancy for the new FBO or June 1, 2000, whichever is sooner, Signature must divest the APA Assets and move into the new FBO facility, unless Signature has found a suitable firm to operate the new FBO facility in its stead.

The Hold Separate Order and the proposed Final Judgment also impose a hold separate agreement that requires defendant Signature to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, the PSP Assets and the BDL Assets will be held separate and apart from, and operated independently of, Signature's other FBO assets and businesses. Similarly, the Hold Separate Order and the proposed Final Judgment require Signature to ensure that, if divestiture of the APA Assets is required, no steps will be taken that would denigrate their value.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Parties and the Proposed Transaction

On December 14, 1998, Signature, AMR Services Holding Corp., and AMR Corporation (the parent of AMR Combs, Inc., and AMR Services Holding Corp.) entered into an agreement under which Signature would seek to acquire all of the capital stock of Combs for approximately \$170 million.

Signature is a wholly owned subsidiary of BBA Group PLC, a British holding company. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature operates a nationwide network of forty-two FBOs throughout the United States, including facilities at PSP Airport and BDL Airport.

Combs is a wholly owned, indirect subsidiary of AMR Corporation, which is a Delaware corporation with its principal place of business in Fort Worth, Texas. Combs is a Delaware corporation, headquartered in Dallas, Texas. It owns and operates eleven FBOs throughout the United States, including ones at PSP Airport, BDL Airport, and APA Airport. Combs also manages two FBOs in Mexico and is an equity partner in an executive aviation center in Hong Kong.

B. The FBO Services Market

FBOs are facilities located at airports that provide flight support services, including aircraft fueling, ramp and hangar rentals, office space rentals, and other services to general aviation customers. General aviation customers include charter, private and corporate aircraft operators, as distinguished from scheduled commercial airlines.

FBOs sell aircraft fuel, as well as related support services such as ramp, hangar and office space rental. The largest source of revenues for an FBO is its fuel sales. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston driven planes. FBOs do not charge separately for many services offered to general aviation customers, such as use of customer and pilot lounges, baggage handling, and flight planning support; rather, they recover the costs for these services in the price that they charge for fuel. FBOs do charge separately for certain services, such as hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain those other services.

The Complaint alleges that the provision of FBO services to general aviation customers at each of the airports -- PSP Airport, BDL Airport, and APA Airport -- is a relevant market (*i.e.*, a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at PSP Airport, BDL Airport, or APA Airport, except through an FBO authorized to sell such products and services by the local airport authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at PSP Airport, BDL Airport, or APA Airport.

The Complaint also alleges that FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use PSP Airport, BDL Airport, and APA Airport. Although there are other airports in the same regions as PSP Airport, BDL Airport, and APA Airport, those other airports are not economically viable substitutes for

passengers flying into PSP Airport, BDL Airport, or APA Airport. General aviation customers use PSP Airport, BDL Airport, or APA Airport because of the airport's location, convenience and facilities. General aviation customers have selected these airports in part because of their proximity to their ultimate destination (whether their residence, business or other place); using a different airport would significantly increase their driving time, reducing the convenience of maintaining a corporate jet. There are not enough general aviation customers who have selected PSP Airport, BDL Airport, or APA Airport as their airport who would switch to other airports to prevent anticompetitive price increases for fuel and other services at PSP Airport, BDL Airport, or APA Airport.

C. Competition Between Signature and Combs

1. PSP Airport and BDL Airport

Signature and Combs are direct competitors in the provision of FBO services to general aviation customers at PSP Airport and BDL Airport. As the only two FBOs at PSP Airport and BDL Airport, Signature and Combs compete over price and service packages. General aviation customers have benefited from competition between Signature and Combs at PSP Airport and BDL Airport, receiving lower prices and improved FBO services. The acquisition would eliminate this competition, creating a monopoly in the market for FBO services to general aviation customers at PSP Airport and at BDL Airport.

The prospect of new entry is not likely to check Signature's resulting ability to raise prices or reduce service. The financial opportunity that would be created by the anticompetitive effect of this merger would not be great enough to induce a new entrant to make the investments needed to enter the FBO business at PSP Airport and BDL Airport. There are significant sunk

costs involved in building an FBO, including the cost of building hangar and ramp facilities. The revenue a new FBO operation would have to generate to achieve an acceptable rate of return on such an investment exceeds the revenues a new entrant would likely earn. In particular, a new entrant would have to achieve a large enough share of market revenues to be able to cover the fixed (including sunk) costs of entry and be profitable at pre-merger prices. And, the airport authorities' minimum operating standards, which require an FBO to provide other services beyond hangar rental, fueling and maintenance, effectively raise the minimum viable scale of entry, making entry even more difficult. Therefore, new FBO entry on a scale sufficient to prevent a post-merger price increase is not likely to occur at PSP Airport and BDL Airport.

2. APA Airport

The market for FBO services at APA Airport is presently highly concentrated, with only two FBOs competing. Prior to its proposed acquisition of Combs, Signature was poised to enter as a third independent competitor early in 2000 when a new FBO facility is to be completed. In September of 1998, Signature signed a detailed letter of intent with SunBorne, the real estate developer, to enter as the tenant operator of an FBO facility at APA Airport in 2000.

For general aviation consumers, the addition of a third, independent FBO at APA Airport would increase consumer choice and would have likely resulted in increased price and quality competition to the benefit of general aviation customers at APA Airport.

Signature's acquisition of Combs significantly lessens the potential for competition among three FBOs at APA Airport. Entry by a different firm that would be the third independent FBO is not likely because Signature was one of only a few firms positioned to make the necessary commitment for a start-up operation.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Signature's acquisition of Combs would result in FBO monopolies at PSP Airport and at BDL Airport. The Complaint further alleges that Signature's acquisition of the Combs FBO at APA Airport would deprive general aviation customers of the benefits of additional competition from having three independent FBOs, rather than just two.

The Complaint alleges that the acquisition of Combs by Signature would substantially lessen competition and restrain trade unreasonably. The transaction would have eliminated actual competition between Signature and Combs in the market for FBO services at PSP Airport and BDL Airport, resulting in an increase in prices for fuel and other FBO services. In addition, potential competition at APA Airport would be substantially lessened, and prices for fuel and other FBO services sold to general aviation customers at APA Airport would not decrease.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the acquisition of Combs by Signature may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the markets for FBO services provided to general aviation customers at PSP Airport, BDL Airport, and APA Airport.

A. PSP Airport and BDL Airport Provisions

The risk to competition posed by this acquisition at PSP Airport and BDL Airport, however, would be eliminated if certain assets, leases, and agreements currently held by Signature or Combs to operate their PSP Airport and BDL Airport FBO businesses 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 V of the proposed Final Judgment requires defendant Signature, within one hundred and eighty (180) calendar days after filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, to divest an FBO business at PSP Airport and an FBO business at BDL Airport, as set out in Section II.C (*i.e.*, the PSP Assets and the BDL Assets) of the proposed Final Judgment. Unless the United States otherwise consents in writing, Signature is required to divest its present FBO business at PSP Airport, including all hangars, ramp and office space, fuel farms, and any related terminal and maintenance facilities located on the property it presently leases as well as any other leases or options on leases it possesses at PSP Airport.

At BDL Airport, Signature is required to divest Combs's present FBO operation, including all hangars, ramp and office space, and any related terminal and maintenance facilities located on the property Combs presently leases, as well as any other leases or options on leases Combs possesses at BDL Airport. Combs does not have a jet fuel farm at its FBO location. It obtains fuel for its general aviation customers from its fuel farm located at BDL Airport's commercial terminal. Combs's fuel farm serves predominantly commercial aviation customers, and Combs's commercial fueling business is separate from its FBO business. The proposed Final Judgment requires Signature, which will own the fuel farm after the acquisition, to provide the purchaser of the Combs FBO business with non-discriminatory and unlimited access to the fuel farm at the commercial terminal for a minimum of two years. Access will be limited to the

storage and delivery of the purchaser's owned Jet A fuel for FBO use at BDL Airport.

Signature may charge the purchaser a commercially reasonable access charge that is no greater than what it charges others for the costs associated with the purchaser's use of the facilities. Of course, the purchaser of the Combs FBO business is free to build its own fuel farm (which it could do in relatively short amount of time for a moderate cost), or it may negotiate a longer term access agreement with Signature.

B. APA Airport Provisions

The risk to competition posed by this acquisition at APA Airport would be eliminated if the likelihood of entry by a third, independent FBO remains the same after the transaction as it was before. This could be accomplished in one of two ways: (1) Signature could go ahead with its plan to be the operator of the new FBO upon its completion, and sell the existing Combs FBO business ("the APA Assets") to a purchaser that could operate it as an independent and financially viable competitor; or (2) Signature could find a firm willing to operate the new FBO instead of Signature, in which case, Signature could operate the existing Combs business.

Accordingly, Section IV of the proposed Final Judgment gives Signature until September 1, 1999, to find a substitute operator for the new FBO facility. If Signature is unsuccessful, Section V of the proposed Final Judgment requires Signature to move into the new FBO facility and divest the APA Assets no later than June 1, 2000, or within ten days of receiving a certificate of occupancy from SunBorne. Section V further provides that if circumstances relating to the completion of the new FBO change, the United States may, in its discretion, relieve Signature of the obligation to sell the APA Assets. As a result of the obligations imposed on Signature, and the divestiture required by the proposed Final Judgment, general aviation

customers at APA Airport will be able to reap the benefits of three competing FBOs in 2000.

C. General Divestiture Provisions

For each of the required divestitures, Signature shall divest such equipment and supplies as is necessary and appropriate to operate a viable FBO at PSP Airport, BDL Airport, and APA Airport. Signature shall transfer its contracts, including customer contracts, and customer lists, for providing FBO services at each airport. Together with the equipment, supplies and customer contracts and lists, and the commitment to access to the fuel farm at BDL Airport at a reasonable price, these assets will give qualified purchasers the means to establish themselves as competitive alternatives to Signature. Thus, as a result of the divestitures required by the proposed Final Judgment, general aviation consumers at PSP Airport and BDL Airport will continue to have a choice between two competitive FBOs, and at APA Airport, the likelihood of their having three competing FBOs has been maintained.

Under the proposed Final Judgment, Signature must take all reasonable steps necessary to accomplish quickly the divestitures of the PSP Assets, the BDL Assets, and the APA Assets, and shall cooperate with prospective purchasers by supplying all information relevant to the proposed sales. Should Signature fail to complete any of its divestitures within the required time periods, the Court will appoint, pursuant to Section VI, a trustee to accomplish the divestitures. The United States will have the discretion to delay the appointment of the trustee in order to permit other governmental review (such as the county or municipal airport authority).

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Signature will be required to pay for all of the trustee's sale-related expenses. The trustee's compensation will be structured to provide an incentive for the

trustee to obtain the highest price for the assets to be divested, and to accomplish the divestitures as quickly as possible.

Section VII of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Signature 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 any of the divestiture assets by the defendant Signature, any proposed divestiture may not be completed. Should the United States object to a sale of any of the divested assets by the trustee, that sale shall not be consummated unless approved by the Court.

Pursuant to Section VI.F, should the trustee not accomplish the divestitures within six months of appointment, the trustee and the parties will make a recommendation 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 term of the trustee's appointment.

Under Section IX of the proposed Final Judgment, defendant Signature must take certain steps to ensure that, until the required divestitures have been completed, the PSP Assets and the BDL Assets will be maintained as separate, ongoing, viable FBO businesses and kept distinct from Signature's other FBO operations. Until such divestitures, Signature must also continue to maintain and operate the divestiture assets as viable, independent competitors at PSP Airport and BDL Airport, using all reasonable efforts to maintain sales of FBO services to general aviation customers at PSP Airport and BDL Airport. Until the divestiture, Signature must maintain and operate the APA Assets as a viable entity, using all reasonable efforts to maintain its sales of FBO services to general aviation customers at APA Airport. Signature must maintain all three

FBO businesses at PSP Airport, BDL Airport, and APA Airport, so that they continue to be stable, including maintaining all records, loans, and personnel necessary for their operation.

Section XI requires the Signature to make available, upon request, the business records and the personnel of its businesses. This provision allows the United States to inspect Signature's facilities and ensure that Signature is complying with the requirements of the proposed Final Judgment. Section XIII 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 attorney's 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 defendants.

V.

PROCEDURE FOR COMMENTING ON THE PROPOSED FINAL JUDGMENT

The United States and defendants 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 sixty (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 sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. 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
325 Seventh Street, N.W., Suite 500
Washington, D.C. 20530

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Signature and Combs. The United States is satisfied, however, that the divestitures of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the provision of FBO services to general aviation customers at PSP Airport, BDL Airport, and APA Airport that otherwise would be affected

adversely by the acquisition. Thus, the compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider --

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment 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). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

In conducting this inquiry, "the court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."¹ Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public."

United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d at 1460-62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the

¹119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

effectiveness of antitrust enforcement by consent decree.²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."³

²United States v. Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added); see United States v. BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716; see also Microsoft, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'") (citations omitted).

³United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom, Maryland v. United States, 460 U.S. 1001 (1983), quoting United States v. Gillette Co., supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985)

VIII.

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: March 15, 1999

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Salvatore Massa", written over a horizontal line.

Nina B. Hale
Salvatore Massa

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