

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

SIGNATURE FLIGHT SUPPORT
CORPORATION,
Defendant.

Civil Action No. 97 0248

Entered: May 22, 1997

Filed: FILED

MAY 23 1997

Clerk, U.S. District Court
District of Columbia

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America (hereinafter "United States"), having filed its Complaint herein on February 5, 1997, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein:

AND WHEREAS, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendant to make this divestiture for the purpose of remedying the loss of competition alleged in the complaint;

AND WHEREAS, defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties thereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

A. "Signature" means Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, Florida, and includes its successors and assigns, its parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "International Aviation" means International Aviation Palm Beach, Inc., a Florida corporation with its headquarters in West Palm Beach, Florida, and includes its successors and assigns, its parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. "The Assets to be Divested" means all rights, titles and interests, including all fee, leasehold and real property rights, in the following assets, owned or controlled by Signature, that are used by Signature to provide fuel and other services to general aviation customers at PBI Airport:

1. The existing Signature terminal and office building (building #1626), as shown on the attached map.
2. Approximately 71,000 square feet of hangar space, consisting of the existing Signature hangar buildings #1625, 1627, 1628 and 1629.
3. The existing Signature fuel farm adjacent to Signature hangar building #1627, consisting of approximately one-half acre, as shown on the attached map.
4. Approximately 23.5 acres of ramp space adjacent to the foregoing buildings, as shown on the attached map.
5. Approximately 2.5 acres of parking space, as shown on the attached map.
6. Existing office furniture, lobby furniture, phone system, radios, television, towing equipment, golf carts, pickup truck, refuellers, ground

power units and other equipment and supplies necessary and appropriate to provide a viable FBO at the foregoing facilities.

7. Contracts (including, but not limited to, customer contracts) and customer lists.

D. "PBI Airport" means Palm Beach International Airport, located in West Palm Beach, Florida.

E. "FBO" means any or all services related to providing fixed based operator services, including, but not limited to, selling fuel, leasing hangar, ramp and office space, providing flight support services, performing maintenance, providing access to terminal facilities, or arranging for ancillary services such as limousines, rental cars or hotels.

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply to defendant, its successors and assigns, parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets of its business, that the purchaser of such assets agree to be bound by the provisions of this Final Judgment; provided

however, that defendant need not obtain such an agreement from the acquirer of The Assets to be Divested in the divestiture contemplated herein.

IV.

DIVESTITURE OF THE ASSETS TO BE DIVESTED

A. Defendant is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days of the filing of this Final Judgment, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest The Assets to be Divested to a purchaser acceptable to the plaintiff, in its sole discretion.

B. Divestiture of Signature's leasehold interest in any of The Assets to be Divested shall be by transfer of the entire leasehold interest which shall be for the entire remaining term of such leasehold including all renewal or option rights.

C. Defendant shall use its best efforts and take all reasonable steps to accomplish the divestiture as expeditiously as possible. If defendant has not accomplished the required divestiture within the one hundred and eighty (180) calendar day period specified in Section IV.A, the plaintiff may, in its sole discretion, extend the time period for two (2) additional periods of time, not to exceed ninety (90) calendar days in total.

D. In accomplishing the divestiture ordered by this Final Judgment, defendant promptly shall make known, by usual and customary means, the availability for sale of The Assets to be Divested. Defendant shall notify any person making an inquiry regarding the possible purchase of The Assets to be Divested

that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of The Assets to be Divested that the assets described in Section II.C. are being offered for sale. Defendant shall also offer to furnish to all *bona fide* prospective purchasers of The Assets to be Divested, subject to customary confidentiality assurances, all information regarding The Assets to be Divested customarily provided in a due diligence process, except information subject to attorney-client privilege or attorney work product privilege. Defendant shall make available such information to the plaintiff at the same time that such information is made available to any other person. Subject to customary confidentiality assurances, defendant shall permit prospective purchasers of The Assets to be Divested to have access to its personnel, to make inspection of The Assets to be Divested, and to have access to financial, operational, and other documents and information relating to The Assets to be Divested, as customarily provided as part of a due diligence process.

E. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV.A, or by the trustee appointed pursuant to Section V of this Final Judgment, shall include all of The Assets to be Divested and be accomplished by selling or otherwise conveying the The Assets to be Divested to a purchaser in such a way as to satisfy the United States, in its sole discretion, that The Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business engaged in the provision of FBO services at PBI. The divestiture, whether

pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, that:

(1) the purchaser has the capability and intent of competing effectively in the provision of FBO services at PBI; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the provision of FBO services at PBI; and (3) none of the terms of any agreement between the purchaser and defendant give defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of FBO services at PBI.

V.

APPOINTMENT OF TRUSTEE

A. In the event that defendant has not divested The Assets to be Divested within the time specified in Sections IV.A or IV.C of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of The Assets to be Divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell The Assets to be Divested. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C of this Final Judgment, the trustee shall

have the power and authority to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendant must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendant, on such terms and conditions as the Court may prescribe, 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 defendant and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of The Assets to be Divested 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.

D. Defendant shall use its 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 defendant, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon 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, that the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that 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 parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out

the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs.

VI.

NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendant or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendant, the proposed purchaser, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser. Defendant 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. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendant, the proposed purchaser, any third party, and

the trustee, whichever is later, the United States shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants's limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, or by defendant under the proviso in Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the closing of any transaction in which Signature directly or indirectly acquires all or any part of the assets or capital stock of International Aviation, and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, defendant shall deliver to plaintiff an affidavit as to the fact and manner of defendant's compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 Assets to be Divested, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, defendant shall deliver to plaintiff an affidavit which describes in detail all actions defendant has taken and all steps defendant has implemented on an on-going basis to preserve The Assets to be Divested pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX.H of this Final Judgment with respect to defendant's efforts to preserve The Assets to be Divested. The affidavit also shall describe, but not be limited to, defendant's efforts to maintain and operate The Assets to be Divested as an active competitor, maintain the management, sales, marketing and pricing of The Assets to be Divested apart from that of defendant's other businesses that provide FBO services, maintain and increase sales of defendant's FBO operation at PBI , and maintain The Assets to be Divested in operable condition, continuing normal maintenance. Defendant shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendant's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendant shall preserve all records of all efforts made to preserve and divest The Assets to be Divested.

VIII.

FINANCING

Defendant shall not finance all or any part of any divestiture made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States.

IX.

PRESERVATION OF ASSETS

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant shall take all steps necessary to ensure that The Assets to be Divested will be maintained and operated as an ongoing, economically viable and active competitor in the provision of FBO services; and that, except as necessary to comply with Sections IX.B to IX.H of this Final Judgment, the management of The Assets to be Divested shall be kept separate and apart from the management of defendant's other FBO operations and will not be influenced by defendant, and the books, records, and competitively sensitive sales, marketing and pricing information associated with The Assets to be Divested will be kept separate and apart from that of defendant's other businesses that provide FBO services.

B. Defendant shall take all steps necessary to ensure that The Assets to be Divested are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for The Assets to be Divested.

C. Defendant shall provide and maintain sufficient sources of credit to maintain The Assets to be Divested as a viable, ongoing business.

D. Defendant shall provide and maintain sufficient working capital to maintain The Assets to be Divested as a viable, ongoing business.

E. Defendant shall not, except as part of a divestiture approved by the United States, remove, sell, or transfer any of The Assets to be Divested, other than sales in the ordinary course of business.

F. Unless it has obtained the prior approval of the United States, defendant shall not terminate or reduce the current employment, salary, housing, or benefit arrangements for any personnel employed by defendant who work at, or have managerial responsibility for, The Assets to be Divested, except in the ordinary course of business.

G. Defendant shall take no action that would jeopardize its ability to divest The Assets to be Divested as a viable, ongoing business.

H. Defendant shall appoint a person or persons to oversee The Assets to be Divested, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

X.

COMPLIANCE INSPECTION

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, including consultants and other persons retained by the United States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal offices, defendant shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section VII or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the

plaintiff 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 defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION


Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: 5-22-97


United States District Judge