UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*,	**Civil Action No.:** 01 CV 1365
	Filed: June 20, 2001
v.	
SIGNATURE FLIGHT SUPPORT CORPORATION,	
RANGER AEROSPACE CORPORATION, *and*	
AIRCRAFT SERVICE GROUP INTERNATIONAL, INC. *Defendants*.	

COMPETITIVE IMPACT STATEMENT

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

I.

NATURE AND PURPOSE OF THE PROCEEDING

On June 20, 2001, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation ("Signature") of Ranger Aerospace Corporation ("Ranger"), and its wholly owned subsidiary, Aircraft Service International Group,

Inc. ("ASIG"), would violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

The Complaint alleges that Signature and ASIG own and operate fixed base operator ("FBO") businesses at various airports around the country. ASIG owns and operates three FBOs, including an FBO at Orlando International Airport ("MCO Airport"). The Complaint alleges that Signature and ASIG are the only two providers of FBO services for general aviation customers at MCO Airport, located in Orlando, Florida. The Complaint further alleges that the proposed acquisition will create a monopoly for Signature at this airport, giving it the ability to raise prices and lower the quality of service. Thus, the proposed acquisition would have likely lessened competition substantially in the market for FBO services at MCO Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a preliminary and permanent injunction preventing Signature and Ranger or ASIG from consummating the proposed acquisition.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Signature to complete its acquisition of Ranger, but requires a divestiture of one of the existing FBOs in order to preserve competition for general aviation customers at MCO Airport. This settlement consists of a Hold Separate Stipulation and Order ("Hold Separate Order"), and a proposed Final Judgment. The proposed Final Judgment orders defendants to sell the existing ASIG FBO assets at MCO Airport to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at that airport. Defendants must complete the divestiture of ASIG's FBO operation at MCO Airport

before the later of one hundred twenty (120) calendar days after filing of the Complaint, or five (5) days after entry of the Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. If defendants should fail to accomplish the divestiture, a trustee appointed by the Court would be empowered to divest these assets.

The Hold Separate Order and the proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, the ASIG FBO operation at MCO Airport will be held separate and apart from, and operated independently of, defendant Signature's other FBO assets and businesses.

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

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Parties and the Proposed Transaction

By an agreement dated November 14, 2000, Signature plans to acquire all the voting securities of Ranger for approximately $137 million.

Signature is a wholly owned subsidiary of BBA Group PLC, a British holding company. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature operates a nationwide network of forty-four FBOs throughout the United States,

including facilities at MCO Airport. Signature also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

Ranger is a Delaware corporation with its principal place of business in Greenville, South Carolina. ASIG is a wholly owned subsidiary of Ranger, which is a Delaware corporation with its principal place of business in Dania, Florida. ASIG owns and operates three FBOs, including one at MCO Airport. ASIG also provides services for commercial airlines and airport authorities, including into-plane fueling, fuel farm maintenance and operation, and other ground services.

B. The FBO Services Market

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

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

General aviation customers generally buy fuel from the same FBO from which they obtain those other services.

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

The Complaint also alleges that FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use MCO Airport. Although there are other airports in the same region as MCO Airport, those airports are not economically viable substitutes for passengers flying into MCO Airport. General aviation customers use MCO Airport because of the airport's location, convenience and facilities. General aviation customers have selected this airport in part because of its proximity to their ultimate destination (whether their residence, business or other place); using a different airport would significantly increase their driving time, reducing the convenience of maintaining a corporate jet. There are not enough general aviation customers who have selected MCO Airport as their airport who would switch to other airports to prevent anticompetitive price increases for fuel and other services at MCO Airport.

C. Competition Between Signature and ASIG at MCO Airport

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

The prospect of new entry is not likely to check Signature's resulting ability to raise prices or reduce service. There are significant sunk costs involved in building an FBO, including the cost of building hangar and ramp facilities. The MCO Airport authority has established minimum requirements for an FBO, including 20,000 square feet of hangar storage, a five-acre lease and other minimum operating requirments. Furthermore, the permitting process to erect a new facility can consume as much as one year before construction begins. Therefore, entry that is timely and sufficient to prevent a post merger price increase or service decrease is unlikely.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Signature's acquisition of ASIG would result in an FBO monopoly at MCO Airport. The Complaint further alleges that the acquisition of Ranger by Signature would substantially lessen competition and restrain trade unreasonably. The transaction would eliminate actual competition between Signature and ASIG in the market for FBO services at MCO Airport, resulting in an increase in prices and a decline in quality of service for fuel and other FBO services.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

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

The risk to competition posed by this acquisition at MCO Airport, however, would be eliminated if certain assets, leases, and agreements currently held by ASIG to operate its MCO Airport FBO business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendants, within one hundred twenty (120) calendar days after filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, to divest the ASIG FBO business at MCO Airport, as set out in Section II(G) of the proposed Final Judgment. Unless the United States otherwise consents in writing, defendants are required to divest the existing ASIG FBO business at MCO Airport, including all hangars, ramp and office space, fuel farms, and any related terminal and maintenance facilities located on the property it presently leases as well as any other leases or options on leases it possesses at MCO Airport.

Defendants shall divest such equipment and supplies as is necessary and appropriate to operate a viable FBO at MCO Airport. Defendants shall transfer ASIG's existing contracts,

including customer contracts, and customer lists, for providing FBO services at MCO Airport. Together with the equipment, supplies and customer contracts and lists, these assets will give the qualified purchaser the means to establish itself as a competitive alternative to Signature. Thus, as a result of the divestiture required by the proposed Final Judgment, general aviation consumers at MCO Airport will continue to have a choice between two competitive FBOs.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers by supplying all information relevant to the proposed sales. Should defendants fail to complete the divestiture within the required time period, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. Pursuant to Section IV(A), the United States will have the discretion to delay the appointment of the trustee in order to permit other governmental review (such as the county or municipal airport authority).

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendants will be required to pay for all of the trustee's sale-related expenses. The trustee's compensation will be structured to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by defendants or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to

a sale of any of the divestiture assets by defendants, the proposed divestiture may not be completed. Should the United States object to a sale of any of the divested assets by the trustee, that sale shall not be consummated.

Pursuant to Section V(G), should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make a recommendation to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the term of the trustee's appointment.

Under Section VIII of the proposed Final Judgment, defendants must take certain steps to ensure that, until the required divestiture has been completed, the Assets to be Divested will be maintained as a separate, ongoing, viable FBO business at MCO Airport and kept distinct from Signature's other FBO operations. Until such divestiture, Signature must also continue to maintain and operate the divestiture assets as a viable, independent competitor at MCO Airport, using all reasonable efforts to maintain sales of FBO services to general aviation customers at MCO Airport. Signature must maintain the FBO business at MCO Airport so that it continues to be stable, including maintaining all records, loans, and personnel necessary for their operation.

Section X requires defendants to make available, upon request, the business records and the personnel of its businesses. This provision allows the United States to inspect defendants' facilities and ensure that defendants are complying with the requirements of the proposed Final Judgment. Section XI specifically bars defendants from reacquiring the Assets to be Divested during the term of the Final Judgment. Section XIII of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V.

PROCEDURE FOR COMMENTING ON THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments

will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Roger W. Fones, Chief
Transportation, Energy &
Agriculture Section
Antitrust Division
325 Seventh Street, N.W., Suite 500
Washington, D.C. 20530

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Signature, Ranger and ASIG. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the provision of FBO services to general aviation customers at MCO Airport. Thus, the compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the

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

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

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

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[1] 119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad.

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

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d at 1460-62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it

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News 6535, 6538.

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

mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[3]

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

VIII.

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: June 20, 2001

Respectfully submitted,

"/s/"

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