

UNITED STATES DISTRICT COURT
FOR THE 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:

Entered: July 30, 1999

FILED

JUL 30 1999

Clerk, U.S. District Court
District of Columbia

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America ("United States"), filed its complaint in this action on March 1, 1999, and plaintiff and defendants, Signature Flight Support Corporation ("Signature"), AMR Combs, Inc. ("Combs"), and AMR Corporation, 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, defendants have agreed 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 fixed based operator facilities to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendant Signature to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to plaintiff that the divestitures ordered herein can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures or 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 hereto, 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 in this action. The Complaint states a claim upon which relief may be granted against the defendants, as defined below, 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 a principal place of business in Orlando, Florida, and 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. "Combs" means AMR Combs, Inc., a Delaware corporation headquartered in Dallas, Texas, as well as its successors, assigns, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them. Combs is a wholly owned subsidiary of AMR Corporation, a Delaware corporation with its principal place of business in Fort Worth, Texas, and is a party to the agreement to sell Combs to Signature.

C. "APA Airport" means Centennial Airport, located near Denver, Colorado.

D. "BDL Airport" means Bradley International Airport, located near Hartford, Connecticut.

E. "PSP Airport" means Palm Springs Regional Airport, located two miles east of Palm Springs, California.

F. The "Assets to be Divested" means all rights, titles and interests, including all fee, leasehold and real property rights, in the PSP Assets, the BDL Assets, and the APA Assets, as defined below:

1. The "PSP Assets" means all tangible and intangible assets controlled by the existing Signature FBO at Palm Springs Airport, as described in Appendix A.

2. The "BDL Assets" means all tangible and intangible assets controlled by the existing Combs FBO at Bradley International Airport, as described in Appendix B, but does not include the assets related to Combs' commercial jet fueling business, such as the bulk fuel storage facility and the fuel farm.
3. The "APA Assets" means all tangible and intangible assets controlled by the existing Combs FBO at Denver Centennial Airport, as described in Appendix C.

G. "FBO" means any or all services related to providing fixed based operator services to general aviation customers, 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 rental cars or hotels.

H. "FBO Facility" means any and all tangible and intangible assets required to provide FBO services, including but not limited to office/terminal space, hangars, ramps, a general aviation fuel farm for Jet A Fuel and aviation gas, and related fueling and maintenance equipment.

I. "SunBorne" means SunBorne Development Corporation, a real estate development company doing business in the Denver, Colorado area.

J. "SunBorne FBO Facility" means the FBO facility that is to be constructed at APA Airport by SunBorne. The SunBorne FBO facility is to consist of (1) an office/terminal facility to occupy the first floor (approximately 15,000 square feet) of a three-floor building to be

constructed by SunBorne; (2) one 25,000 square foot hangar to be constructed by SunBorne; (3) a general aviation fuel farm with storage for 40,000 gallons of Jet A fuel and 20,000 gallons of aviation gas to be constructed by Signature; and (4) a 10.8 acre ramp.

K. "Substitute operator for the SunBorne FBO Facility" means a person who, with the approval of SunBorne and of the Arapahoe County Public Airport Authority, will operate the SunBorne FBO Facility in Signature's stead.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and 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. Signature shall require, as a condition of the sales or other disposition(s) of all or substantially all of the Assets to be Divested, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV.

THE SUNBORNE FBO FACILITY

A. Signature shall have until September 1, 1999, to find a substitute operator for the SunBorne FBO Facility that is acceptable to the United States in its sole discretion. The United

States, in its sole discretion, may extend the time period for finding a substitute operator by an additional period of time not to exceed thirty (30) calendar days.

V.

DIVESTITURE OF THE ASSETS

A. Signature is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the PSP Assets and the BDL Assets as ongoing businesses to purchasers acceptable to the United States in its sole discretion. With respect to any of the PSP Assets and the BDL Assets to be divested in which Signature holds a leasehold interest, Signature must transfer the entire leasehold including all renewal or option rights.

B. In addition to divesting the PSP Assets and the BDL Assets, Signature shall provide to the purchaser of the BDL Assets (which includes all successors, assigns, parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of the purchaser) the option of access to the existing Combs jet fuel bulk storage facility and fuel farm for two years. In the event that the purchaser exercises this option, such access shall be limited to the storage and delivery of the purchaser's owned Jet A fuel for use at the BDL Assets. To the extent Signature charges the purchaser of the BDL Assets for access, the service charge shall be commercially reasonable and shall be no greater than the fee Signature charges any other customer for the same types of services associated with such access.

C. In the event that Signature does not find a substitute operator for the SunBorne FBO Facility by the date set forth in Paragraph A of Section IV, Signature is hereby ordered and directed in accordance with the terms of this Final Judgment, by June 1, 2000, or within 10 (ten) calendar days after receipt of a certificate of occupancy by SunBorne Development Corporation for the SunBorne FBO facility, whichever is sooner, to divest the APA Assets as an ongoing business to a purchaser acceptable to the United States in its sole discretion. With respect to any of the APA Assets in which Signature holds a leasehold interest, Signature must transfer the entire leasehold including all renewal or option rights.

D. Signature shall use its best efforts to facilitate the completion of the SunBorne FBO Facility.

E. Signature shall not take any action, direct or indirect, that will impede in any way the completion of the SunBorne FBO Facility.

F. The plaintiff may, in its sole discretion, relieve Signature of the obligation to divest the APA Assets based on the plaintiff's assessment of changed circumstances relating to the completion of the SunBorne FBO Facility.

G. Signature shall use its best efforts to accomplish each of the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any of the divestitures in order to accommodate mandatory municipal, county, state or federal review.

H. In accomplishing each of the divestitures ordered by this Final Judgment, Signature promptly shall make known, by usual and customary means, the availability of each of the Assets to be Divested described in this Final Judgment. Signature shall inform any person making an inquiry regarding a possible purchase that the sales are being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Signature shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Assets to be Divested customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work-product privilege. Signature shall make available such information to the plaintiff at the same time that such information is made available to any other person.

I. Signature shall not interfere with any negotiations by any purchaser to employ any employee who works at any of the Assets to be Divested, or whose principal responsibility is operating or managing any of the Assets to be Divested.

J. Signature shall permit prospective purchasers of each of the Assets to be Divested to have reasonable access to personnel and to make such inspection of each of the Assets to be Divested; 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.

K. Signature shall not take any action, direct or indirect, that will impede in any way the operation or value of the Assets to be Divested.

L. Unless the United States otherwise consents in writing, the divestitures pursuant to Section V, or by a trustee appointed pursuant to Section VI of this Final Judgment, shall include all of the Assets to be Divested, operated in place pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying all of the Assets to be Divested to purchasers in such a way as to satisfy the United States, in its sole discretion, that each of the Assets to be Divested can and will be used by the purchasers as part of viable, ongoing businesses engaged in providing FBO services at PSP Airport, at BDL Airport, and at APA Airport. Each of the divestitures, whether pursuant to Section V or Section VI of this Final Judgment, shall be made to purchasers for whom it is demonstrated to the United States' sole satisfaction that: (1) the purchasers have the capability and intent of competing effectively in the provision of FBO services at PSP Airport, at BDL Airport, and at APA Airport; (2) the purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in the provision of FBO services at PSP Airport, BDL Airport, and APA Airport; and (3) none of the terms of any agreement between the purchasers and Signature gives Signature the ability unreasonably to raise the purchasers' costs, to lower the purchasers' efficiency, or otherwise to interfere in the ability of the purchasers to compete effectively.

VI.

APPOINTMENT OF TRUSTEE

A. In the event that Signature has not divested all of the Assets to be Divested within the times specified in Section V of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestitures of those Assets to be Divested that have not been timely divested.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the particular Assets to be Divested (*i.e.*, APA Assets, PSP Assets, and/or BDL Assets). The trustee shall have the power and authority to accomplish the divestiture(s) at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Signature any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the particular divestiture(s), and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the particular divestiture(s) at the earliest possible time to purchaser(s) acceptable to the United States in its sole discretion and shall have such other powers as this Court shall deem appropriate. Signature shall not object to a sale by trustee on any grounds other than the trustee's malfeasance. Any such objections by Signature must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. A trustee shall serve at the cost and expense of Signature, 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 Signature and the trust shall then be terminated. The compensation of the trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of each of the divested businesses and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the particular divestiture(s) and the speed with which it is accomplished.

D. Signature shall use its best efforts to assist the trustee in accomplishing the required divestiture(s), including its best efforts to effect all necessary regulatory approvals. 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 Assets to be Divested, and Signature shall develop financial or other information relevant to the Assets to be Divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Signature shall permit prospective acquirers of each of the Assets to be Divested to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth that trustee's efforts to accomplish the particular divestiture(s) ordered

under this Final Judgment; 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. 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 any of the Assets to be Divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the particular Assets to be Divested.

F. If the trustee has not accomplished such divestiture(s) 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(s), (2) the reasons, in the trustee's judgment, why the required divestiture(s) have 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 for a period requested by the United States.

VII.

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, the proposed divestitures pursuant to Sections V or VI of this Final Judgment, Signature or a trustee, whichever is then responsible for effecting the particular divestiture(s), shall notify plaintiff of the proposed divestiture(s). If a trustee is responsible, the trustee shall similarly notify Signature. 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 particular Assets to be Divested that is the subject of the definitive agreement, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request from Signature, the proposed purchaser(s), or any other third party additional information concerning the proposed divestiture(s) and the proposed purchaser(s). Signature and the trustee shall furnish any additional information requested from them 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 the plaintiff has been provided the additional information requested from Signature, the proposed purchaser(s), or any third party, whichever is later, the United States shall provide

written notice to Signature and the trustee, if there is one, stating whether or not it objects to the proposed divestiture(s). If the United States provides written notice to Signature and the trustee that it does not object, then the divestiture(s) may be consummated, subject only to Signature's limited right to object to the sales under Section VI(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, none of the divestitures proposed under Section V or Section VI shall be consummated. Upon objection by Signature under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII.

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 whether pursuant to Section V or Section VI of this Final Judgment, Signature shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section V or Section VI 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 each of the Assets to Divested, 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 that Signature has taken to solicit buyer(s) for each

of the Assets to be Divested and to provide required information to prospective purchasers, including the limitations, if any, on such information.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Signature shall deliver to plaintiff an affidavit which describes in detail all actions Signature has taken and all steps Signature has implemented on an on-going basis to preserve each of the Assets to be Divested pursuant to Section IX of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. Relating to the PSP Assets and the BDL Assets, the affidavit also shall describe, but not be limited to, Signature's efforts to maintain and operate each of those Assets to be Divested as active competitors, maintain the management, staffing, research and development activities, sales, marketing, and pricing of each of those Assets to be Divested, and maintain the PSP and BDL FBO facilities in operable condition at current capacity configurations. Relating to the APA Assets, the affidavit shall describe, but not be limited to, Signature's efforts to maintain the management, staffing, research and development activities, sales, marketing, and pricing of the APA Assets, and maintain the APA FBO facility in an operable condition at current capacity configurations. Signature shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Signature's earlier affidavit(s) filed pursuant to Section VIII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after each divestiture has been completed, Signature shall preserve all records of all efforts made to preserve the Assets to be Divested and effect the divestitures.

IX.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, Signature shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Signature shall take no action that would jeopardize the divestiture of any of the Assets to be Divested.

X.

FINANCING

Signature is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections V or VI of this Final Judgment.

XI.

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Signature made to its principal offices, shall be permitted:

1. Access during office hours of Signature to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Signature, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
2. Subject to the reasonable convenience of Signature and without restraint or interference from them, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Signature at its principal offices, Signature shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the United States 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 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 any of the defendants to plaintiff, any of the defendants represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and 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 plaintiff shall give ten (10) days notice to the defendant(s) prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XII.

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.

XIII.

TERMINATION

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

XIV.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: July 30, 1999

Ray C. Lankford
United States District Judge

APPENDIX A-PSP ASSETS

“PSP Assets” 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 or other services to general aviation customers at PSP Airport.

1. The existing 8,000 square foot Signature terminal and office buildings.
2. Approximately 21,000 square feet of hangar space, consisting of the existing Signature hangar buildings and approximately 30,000 square feet of space prepared for hangar use.
3. The existing Signature above-ground fuel farm consisting of two 20,000 gallon Jet A fuel tanks and one 12,000 gallon avgas tank with fuel separator sump system that is adjacent to the t-hangars.
4. Approximately 40,000 square feet of ramp space adjacent to the foregoing buildings.
5. All equipment and supplies necessary and appropriate to support a viable FBO business at the foregoing facilities, including but not limited to, existing office furniture, lobby furniture, phone system, radios, televisions, towing equipment, golf carts, pickup trucks, refuellers, and ground power units.
6. Contracts (including, but not limited to, customer contracts) and customer lists related to this location.
7. Approximately 2.5 acres of parking space.

APPENDIX B-BDL ASSETS

“BDL Assets” means all rights, titles, and interests, including all fee, leasehold and real property rights, in the following assets owned or controlled by Combs that are used by Combs to provide fuel or other services to general aviation customers at BDL Airport.

1. The existing Combs terminal and office buildings.
2. Approximately 50,000 square feet of hangar space, consisting of the existing Combs hangar buildings: one 30,000 square foot hangar (Hangar 214); one 20,000 square foot hangar (Storage Hangar).
3. The existing Combs avgas tank, located adjacent to the commercial airline services building.
4. Approximately 366,000 square feet of ramp space adjacent to the foregoing buildings.
5. All equipment and supplies necessary and appropriate to support a viable FBO business at the foregoing facilities, including but not limited to, existing office furniture, lobby furniture, phone system, radios, televisions, towing equipment, golf carts, pickup trucks, refuellers, ground power units.
6. Contracts (including, but not limited to, customer contracts) and customer lists related to this location.
7. Approximately .9 acres of parking space.

APPENDIX C- APA ASSETS

“APA Assets” means all rights, titles, and interests, including all fee, leasehold and real property rights, in the following assets owned or controlled by Combs that are used by Combs to provide fuel or other services to general aviation customers at APA Airport.

1. The existing Combs terminal and office buildings.
2. Approximately 40,000 square feet of hangar space, consisting of the existing Combs hangar buildings: one hangar of 20,000 square feet (Hangar 9) ; one hangar of 20,000 square feet (Hangar 10).
3. The existing Combs fuel farm consisting of two 12,000 gallon Jet A tanks and one 10,000 gallon avgas tank located 1/4 mile from the executive terminal between Peoria Street and Dove Valley Parkway.
4. Approximately 1,000,000 square feet of ramp space adjacent to the foregoing buildings.
5. All equipment and supplies necessary and appropriate to support a viable FBO business at the foregoing facilities, including but not limited to, existing office furniture, lobby furniture, phone system, radios, televisions, towing equipment, golf carts, pickup trucks, refuellers, and ground power units.
6. Contracts (including, but not limited to, customer contracts) and customer lists related to this location.
7. Approximately 5 acres of parking space.