

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

UNITED STATES OF AMERICA, *et al.*

Plaintiffs,

v.

US AIRWAYS GROUP, INC.

and

AMR CORPORATION

Defendants.

Case No. 1:13-cv-01236 (CKK)

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

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), plaintiff United States moves for entry of the proposed Final Judgment filed on November 12, 2013, and attached as Exhibit 1. The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) and the Response of Plaintiff United States to Public Comments on the Proposed Final Judgment (“Response to Comments”) – filed on November 12, 2013, and March 10, 2014, respectively – explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (“Certificate of Compliance”) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA.

I. Background

On August 13, 2013, the United States, along with several states and the District of Columbia, filed a Complaint in this matter alleging that the proposed merger of US Airways Holdings, Inc. and AMR Corporation, the parent company of American Airlines, would substantially lessen competition in the provision of scheduled airline passenger service in the United States and in the market for take-off and landing rights (“slots”) at Washington National Airport in violation Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would have resulted in increased airline fares and fees and reduced airline service.

On November 12, 2013, the United States filed the proposed Final Judgment – which is designed to remedy the anticompetitive effects of the proposed merger – the CIS, and an Asset Preservation Order and Stipulation signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA. The proposed Final Judgment requires Defendants to divest slots and gates at constrained airports. The divestiture assets include 104 slots at Washington National Airport, 34 slots at New York LaGuardia Airport, and two gates at each of five other key airports. As described in the Response to Comments, the divestiture process has been partially completed.

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

II. Compliance with the APPA

The APPA requires a 60-day period for submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on November 12, 2013; published the proposed Final Judgment and CIS in the *Federal Register* on November 27, 2013, *see* 78 Fed. Reg. 71377; and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for submission of written comments relating to the proposed Final Judgment, published in the *Washington Post*, *Dallas Morning News*, and *Arizona Republic* for seven days, beginning on November 25, 2013 and ending on December 9, 2013. The 60-day public comment period ended on February 7, 2014. On March 10, 2014, the United States filed with the Court its Response to Comments and the public comments that it received. Pursuant to 15 U.S.C. § 16(d), and with the Courts' authorization, the United States posted on the Antitrust Division's website the comments and the Response to Comments. On March 13, 2014, the United States published in the *Federal Register* its Response to Comments and the location on the Antitrust Division's website at which the comments are accessible, *see* 79 Fed. Reg. 14279 (2014).

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

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C.

§ 16 (e)(1). In making that determination, the Court may consider:

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

15 U.S.C. § 16(e)(1)(A)-(B).

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

IV. Conclusion

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

The United States respectfully requests that the proposed Final Judgment¹ be entered at this time.

Dated: March 13, 2014

Respectfully submitted,

/s/ Michael D. Billiel

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¹ An error in one of the slot numbers in Exhibit A has been corrected in the attached Final Judgment. It is otherwise identical to the proposed Final Judgment filed on November 12, 2013 (Docket No. 147-2).