

Issued: July 11, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-16279 Filed 7-16-08; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 27, 2008, a proposed Consent Decree in *United States and State of Oklahoma v. Albert Investment, et al.*, Civil Action No. 5:08-cv-637, was lodged with the United States District Court for the Western District of Oklahoma.

In this action the United States, on behalf of the United States Environmental Protection Agency ("EPA"), sought to recover from certain parties response costs that it incurred in response to releases and threatened releases of hazardous substances from the Double Eagle Refinery Superfund Site (the "Site") located in Oklahoma City, Oklahoma. The proposed Consent Decree resolves claims alleged by the United States, on behalf of the United States Environmental Protection Agency ("EPA"), and the United States Department of the Interior ("DOI"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The proposed Consent Decree provides that the Settling Defendants, which sent waste oil containing hazardous substances to the Site for disposal, will pay the United States and the State of Oklahoma approximately \$6.48 million in response costs and natural resource damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, and either e-mailed to [pubcommentees.enrd@usdoj.gov](mailto:pubcommentees.enrd@usdoj.gov) or mailed to P.O. Box 7611, NW., Washington, DC 20044-7611, and should refer to *United States and State of Oklahoma v. Albert Investment, et al.*, DOJ. Ref. 90-11-2-857/2.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Oklahoma, 210 Park Ave., Suite 400, Oklahoma City, OK 72102, and at the offices of EPA, Region 6, 1445 Ross Ave., Dallas,

TX 75202-2733. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$18.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Thomas A. Mariani, Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8-16392 Filed 7-16-08; 8:45 am]

BILLING CODE 4410-15-P

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States of America v. Signature Flight Support Corporation and Hawker Beechcraft Services, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 5 U.S.C. 16(b)-(h), that a proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Signature Flight Support Corporation and Hawker Beechcraft Services, Inc.*, Civil Action No. 1:08-cv-01164-RWR.

On July 3, 2008, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation ("Signature") of the fixed base operations ("FB") of Hawker Beechcraft Services, Inc. ("Hawker Beechcraft") at the Indianapolis International Airport ("IND") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would combine the only providers of FBO services at IND, resulting in higher prices and reduced services. The proposed Final Judgment requires the

parties to divest either Signature's or Hawker Beechcraft's FBO assets at IND.

Copies of the Complaint, proposed Final Judgment, Hold Separate and Preservation of Assets Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, Room 1010, 450 5th Street, NW., Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202-307-6410).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

#### United States District Court for the District of Columbia

*United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Plaintiff, v. Signature Flight Support Corporation, Signature Plaza, 201 South Orange Avenue, Suite 1100, Orlando, Florida 32801, and Hawker Beechcraft Services, Inc., 10511 East Central, Wichita, Kansas 67206, Defendants*

Civil Action No.:

Filed:

Case: 1:08-cv-01164.

Assigned To: Roberts, Richard W.

Assign. Date: 7/3/2008.

Description: Antitrust.

### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition by Signature Flight Support Corporation ("Signature") of fixed base operations of Hawker Beechcraft Services, Inc. ("Hawker Beechcraft") and to obtain

equitable and other relief. The United States alleges as follows:

### I. Nature of the Action

1. On February 21, 2008, Signature and Hawker Beechcraft signed a definitive agreement for Signature to acquire Hawker Beechcraft's United States' fixed base operations ("FBO") for \$128.5 million. FBOs provide flight support services—including fueling, hangar rentals, office space rentals, and other services—to general aviation customers. Signature is the largest fixed base operator in the world and operates FBOs at more than forty-five around the country. Hawker Beechcraft operates FBOs at seven airports in the United States. Both Signature and Hawker Beechcraft operate FBOs at the Indianapolis International Airport ("IND").

2. Signature and Hawker Beechcraft are the only two FBOs operating at IND Airport. They compete directly on price and quality of FBO services to general aviation customers. The acquisition would eliminate this competition, creating an FBO monopoly at IND. The acquisition would give Signature the ability to raise prices and lower the quality services at IND for general aviation customers. Unless the transaction is enjoined, the proposed acquisition is likely to lessen competition substantially in the market for FBO services at IND in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

### II. Jurisdiction and Venue

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Signature and Hawker Beechcraft provide FBO services to aircraft landing throughout the United States. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. 22 and 25, and 28 U.S.C. 1331, 1337(a), and 1345.

5. Venue is proper in this district as Signature and Hawker Beechcraft have consented to venue and personal jurisdiction in this judicial district.

### III. Defendants and the Proposed Transaction

6. Signature is a wholly owned subsidiary of BBA Aviation PLC, a supplier of aviation machinery, support, and repair. Signature is a Delaware

corporation with its principal place of business in Orlando, Florida. Signature owns and operates more than sixty FBO facilities in the United States, including its FBO operation at IND.

7. Hawker Beechcraft is a Kansas corporation with its principal place of business in Wichita, Kansas. Hawker Beechcraft owns and operates seven FBO facilities in the United States, including its FBO operation at the IND Airport.

8. On February 21, 2008, Signature and Hawker Beechcraft executed a Sale of Line Service Business Asset Purchase Agreement under which Signature will acquire all of Hawker Beechcraft's FBO assets for approximately \$128.5 million.

### IV. Trade and Commerce

#### *The Relevant Market*

9. FBO services include the sale of jet aviation fuel ("Jet A fuel") and aviation gasoline ("avgas"), as well as related support services, to general aviation customers. FBOs usually do not charge separately for services such as conference rooms, pilot lounges, flight planning, and transportation. Instead, they recover the cost of these ancillary services in the price that they charge for fuel. FBOs charge separately for hangar and office rentals, aircraft storage, tie-down and ground services, deicing, and catering.

10. The largest source of revenue for an FBO is fuel sales. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston-operated planes. At IND, Signature and Hawker Beechcraft sold approximately \$17 million of fuel in 2007, and obtained additional revenues of approximately \$3 million for other FBO-related services.

11. General aviation customers cannot obtain fuel, hangar, ramp and related services at IND except through the FBOs authorized to sell such products and services by the local airport authority, leaving general aviation customers landing at IND no alternatives to the Signature and Hawker Beechcraft FBOs for these services. Obtaining FBO services at another airport would not provide an economically practical alternative for general aviation customers who currently use IND. A small but significant post-acquisition increase in the prices for fuel, hangar space, and other FBO services would not cause general aviation customers to switch to other airports in sufficient quantities to make such a price increase unprofitable.

12. Thus, the provision of FBO services to general aviation customers is a relevant product market and IND is a

relevant geographic market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act, 15 U.S.C. 18.

#### *Anticompetitive Effects*

13. The market for FBO services at IND is highly concentrated, with only two providers—Signature and Hawker Beechcraft. If Signature acquires the Hawker Beechcraft FBO facility, it will have a monopoly in the market for FBO services at IND. Currently, based on fuel sales, Signature has 46 percent of the IND FBO market, and Hawker Beechcraft has 54 percent.

14. Competition between Signature's and Hawker Beechcraft's FBO facilities currently limits the ability of each to raise prices for FBO services. The proposed acquisition would eliminate the competitive constraint each imposes upon the other. This would lead to a monopoly, resulting in higher prices for FBO services, as well as lower quality of service, at IND in violation of Section 7 of the Clayton Act.

15. Successful entry into the provision of FBO services at IND would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Hawker Beechcraft would be difficult for several reasons. The entrant would need to get the approval of the airport authority, obtain permits, and construct facilities, all of which require extensive lead time to complete. Successful entry would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

### V. Violation Alleged

16. The United States hereby incorporates paragraphs 1 through 15.

17. Unless restrained, Signature's proposed acquisition of Hawker Beechcraft's FBO facility at IND is likely to tend to create a monopoly in the market for FBO services at IND in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the following ways:

- a. Actual and potential competition between Signature and Hawker Beechcraft in the market for FBO services at IND will be eliminated;
- b. Competition in the provision of FBO services at IND will be eliminated; and
- c. Prices for FBO services to general aviation customers at IND will likely increase and quality of service will likely decrease.

### VI. Request for Relief

18. The United States requests that:

a. Signature's proposed acquisition of Hawker Beechcraft's FBO facility at IND be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Defendants and all persons acting on their behalf be preliminarily and permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Signature's and Hawker Beechcraft's FBO operations at IND;

c. The United States be awarded its costs for this action; and d. the United States receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ James J. O'Connell, Jr.  
James J. O'Connell, Jr.

Acting Assistant Attorney General, DC Bar  
#464109

/s/ Patricia A. Brink  
Patricia A. Brink  
Deputy Director, Office of Operations

/s/ Donna N. Kooperstein  
Donna N. Kooperstein  
Chief, Transportation, Energy & Agriculture  
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Agriculture Section, 450 Fifth Street, NW,  
Room 4100, Washington, DC 20530,  
Telephone: (202) 307-6410, Facsimile:  
(202) 307-2784.  
Dated: July 3, 2008.

#### United States District Court for the District Of Columbia

*United States of America, Plaintiff v.  
Signature Flight Support Corporation  
and Hawker Beechcraft Services, Inc.,  
Defendants*

Civil Action No.: I :08-cv-O1164.

Description: Antitrust.

Judge: Roberts, Richard W.

Date Stamp: 7/3/08.

#### Proposed Final Judgment

Whereas, plaintiff, the United States of America ("United States"), filed its complaint on July \_\_, 2008, the United States and defendants, Signature Flight Support Corporation ("Signature") and Hawker Beechcraft Services, Inc. ("Hawker Beechcraft"), by their attorneys, have consented to the entry of

this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

And whereas, defendants agree 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 assets by the defendants to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ordered, adjudged, and decreed:

#### I. Jurisdiction

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

#### II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom defendants divest the Divestiture Assets.

B. "Signature" means defendant Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, Florida, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Hawker Beechcraft" means defendant Hawker Beechcraft Services, Inc., a Kansas corporation headquartered in Wichita, Kansas, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "IND" means Indianapolis International Airport, located in the Indianapolis, Indiana metropolitan area.

E. "IND FBO Services" means any or all services related to providing fixed base operator services to general aviation customers at IND, including, but not limited to, selling fuel, leasing hangar, ramp, and office space, providing flight support services, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels.

F. "FBO Facility" means any and all tangible and intangible assets that comprise the business of providing IND FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling equipment, and other tangible property and all assets used in connection with the business of providing IND FBO Services; all licenses, permits, registrations, and authorizations issued by any governmental organization relating to the business of providing IND FBO Services subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing IND FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all other records relating to the business of providing IND FBO Services, all intangible assets used in the development, production, servicing, and sale of IND FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

G. "Divestiture Assets" means either of the following:

1. All rights, titles and interests, including all fee, leasehold and real property rights, in Hawker Beechcraft's existing and future FBO Facilities at IND that Signature acquires in the Proposed Transaction; or

2. All rights, titles and interests, including all fee, leasehold and real property rights, that Signature possesses in its FBO Facility at IND.

H. "Proposed Transaction" means Signature's proposed acquisition of certain assets from Hawker Beechcraft pursuant to the Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 that

is the subject of the Hart-Scott-Rodino Premerger Notification Filing 2008-0879.

### III. Applicability

A. This Final Judgment applies to Signature and Hawker Beechcraft, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV or V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

### IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter or after five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 90-day period, the United States will not withhold its agreement to an extension of the period. Defendants agree to use their best efforts to complete the required divestiture as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents regarding the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. The

documents provided to prospective Acquirers shall include (1) The Land and Special Facilities Lease Agreement By and Between Hawker Beechcraft Services, Inc. and The Indianapolis Airport Authority dated February 2008; (2) the Sublease between Hawker Beechcraft Services, Inc. and Signature Flight Support Corporation and the Addendum thereto; and (3) the agreement entitled Sale of Line Service Business By Hawker Beechcraft Services, Inc. to Signature Flight Support Corporation Asset Purchase Agreement Dated February 21, 2008 and all attachments and exhibits relating to IND. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation, management, and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation, management, and sale of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the physical facilities of the Divestiture Assets and to examine the blueprints and other plans relating to any physical facilities of the Divestiture Assets under construction or proposed for construction; 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.

E. Defendants shall warrant to the Acquirer of the Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture

pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in providing IND FBO Services. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment: (I) shall be made to an Acquirer that in the United States's sole judgment has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of IND FBO Services; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

### V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the judgment of the trustee to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such

terms and conditions as the plaintiff approves, 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 defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets 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, but timeliness is paramount.

E. Defendants shall use their 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 the Divestiture Assets, including the blueprints and other plans relating to any physical facilities of the Divestiture Assets under construction or proposed for construction, and defendants shall develop financial or other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth that trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its

appointment, the trustee 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, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. 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 United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment for a period requested by the United States.

#### **VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If a trustee is responsible, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered, expressed an interest in or a desire to acquire any ownership interest in the Divestiture Assets together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants 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.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides

written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sales under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### **VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

#### **VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

#### **IX. 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 under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, 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 Divestiture Assets, 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 defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by the defendants, including limitation on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes

in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the divestiture has been completed.

#### X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("DOJ"), including consultants and other persons retained by the United States, shall upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants be permitted:

1. Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an 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 defendants to the United States, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

#### XI. No Reacquisition

Defendant Signature may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

#### XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

#### XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.  
Dated: \_\_\_\_\_

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

\_\_\_\_\_  
*United States District Judge.*

#### United States District Court for the District of Columbia

*United States of America, Plaintiff, v. Signature Flight Support Corporation and HAWKER BEECHCRAFT SERVICES, INC., Defendants.*

Civil Action No.: 1:08-cv-O1164.

Description: Antitrust.

Judge: Roberts, Richard W.

Date Stamped: 7/3/08.

#### Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 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

Defendant Signature Flight Support Corporation ("Signature") and Defendant Hawker Beechcraft Services, Inc. ("Hawker Beechcraft") entered into an agreement, dated February 21, 2008, pursuant to which Signature would acquire the fixed base operations (FBO) of Hawker Beechcraft. The United States filed a civil antitrust complaint on July \_\_, 2008, seeking to enjoin the proposed acquisition. The Complaint alleges that the effect of this acquisition would be to combine the only providers of FBO services at Indianapolis International Airport ("IND"), creating a monopoly and violating Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate and Preservation of Assets Stipulation and Order ("Stipulation and Order") and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to sell either the Signature or Hawker Beechcraft FBO assets at IND to a purchaser who has the capability to compete effectively in the provision of FBO services to general aviation customers at that airport.

Until the divestiture of either the Signature or Hawker Beechcraft FBO assets at IND, the Stipulation and Order requires the defendants to take all steps necessary to preserve both companies' FBO assets at IND and ensure that Hawker Beechcraft's FBO business operates as an independent, ongoing, economically viable, competitive business at IND held entirely separate, distinct and apart from Signature's IND FBO business. Further, until the

required divestiture is accomplished, the defendants must take all steps necessary to ensure that Hawker Beechcraft's FBO business at IND will be maintained and operated as an ongoing, economically viable and active line of business; that competition between Signature and Hawker Beechcraft in the provision of FBO services at IND is maintained during the pendency of the ordered divestiture; and that the defendants preserve and maintain their IND FBO assets. The Stipulation and Order thus ensures that competition is protected pending completion of the required divestitures and that the assets are preserved so that relief will be effective.

The United States and the defendants 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. Description of the Events Giving Rise to the Alleged Violation

### A. The Defendants and the Proposed Transaction

Signature is a wholly-owned subsidiary of BBA Aviation PLC, a supplier of aviation machinery, support, and repair. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature is the world's largest FBO operator and operates more than forty-five FBO facilities in the United States. Signature's 2007 revenues from its United States FBO operations were approximately \$600 million.

Hawker Beechcraft is a Kansas corporation with its principal place of business in Wichita, Kansas. Hawker Beechcraft is a manufacturer of business, special-mission, and trainer aircraft, and designs, markets and supports aviation products and services for businesses, governments, and individuals. The company also operates FBO facilities at seven airports in the United States including IND. Hawker Beechcraft's 2007 revenues from its FBO operations were approximately \$73 million.

By an agreement dated February 21, 2008, Signature proposes to acquire Hawker Beechcraft's FBO assets at seven airports in the United States for \$128.5 million. IND is the only airport at which both companies compete in the provision of FBO services.

### B. The Competitive Effects of the Transaction on the FBO Services Market

#### 1. The Relevant Market

The Complaint alleges that the proposed transaction would eliminate competition in the provision of FBO services at IND in violation of Section 7 of the Clayton Act. FBOs are facilities located at airports that provide fuel and related support services to general aviation customers. General aviation customers include charter, private, and corporate aircraft operators, as distinguished from scheduled commercial airlines.

Fuel sales are the largest source of FBO revenues. FBOs usually do not charge for services such as conference rooms, pilot lounges, flight planning, and transportation. Instead, they recover the cost of these services in the price that they charge for fuel. FBOs also derive income from hangar and office rentals, aircraft storage, tie-down and ground services, deicing, and catering services.

General aviation customers cannot obtain fuel, hangar, ramp, and related services at IND except through an FBO authorized to sell such services by the local airport authority, leaving general aviation customers departing from or landing at IND no alternatives to Signature and Hawker Beechcraft FBOs for these services. Obtaining FBO services at other airports in the Indianapolis region would not provide an economically practical alternative for these general aviation customers. Many general aviation customers select IND over other airports in the area for the available hangar space, as well as the necessary safety features of a control tower and longer runway length and the airport's proximity to downtown Indianapolis. General aviation customers at IND would not switch to other airports in the Indianapolis region in sufficient numbers to prevent anticompetitive price increases for fuel and other FBO services at IND.

#### 2. The Proposed Merger Would Produce Anticompetitive Effects

Signature and Hawker Beechcraft are the only two competitors in the provision of FBO services at IND. Competition between them currently limits the ability of each to raise prices for FBO services. The proposed acquisition would eliminate the competitive constraint each imposes upon the other. This would lead to a monopoly at IND, resulting in higher prices for FBO services and lower quality of service in violation of Section 7 of the Clayton Act.

Successful entry would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Hawker Beechcraft would be difficult for several reasons. The entrant would need to get the approval of the airport authority, obtain permits, and construct facilities, all of which require extensive lead time to complete. Successful entry would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

### III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for FBO services provided to general aviation customers at IND by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires the Defendants to divest, as a viable ongoing business, either the Signature or the Hawker Beechcraft FBO assets at IND.

Hawker Beechcraft currently has a long-term lease with the IND airport authority under which it has rights to use several buildings and other assets, including fuel storage facilities, to provide both FBO and non-FBO maintenance for planes manufactured by the company. Signature also operates its FBO business at IND under a long-term lease with the airport authority. Under the transaction agreement, Signature will obtain rights equivalent to Hawker Beechcraft's rights with respect to the FBO assets it uses to provide FBO services at IND. If Signature chooses to divest the Hawker Beechcraft FBO assets at IND, the acquiring company will acquire all interests and rights that Signature will acquire under its agreement with Hawker Beechcraft. This not only includes rights to use all buildings that Hawker Beechcraft currently uses to provide FBO services at IND, but also includes, when Hawker Beechcraft completes construction of a new facility at IND next year, the exclusive rights to use all the new buildings Hawker Beechcraft will build for the provision of FBO services at IND. Thus, a purchaser of either the Hawker Beechcraft Divestiture Assets or the Signature Divestiture Assets will have the same ability to compete in the IND FBO market as Hawker Beechcraft or Signature had prior to the acquisition.

In antitrust cases involving acquisitions in which the United States seeks a divestiture remedy, the United States seeks to require completion of the

divestiture within the shortest period of time reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost in the acquisition and reducing the possibility that the value of the assets will be diminished. Section IV(A) of the proposed Final Judgment requires the defendants to complete the divestiture within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later.<sup>1</sup>

The assets must be divested so as to satisfy the United States, in its sole discretion, that the operations can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture of either the Signature or Hawker Beechcraft Divestiture Assets. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of FBO services at IND.

<sup>1</sup> The proposed Final Judgment also provides that this time period may be extended one or more times by the United States in its sole discretion for a period not to exceed sixty (60) calendar days, and that the Court will receive notice of any such extension. The proposed Final Judgment provides that if pending state or local regulatory approval is the only remaining matter precluding a divestiture after the 90-day period, the United States will not withhold its agreement to an extension of the period.

#### 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 attorneys' 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 Defendants.

#### V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the 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**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. 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: Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 450 5th Street, NW., Suite 4100, Washington, DC 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 against the defendants. The United

States could have continued the litigation and sought preliminary and permanent injunctions against Signature's acquisition of Hawker Beechcraft's FBO assets. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of FBO services at IND. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States could have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

#### VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the 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, is required to 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 considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F.Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).<sup>2</sup>

<sup>2</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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 Microsoft*, 56 F.3d at 1458–62. 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) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he 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.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>3</sup> In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government's predictions as to the effect of the proposed remedies”);

consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e)(2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

<sup>3</sup> *Cf. BNS*, 858 F.2d at 464 (holding that the court's “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing 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’”).

*United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[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.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Because the “court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC*

*Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction 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). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he 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.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc'ns*, 489 F. Supp. 2d at 11.<sup>4</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 3, 2008.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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[FR Doc. E8–16254 Filed 7–16–08; 8:45 am]

BILLING CODE 4410–11–M

#### DEPARTMENT OF LABOR

##### Information Collection Request for Extension (Without Changes) of the Prisoner Reentry Initiative Reporting System; Comment Request

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce

<sup>4</sup> *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (“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.”); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).