

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTUIT INC.,

and

CREDIT KARMA, INC.,

Defendants.

Civil Action No.: 1:20-cv-03441-ABJ

**UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM
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”), the United States of America (“United States”) moves the Court to enter the Amended Proposed Final Judgment filed in this civil antitrust proceeding on March 9, 2021 (Dkt. No. 13-1) (attached as Exhibit A). As set forth in the Asset Preservation Stipulation and Order (“Stipulation and Order”) dated December 1, 2020 (Dkt. No. 3), Defendants stipulated that the Final Judgment could be filed with and entered by the Court, upon the motion of the United States or upon the Court’s own motion, at any time after compliance with the requirements of the APPA and without further notice to any party or other proceedings.

The Amended 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 Response of Plaintiff United States to Public

Comment on the Proposed Final Judgment (“Response to Public Comment”) filed in this matter on December 10, 2020, and April 23, 2021, respectively, (Dkt. No. 10 and Dkt. No. 14) explain why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

I. BACKGROUND

On November 25, 2020, the United States filed a civil antitrust Complaint against Defendants seeking to enjoin the proposed transaction of Credit Karma, Inc. (“Credit Karma”) by Intuit Inc. (“Intuit”). The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for the development, provision, operation, and support of digital do-it-yourself (“DDIY”) tax preparation products that help individuals file U.S. federal and state income tax returns (“DDIY tax preparation products”), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The loss of competition would result in higher prices and lower quality products and services.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and the Stipulation and Order. The Stipulation and Order, which was agreed to by the United States and Defendants and which was entered by the Court on December 1, 2020, provides that the proposed Final Judgment may be entered by the court once the requirements of the APPA have been met. On December 8, 2020, the divestiture contemplated by the proposed Final Judgment was effectuated to Square, Inc. Pursuant to requirements under the APPA, the United States filed the CIS on December 10, 2020, describing the events giving rise to the alleged violation and the proposed Final Judgment. The proposed Final Judgment requires

Credit Karma to divest its DDIY tax preparation business, known as Credit Karma Tax, including the assets needed to run that business. The proposed Final Judgment also allows the acquirer, at its option, to enter into a transition services agreement with Defendants for a period of up to 24 months. As explained in the CIS, this option gives the acquirer sufficient time to integrate the divestiture assets into its existing business and to ensure customers can smoothly transition from CKT to the acquirer.

On March 9, 2021, the United States filed a Joint Notice of Amended Proposed Final Judgment (the “Joint Notice”), attaching an Amended Proposed Final Judgment as Exhibit 1. The Amended Proposed Final Judgment addresses a technical clarification to the original proposed Final Judgment to allow Intuit to comply with its obligations under its Memorandum of Understanding with the Internal Revenue Service (IRS) in connection with Intuit’s participation in the IRS Free File program. The Amended Proposed Final Judgment is identical in all respects to the original proposed Final Judgment except for the change to Paragraph IV(O)(2), which has been made for the limited purpose of permitting Intuit to comply with obligations to the IRS. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the 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 proposed Final Judgment and the CIS with the Court on November 25, 2020 and December 10, 2020, respectively, published

the proposed Final Judgment and CIS in the *Federal Register* on December 16, 2020 (see 85 Fed. Reg. 81501), and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days during the period December 15, 2020, through December 21, 2020. The public comment period concluded on February 19, 2021, and the United States received one comment. Pursuant to 15 U.S.C. § 16(d), the United States filed the Response to Public Comment on April 23, 2021 (Dkt. No. 14) and published it and the public comment in the *Federal Register* on April 29, 2021, 86 Fed. Reg. 22,706 (April 29, 2021).

III. STANDARD OF JUDICIAL REVIEW

Before entering the Amended Proposed Final Judgment, the APPA requires the Court to determine whether the Amended Proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, “shall 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). Section 16(e)(2) of the APPA states 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). In its CIS and Response to Public Comment, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

IV. ENTRY OF THE AMENDED PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

The United States alleged in the Complaint that the acquisition of Credit Karma by Intuit would substantially lessen competition in the market for the for the development, provision, operation, and support of DDIY tax preparation products in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. As explained in the CIS and the Response to Public Comment, the Amended Proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States by requiring the divestiture of Credit Karma’s DDIY tax preparation business and the assets required to run the business. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment. As explained in the CIS and the Response to Public Comment, entry of the Amended Proposed Final Judgment is in the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comment, the United States respectfully requests that the Court find that the Amended Proposed Final Judgment is in the public interest and enter the Amended Proposed Final Judgment.

Dated: May 6, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/
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CERTIFICATE OF SERVICE

I, Brian Hanna, hereby certify that on May 6, 2021, I caused a copy of United States' Unopposed Motion and Memorandum in Support of Entry of Final Judgment to be served on Defendants Intuit Inc. and Credit Karma, Inc., via the CM/ECF system.

/s/
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