

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

**SIGNATURE FLIGHT SUPPORT
CORPORATION, and**

**HAWKER BEECHCRAFT SERVICES,
INC.,**
Defendants.

Civil Action No.: 1:08-cv-01164

Judge: Hon. Richard W. Roberts

Deck Type: Antitrust

Date Filed: October 21, 2008

**MOTION AND MEMORANDUM IN SUPPORT OF
THE UNITED STATES IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement (“CIS”), filed in this matter on July 3, 2008, explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

I. Background

On July 3, 2008, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of Hawker Beechcraft Services, Inc.’s (“Hawker Beechcraft”) fixed based

operation (FBO) assets at Indianapolis International Airport (IND) by Signature Flight Corporation (“Signature”) would substantially lessen competition in the provision of FBO Services at IND in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. FBO Services are support services provided to general aviation customers, including selling fuel, leasing hangar, ramp, and office space, providing flight support services, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels. The Complaint alleges that Signature and Hawker Beechcraft are the only providers of FBO services at IND and compete directly on price and quality of services. As alleged in the Complaint, the transaction would eliminate this competition at IND, creating a monopoly. Accordingly, the Complaint seeks to permanently enjoin Signature’s acquisition of Hawker Beechcraft’s FBO facility at IND as a violation of Section 7 of the Clayton Act.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (“HSSO”) and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition, and a Competitive Impact Statement (“CIS”). The Court signed and entered the HSSO on July 18, 2008. The proposed Final Judgment requires defendants, within ninety days after filing the Complaint or five days after notice of entry of the Final Judgment by the Court, whichever is later, to divest the Divestiture Assets, which are defined as either (1) all rights, titles and interests, including all fee, leasehold and real property rights, in Hawker Beechcraft’s existing and future FBO Facilities at IND that Signature acquires

in the Proposed Transaction;¹ or (2) all rights, titles and interests, including all fee, leasehold and real property rights, that Signature possesses in its FBO Facility at IND. In the HSSO, these options are referred to as the Hawker Beechcraft Divestiture Assets and the Signature Divestiture Assets, respectively.²

The proposed Final Judgment permits the United States to extend the divestiture period one or more times for a total of sixty days. If defendants do not complete the required divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Divestiture Assets.

Until the required divestiture is completed, the HSSO and the proposed Final Judgment require that the Hawker Beechcraft Divestiture Assets be operated as an independent, ongoing, economically viable competitive business in the provision of FBO services at IND and be held separate and apart from Defendant Signature's businesses. The HSSO and the proposed Final Judgment also require that the Signature Divestiture Assets be preserved, maintained, and operated as an ongoing, economically viable and active competitor in the provision of IND FBO services.

¹ The Proposed Transaction is defined as Signature's proposed acquisition of certain assets from Hawker Beechcraft pursuant to the Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 that is the subject of the Hart-Scott-Rodino Premerger Notification Filing 2008-0879.

² Defendants have elected to divest the Hawker Beechcraft Divestiture Assets and are in negotiations with several potential purchasers. The United States has been monitoring the divestiture process.

The CIS explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment would be in the public interest. The HSSO provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. *See* 15 U.S.C. §16(b). In compliance with the APPA, the United States filed the CIS on July 3, 2008; published the proposed Final Judgment and CIS in the Federal Register on July 17, 2008 (*see United States v. Signature Flight Support Services, Inc., et al.*, 73 Fed. Reg. 41118); and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Washington Post* for seven days beginning on July 24, 2008 and ending on July 30, 2008.

The sixty-day period for public comments ended on September 28, 2008, and the United States received no comments. The United States is filing a Certificate of Compliance simultaneously with this Motion and Memorandum that states that all 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

The Clayton Act, as amended by the APPA, requires that proposed consent decrees in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the district court shall determine whether entry of the proposed Final Judgment “is in the public

interest.” 15 U.S.C. § 16(e)(1). In making that determination, the district court, in accordance with the statute as amended in 2004,³ is required to 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 considering these statutory factors, the district court’s inquiry is necessarily a limited one, as the government is entitled to “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); *see generally United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing the public interest standard under the Tunney Act).

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States’s complaint, whether the proposed consent decree is sufficiently clear, whether enforcement mechanisms are sufficient,

³ The 2004 amendments substituted “shall” for “may” in directing relevant factors for the district court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review by the courts).

and whether the proposed consent decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the proposed consent 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) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62.

Courts have held that:

[t]he 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 effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).⁴ In making its public interest determination, a district court “must accord deference to the United States’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government’s case or concessions made during negotiation.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting need for courts to be “deferential to the government’s

⁴ *Cf. BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). *See generally Microsoft*, 56 F.3d at 1461 (discussing 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’”).

predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’s prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[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.’” *United States v. AT&T Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving a consent decree even though the district court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and the APPA does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459-60. As this Court recently confirmed in *SBC*

Communications, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). This instruction explicitly writes into the statute the standard intended by the Congress that enacted the Tunney Act in 1974, as Senator Tunney then explained: “[t]he 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.” 119 Cong. Rec. 24, 598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the scope of the court’s “review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.⁵

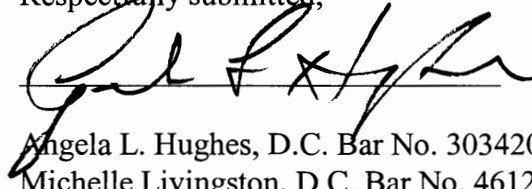
⁵ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (“[T]he Court, in making its public interest finding, should . . . carefully consider the explanations of the government in order to determine whether those explanations are reasonable under the circumstances.”).

IV. Conclusion

For the reasons set forth in this Motion and Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. The United States respectfully requests that the Final Judgment annexed hereto be entered as soon as possible.

Dated: October 21, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Angela L. Hughes", written over a horizontal line.

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

UNITED STATES OF AMERICA,	)	
	)	Civil Action No.:
<i>Plaintiff,</i>	)	
	)	Filed:
v.	)	
	)	Judge:
SIGNATURE FLIGHT SUPPORT	)	
CORPORATION, <i>and</i>	)	
	)	
HAWKER BEECHCRAFT SERVICES,	)	Date Stamp:
INC.,	)	
<i>Defendants.</i>	)	
	)	

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America ("United States"), filed its complaint on July ___, 2008, the United States and defendants, Signature Flight Support Corporation ("Signature") and Hawker Beechcraft Services, Inc. ("Hawker Beechcraft"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is prompt and certain divestiture of certain assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

- A. “Acquirer” means the entity to whom defendants divest the Divestiture Assets.
- B. “Signature” means defendant Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, Florida, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.
- C. “Hawker Beechcraft” means defendant Hawker Beechcraft Services, Inc., a Kansas corporation headquartered in Wichita, Kansas, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “IND” means Indianapolis International Airport, located in the Indianapolis, Indiana metropolitan area.

E. “IND FBO Services” means any or all services related to providing fixed base operator services to general aviation customers at IND, including, but not limited to, selling fuel, leasing hangar, ramp, and office space, providing flight support services, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels.

F. “FBO Facility” means any and all tangible and intangible assets that comprise the business of providing IND FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling equipment, and other tangible property and all assets used in connection with the business of providing IND FBO Services; all licenses, permits, registrations, and authorizations issued by any governmental organization relating to the business of providing IND FBO Services subject to licensor’s approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing IND FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all other records relating to the business of providing IND FBO Services; all intangible assets used in the development, production, servicing, and sale of IND FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

G. “Divestiture Assets” means either of the following:

1. all rights, titles and interests, including all fee, leasehold and real property rights, in Hawker Beechcraft’s existing and future FBO Facilities at IND that Signature acquires in the Proposed Transaction; or
2. all rights, titles and interests, including all fee, leasehold and real property rights, that Signature possesses in its FBO Facility at IND.

H. “Proposed Transaction” means Signature’s proposed acquisition of certain assets from Hawker Beechcraft pursuant to the Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 that is the subject of the Hart-Scott-Rodino Premerger Notification Filing 2008-0879.

III. Applicability

A. This Final Judgment applies to Signature and Hawker Beechcraft, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV or V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter or after five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 90-day period, the United States will not withhold its agreement to an extension of the period. Defendants agree to use their best efforts to complete the required divestiture as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents regarding the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. The documents provided to prospective Acquirers shall include (1) the Land and Special Facilities Lease Agreement By and Between Hawker Beechcraft Services, Inc. and The Indianapolis Airport Authority dated February 2008; (2) the Sublease between Hawker Beechcraft Services,

Inc. and Signature Flight Support Corporation and the Addendum thereto; and (3) the agreement entitled Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 and all attachments and exhibits relating to IND. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation, management, and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation, management, and sale of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Divestiture Assets and to examine the blueprints and other plans relating to any physical facilities of the Divestiture Assets under construction or proposed for construction; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in providing IND FBO Services. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment: (1) shall be made to an Acquirer that in the United States's sole judgment has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of IND FBO Services; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of

the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, including the blueprints and other plans relating to any physical facilities of the Divestiture Assets under construction or proposed for construction, and defendants shall develop financial or other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth that trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture

Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment for a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If a trustee is responsible, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered, or expressed an interest in or a desire to acquire any ownership interest in the Divestiture Assets together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sales under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all

actions defendants have taken and all steps defendants have implemented on an on going basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("DOJ"), including consultants and other persons retained by the United States, shall upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present,

regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendant Signature may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to

comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust
Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge