DEPARTMENT OF JUSTICE
Antitrust Division

United States v. BBA Aviation plc, et al.

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. BBA Aviation plc, et al., Civil Action No. 1:16-cv-00174 (ABJ). On February 3, 2016, the United States filed a Complaint alleging that BBA Aviation plc's ("BBA") proposed acquisition of the fixed-base operator ("FBO") assets owned by Landmark U.S. Corp LLC and LM U.S. Member LLC (collectively, "Landmark") at six U.S. airports would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires BBA to divest the FBO assets it is acquiring from Landmark at each of the six airports: Washington Dulles International Airport (IAD); Scottsdale Municipal Airport (SDL); Fresno Yosemite International Airport (FAT); Jacqueline Cochran Regional Airport (TRM); Westchester County Airport (HPN); and Ted Stevens Anchorage International Airport (ANC).

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at http://www.justice.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 60 days of the date of this notice. Such comments,

including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 7100, Washington, DC 20530 (telephone: 202-307-6640).

Patricia A. Brink
Director of Civil Enforcement

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 7100
Washington, DC 20530

Plaintiff,

v.

BBA AVIATION PLC
105 Wigmore Street
London, UK
W1U 1QY England,

LANDMARK U.S. CORP LLC
1001 Pennsylvania Avenue, NW
Suite 220 South
Washington, DC 20004,

and

LM U.S. MEMBER LLC
1001 Pennsylvania Avenue, NW
Suite 220 South
Washington, DC 20004

Defendants.

CASE NO.: 1:16-cv-00174
JUDGE: Amy Berman Jackson
FILED: 02/03/2016

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 BBA Aviation plc ("BBA"), operating in the United States through its subsidiary Signature Flight Support Corporation ("Signature"), of Landmark U.S. Corp LLC and LM U.S. Member LLC,

collectively doing business as Landmark Aviation ("Landmark"), and to obtain other equitable relief. The United States alleges as follows:

I.

NATURE OF THE ACTION

1. On September 23, 2015, BBA and Landmark signed an agreement for BBA to acquire all of the equity interests in Landmark, including Landmark's fixed-base operator locations ("FBOs"), for approximately $2.065 billion. FBOs sell aviation fuel and provide flight support services to general aviation customers. BBA, through Signature, operates approximately 70 FBOs at airports across the United States. Landmark operates FBOs at approximately 60 airports in the United States. Both Signature and Landmark operate FBOs at Washington Dulles International Airport ("IAD") located in Dulles, Virginia; Scottsdale Municipal Airport ("SDL") located in Scottsdale, Arizona; Fresno Yosemite International Airport ("FAT") located in Fresno, California; Jacqueline Cochran Regional Airport ("TRM") located in Thermal, California; Westchester County Airport ("HPN") located in White Plains, New York; and Ted Stevens Anchorage International Airport ("ANC") located in Anchorage, Alaska.

2. Signature and Landmark are the only two full-service FBOs operating at IAD, SDL, and FAT, and two of only three full-service FBOs operating at TRM, HPN, and ANC. At each of these six airports, Signature and Landmark compete directly on price and quality of FBO services. The proposed acquisition would eliminate this head-to-head competition, resulting in higher prices and lower quality of services for general aviation customers at each airport.

3. Accordingly, BBA's proposed acquisition of Landmark is likely to lessen competition substantially in the markets for full-service FBO services at IAD, SDL, FAT, TRM, HPN, and ANC in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II.

JURISDICTION AND VENUE

4. 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. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Signature and Landmark market and sell their products and services, including their FBO services, throughout the United States and regularly transact business and transmit data in connection with these activities in the flow of interstate commerce.

6. Defendants have consented to venue and personal jurisdiction in this District. This Court has personal jurisdiction over each Defendant and venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c).

III.

DEFENDANTS AND THE PROPOSED TRANSACTION

7. BBA is a United Kingdom public limited company headquartered in London, England. BBA operates in the United States through its subsidiary, Signature, a Delaware corporation headquartered in Orlando, Florida. Signature has the largest FBO network in the United States and in the world. It owns or operates approximately 70 FBO facilities in the United States, including FBO operations at IAD, SDL, FAT, TRM, HPN, and ANC. BBA had worldwide revenues of approximately $2.3 billion in 2014, of which over $900 million were derived from Signature's U.S. FBO business.

8. Landmark U.S. Corp. and LM U.S. Member are Delaware limited liability companies with their headquarters in Houston, Texas and together comprise the companies doing business as Landmark. They are subsidiaries of CP V Landmark II, L.P. and CP V Landmark, L.P, respectively, which are both Delaware limited partnerships affiliated with the Carlyle Group. Landmark has the third-largest FBO network in the United States, where it owns and operates approximately 60 FBO facilities, including FBO operations at IAD, SDL, FAT, TRM, HPN, and ANC. Landmark had worldwide revenues of over $700 million in 2014, of which over $500 million were derived from its U.S. FBO business.

9. On September 23, 2015, BBA and Landmark executed a Securities Purchase Agreement under which BBA agreed to acquire all of the equity interests in Landmark for approximately $2.065 billion.

IV.

TRADE AND COMMERCE

A. The Relevant Market

10. An FBO is a commercial business that is granted the right by a local airport authority to sell fuel and provide related support services to general aviation customers. General aviation customers include charter, private, and corporate aircraft operators, as distinguished from scheduled commercial passenger and cargo airline operators. General aviation customers cannot obtain FBO services except through the FBOs authorized to sell such services by each local airport authority.

11. Full-service FBOs sell aviation fuel, including at least jet aviation fuel ("Jet A") and typically also aviation gasoline ("avgas"); provide fueling services, including pumping fuel into aircraft; and provide additional support services, including aircraft ground handling, aircraft

parking and storage, and passenger and crew services such as baggage handling, ground transportation, catering, concierge, conference room, and lounge services.

12. The largest source of revenue for an FBO is fuel sales. FBOs sell Jet A for turbine-powered aircraft, including turbojets and turboprops, and avgas for smaller, piston-powered aircraft. Jet A comprises the vast majority of U.S. fuel consumption by general aviation customers, with avgas making up a significantly smaller portion.

13. Full-service FBOs do not typically charge separately for certain ancillary services such as conference rooms, pilot lounges, flight planning, and transportation, and instead recover the cost of these services in the price that they charge for fuel. Full-service FBOs do, however, often charge separately for hangar and office space rentals, aircraft parking and storage, aircraft handling, tie-down and ground services, deicing, and catering.

14. Full-service FBOs are distinct from self-service FBOs, which require that the aircraft pilot or crew tow the aircraft and pump the fuel themselves and do not provide the full range of support services provided by full-service FBOs. Most self-service FBOs do not sell Jet A, and those that do lack the necessary equipment to service large jet aircraft. For the vast majority of general aviation customers, self-service FBOs are not an alternative to a full-service FBO, and a hypothetical monopolist of full-service FBO services at an airport could profitably increase prices by a significant and non-transitory amount. Accordingly, full-service FBO services constitute a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

15. General aviation customers typically select the airport they wish to fly into based on its proximity to their ultimate destination and other convenience factors and then select an FBO from those available at that airport. In most cases, the inconvenience and cost of flying an

aircraft to another nearby airport to refuel outweighs any difference in the fuel prices between the airports. Thus, obtaining FBO services at another airport is not a meaningful alternative for most general aviation customers. As a result, a hypothetical monopolist of full-service FBO services at IAD, SDL, FAT, TRM, HPN, or ANC could profitably increase prices by a significant and non-transitory amount. Accordingly, these individual airports each constitute a relevant geographic market and section of the country under Section 7 of the Clayton Act, 15 U.S.C. § 18.

B. Anticompetitive Effects

16. The markets for full-service FBO services at IAD, SDL, and FAT are highly concentrated, with Signature and Landmark serving as the only two providers of full-service FBO services at each airport.

17. The markets for full-service FBO services at TRM, HPN, and ANC are also highly concentrated, with Signature, Landmark, and a single smaller competitor serving as the only three providers of full-service FBO services at each airport. At TRM, the third competitor is a new full-service FBO that has obtained a lease with the airport authority and begun construction of a facility, but is not expected to be fully operational until later this year. At HPN, the other competitor is precluded by the terms of its lease with the airport authority from serving larger aircraft—which represent a significant portion of HPN's general aviation customers—and serves less than 20% of the market. At ANC, the other competitor has not been operating as long as either Signature or Landmark and also has a market share below 20%.

18. Market concentration often is a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase that concentration, the more likely it is that the transaction

would result in reduced competition and harm to consumers. Market concentration commonly is measured by the Herfindahl-Hirschman Index ("HHI"), as explained in Appendix A. Markets in which the HHI exceeds 2,500 points are considered highly concentrated, and transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power. Here, the proposed acquisition would substantially increase market concentration at IAD, SDL, FAT, TRM, HPN, and ANC, each of which already is highly concentrated, raising the HHI by more than 3,100 points in each market. At IAD, SDL, and FAT, the proposed acquisition would result in an HHI of 10,000—a total monopoly—and at TRM, HPN, and ANC, the post-acquisition HHI would exceed 6,700 points in each market.

19. Competition between the Signature and Landmark FBO facilities at IAD, SDL, FAT, TRM, HPN, and ANC currently limits the ability of each company to raise prices for FBO services. This head-to-head competition also forces each company to offer better service to customers. The proposed acquisition would eliminate the competitive constraint each firm imposes on the other at each airport.

20. Consequently, the proposed acquisition would lead to a monopoly at IAD, SDL, and FAT and establish Signature as the dominant provider of full-service FBO services at TRM, HPN, and ANC, with a market share of at least 80% and the ability to exercise substantial market power. The proposed acquisition would therefore likely result in higher prices for full-service FBO services and a lower quality of service for general aviation customers at IAD, SDL, FAT, TRM, HPN, and ANC in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Entry

21. Successful entry into the provision of full-service FBO services at IAD, SDL, FAT, TRM, HPN, or ANC would not be timely, likely, or sufficient to deter the anticompetitive effects

resulting from the proposed acquisition for several reasons. First, FBO entry or expansion requires extensive lead time and capital investment to complete and there is no guarantee that the FBO provider would be able to obtain the necessary approvals and permits. Second, it often takes several years for a new FBO provider to build a significant customer base. Third, an FBO provider that wanted to enter or expand at an airport would need to secure land to build FBO facilities, obtain the approval of the airport authority and necessary permits, and construct FBO facilities prior to beginning operations. At airports where there is insufficient existing land or infrastructure to support additional FBO facilities—which is the case at least at IAD, SDL, FAT, and HPN—an FBO provider would also need to develop adjacent land and expand the airport infrastructure. Thus, successful entry or expansion at any of the individual airports at issue likely would not occur in a timely manner or be sufficient to prevent or remedy the proposed acquisition's anticompetitive effects.

V.

VIOLATION ALLEGED

22. The United States hereby incorporates paragraphs 1 through 21 above.

23. Unless enjoined, BBA's proposed acquisition of Landmark is likely to substantially lessen competition for full-service FBO services at IAD, SDL, FAT, TRM, HPN, and ANC in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways:

(a) all competition for full-service FBO services at IAD, SDL, and FAT will be eliminated;

(b) actual and potential competition between Signature and Landmark for full-service FBO services at IAD, SDL, FAT, TRM, HPN, and ANC will be eliminated; and

(c) prices for full-service FBO services for general aviation customers at IAD, SDL, FAT, TRM, HPN, and ANC will likely increase and the quality of services will likely decrease.

VI.

REQUEST FOR RELIEF

24. The United States requests that this Court:

(a) adjudge and decree that BBA's proposed acquisition of Landmark would be unlawful and would violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) permanently enjoin and restrain Defendants and all persons acting on their behalf 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 Landmark's FBO facilities and assets at IAD, SDL, FAT, TRM, HPN, and ANC;

(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as this Court deems just and proper.

Dated: February 3, 2016.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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APPENDIX A

Herfindahl-Hirschman Index

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the relevant market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* § 5.3 (2010) ("Guidelines"). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the Guidelines. *Id.*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. BBA AVIATION PLC, LANDMARK U.S. CORP LLC, and LM U.S. MEMBER LLC, *Defendants*.	CASE NO.: 1:16-cv-00174 JUDGE: Amy Berman Jackson FILED: 02/03/2016

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 BBA Aviation plc ("BBA") and Defendants Landmark U.S. Corp LLC and LM U.S. Member LLC ("Landmark") entered into a Securities Purchase Agreement, dated September 23, 2015, pursuant to which BBA intends to acquire all of the equity interests in Landmark for approximately $2.065 billion. The United States filed a civil antitrust Complaint on February 3, 2016, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for full-service fixed-base operator ("FBO") services at Washington Dulles International Airport ("IAD"),

located in Dulles, Virginia; Scottsdale Municipal Airport ("SDL"), located in Scottsdale, Arizona; Fresno Yosemite International Airport ("FAT"), located in Fresno, California; Jacqueline Cochran Regional Airport ("TRM"), located in Thermal, California; Westchester County Airport ("HPN"), located in White Plains, New York; and Ted Stevens Anchorage International Airport ("ANC"), located in Anchorage, Alaska (collectively, the "Divestiture Airports"), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices for aircraft fuel and other FBO services and a reduction in quality of such services at the Divestiture Airports.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and 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, Defendants are required to sell the Landmark FBO assets (the "Divestiture Assets") at each of the Divestiture Airports. Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Assets at the Divestiture Airports are operated as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and 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*

BBA is a United Kingdom public limited company headquartered in London, England that operates in the United States through its subsidiary Signature Flight Support Corporation ("Signature"), a Delaware corporation which has its principal place of business in Orlando, Florida. Signature has the largest FBO network in the world and in the United States. It owns or operates approximately 70 FBO facilities in the United States, including FBO operations at IAD, SDL, FAT, TRM, HPN, and ANC. BBA had worldwide revenues of approximately $2.3 billion in 2014, of which over $900 million were derived from Signature's U.S. FBO business.

Landmark U.S. Corp. and LM U.S. Member are Delaware limited liability companies with their headquarters in Houston, Texas and together comprise the companies doing business as Landmark. They are subsidiaries of CP V Landmark II, L.P. and CP V Landmark, L.P., respectively, which are both Delaware limited partnerships affiliated with the Carlyle Group. Landmark has the third-largest FBO network in the United States, where it owns and operates approximately 60 FBO facilities, including FBO operations at IAD, SDL, FAT, TRM, HPN, and ANC. Landmark had worldwide revenues of over $700 million in 2014, of which over $500 million were derived from its U.S. FBO business.

On September 23, 2015, BBA and Landmark executed a Securities Purchase Agreement pursuant to which BBA agreed to acquire all of the equity interests in Landmark for approximately $2.065 billion.

The proposed transaction, as initially agreed to by Defendants, would substantially lessen competition for full-service FBO services at the six Divestiture Airports. At each of the

Divestiture Airports, Signature and Landmark are either the only two competitors, or two of only three competitors. The acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States today.

B. The Competitive Effects of the Transaction on the Relevant Markets

1. The Relevant Markets

The Complaint alleges that the provision of full-service FBO services at each of the six Divestiture Airports are relevant markets within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18. An FBO is a commercial business that is granted the right by a local airport authority to sell fuel and provide related support services to general aviation customers. General aviation customers include charter, private, and corporate aircraft operators, as distinguished from scheduled commercial passenger and cargo airline operators.

Full-service FBOs sell jet aviation fuel ("Jet A") and typically also aviation gasoline ("avgas"); provide fueling services, including pumping fuel into aircraft; and provide additional ancillary services, including aircraft ground handling, aircraft parking and storage, and passenger and crew services such as baggage handling, ground transportation, catering, concierge, conference room, and lounge services.

The largest source of revenue for an FBO is fuel sales. Full-service FBOs usually do not charge separately for ancillary services they provide such as conference rooms, pilot lounges, flight planning, and transportation, and instead recover the cost of these services in the price that they charge for fuel. Full-service FBOs often charge separately for hangar and office space rentals, aircraft parking and storage, aircraft handling, tie-down and ground services, deicing, and catering.

Full-service FBOs are distinct from self-service FBOs, which require that the aircraft pilot or crew tow the aircraft and pump the fuel and do not offer the full range of products, equipment, and ancillary services provided by full-service FBOs. For the vast majority of customers, self-service FBOs are not an alternative to a full-service FBO.

Obtaining FBO services at other airports in the general vicinity of the Divestiture Airports would not provide a meaningful alternative for most general aviation customers. Customers typically select an airport for its proximity to their final destination and other convenience factors, and in most cases the inconvenience and cost of flying an aircraft to another airport to refuel outweighs any difference in the fuel prices between the airports. General aviation customers at the Divestiture Airports would not switch to other airports in sufficient numbers to prevent post-acquisition price increases for fuel and other FBO services at the Divestiture Airports.

2. The Proposed Merger Would Produce Anticompetitive Effects

Each of the markets for full-service FBO services at the Divestiture Airports is highly concentrated. Signature and Landmark are the only two providers of full-service FBO services at three of these airports—IAD, SDL, and FAT. At three other airports—TRM, HPN and ANC—a single smaller competitor exists beyond Signature and Landmark. Competition between the Signature and Landmark FBO facilities at each of these airports currently limits the ability of each company to raise prices for full-service FBO services. This head-to-head competition also forces each company to offer better service to general aviation customers at the Divestiture Airports. The proposed acquisition would eliminate the competitive constraint each provider imposes upon the other at each airport and would lead to a monopoly at IAD, SDL, and

FAT. It would further reduce the number of competitors at TRM, HPN and ANC from three to two, thus enabling the merged firm to control at least 80% of each of these markets. This would result in higher prices for fuel and other FBO services and a lower quality of service at each of the Divestiture Airports, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

3. Timely Entry Is Unlikely

Successful entry into the provision of FBO services at the Divestiture Airports would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. First, FBO entry or expansion requires extensive lead time and capital investment to complete and there is no guarantee that the FBO provider would be able to obtain the necessary approvals and permits. Second, it often takes several years for a new FBO to build a significant customer base. Third, an FBO provider that wanted to enter or expand at an airport would need available land, to obtain the approval of the airport authority and necessary permits, and to construct facilities prior to beginning operations. At airports where there is insufficient existing land or infrastructure to support additional FBO facilities, an FBO provider would also need to develop adjacent land and expand the airport infrastructure. Thus, successful entry or expansion at any of the individual airports at issue likely would not occur in a timely manner or be sufficient to defeat a small but significant and non-transitory price increase by the merged firm.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. Divestiture of Landmark's FBO Assets at the Divestiture Airports

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for full-service FBO services by maintaining an independent and economically viable competitor at each of the Divestiture Airports.

The proposed Final Judgment requires the Defendants to divest, as viable ongoing business concerns, the Landmark FBO assets at IAD, SDL, FAT, TRM, HPN, and ANC (collectively, the "Divestiture Assets"). The Divestiture Assets include all rights in Landmark's existing and future FBO facilities at the Divestiture Airports, including any and all tangible and intangible assets that are primarily related to or primarily used in connection with the business of providing FBO services at the Divestiture Airports.

In antitrust cases where the United States requires a divestiture remedy, it seeks completion of the divestiture within the shortest period of time reasonable under the circumstances. To this end, 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 or five calendar (5) days after the Court enters the Final Judgment, whichever is later. The proposed Final Judgment 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 such an extension will be granted if pending state or local regulatory approval is the only matter precluding divestiture. The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Sections IV(C)-(G) of the proposed Final Judgment require Defendants to furnish information and make certain warranties to prospective acquirers in an attempt to sell the Divestiture Assets. Any acquirer of the Divestiture Assets must be approved by the United

States in its sole discretion and must satisfy the United States that it has the intent and capability to compete effectively in the relevant markets.

In the event that Defendants do not accomplish the divestiture within the time period prescribed, Section V(A) of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. 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 divestitures. At the end of six (6) months, if the divestitures have 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.

B. Notification of Future Transactions

Section XI of the proposed Final Judgment requires BBA to provide advance notification of certain future acquisitions that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. §18a ("HSR Act"). Specifically, Section XI provides that BBA (including Signature) must provide advance notification to the Antitrust Division before directly or indirectly acquiring any leases from, assets of, or interests in any entity providing FBO services at (i) Boeing Field/King County International Airport ("BFI"); or (ii) any other airport in the United States where BBA is already providing FBO services unless

(1) the value of the assets, interests, or leases is less than $20 million or (2) two or more full-service FBOs who are not parties to the transaction are already operating at the airport. Section XI provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act. These provisions are intended to inform the Division of transactions that raise competitive concerns similar to those remedied here and to provide the Division with the opportunity, if necessary, to seek effective relief.

C. Hold Separate Provisions

In connection with the proposed Final Judgment, Defendants have agreed to the terms of a Hold Separate Stipulation and Order ("Hold Separate"), which is intended to ensure that the Divestiture Assets are operated as competitively independent and economically viable ongoing business concerns and that competition is maintained during the pendency of the ordered divestitures. Sections V(A)-(B) of the Hold Separate specify that the Divestiture Assets will be maintained as separate viable businesses and that BBA and Signature employees will not gain access to customer or supplier lists specific to the Divestiture Assets prior to divestiture. Sections V(C)-(E) further require that Defendants maintain or increase the current sales and quality of the Divestiture Assets, including maintaining current customer discounts and agreements that relate to the Divestiture Assets. Section V(H) obligates Defendants to use best efforts to obtain any necessary airport authority approvals in connection with the sale of the Divestiture Assets.

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 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. In addition,

comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to:

James J. Tierney
Chief, Networks and Technology Enforcement Section
Antitrust Division
United States Department of Justice
450 5th St. NW
Suite 7100
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

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 Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against BBA's acquisition of Landmark. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of full-service FBO services at the Divestiture Airports identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would 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); *United States v, U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust

violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[1]

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) (quoting *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); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. 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).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to 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).

[2] *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

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 U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *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"); *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 U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *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.

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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'").

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; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). 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. *Microsoft*, 56 F.3d at 1459-60. As this Court 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); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). 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 Sen. 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.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76.

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.

[3] *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.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (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, 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.").

Dated: February 3, 2016

Respectfully submitted,

/s Patricia L. Sindel
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U.S. Department of Justice
Antitrust Division
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *Plaintiff,* v. BBA AVIATION PLC, LANDMARK U.S. CORP LLC, and LM U.S. MEMBER LLC, *Defendants.*	CASE NO.: 1:16-cv-00174 JUDGE: Amy Berman Jackson FILED: 02/03/2016

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff United States of America filed its Complaint on February 3, 2016, the United States and Defendants BBA Aviation plc, Landmark U.S. Corp LLC, and LM U.S. Member LLC, by their respective 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 fact or law;

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 the prompt and certain divestiture of certain rights or 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 ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

A. "Acquirer" means an entity to which Defendants divest some or all of the Divestiture Assets.

B. "BBA" means Defendant BBA Aviation plc, a public limited company incorporated in England and Wales with its headquarters in London, England; BBA US Holdings, Inc., a Delaware corporation with its headquarters in Orlando, Florida; Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, Florida; and their successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. "Landmark" means Defendant Landmark U.S. Corp LLC, a Delaware limited liability company with its headquarters in Houston, Texas; Defendant LM U.S. Member LLC, a

Delaware limited liability company with its headquarters in Houston, Texas; CP V Landmark Investors Corp Holdings Partnership, L.P., a Delaware limited partnership; CP V Landmark Corp Holdings Partnership, L.P., a Delaware limited partnership; CP V Landmark GP LLC, a Delaware limited liability company; Landmark U.S. Holdings LLC, a Delaware limited liability company; Landmark U.S. Corp Holdings, L.P., a Delaware limited partnership; CP V LM Manager LLC, a Delaware limited liability company; and their successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. "ANC" means Ted Stevens Anchorage International Airport, located in Anchorage, Alaska.

E. "BFI" means Boeing Field/King County International Airport, located in Seattle, Washington.

F. "Divestiture Airports" means ANC, FAT, HPN, IAD, SDL, and TRM.

G. "Divestiture Assets" means the Landmark FBO Assets at ANC, FAT, HPN, IAD, SDL and TRM.

H. "FAT" means Fresno Yosemite International Airport, located in Fresno, California.

I. "FBO Facilities" means any and all tangible and intangible assets that are primarily related to or primarily used in connection with the business of providing FBO Services at the Divestiture Airports, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet fuel and aviation gasoline, and related fueling equipment, and all other tangible property and

assets primarily used in connection with the business of providing FBO Services at the Divestiture Airports; all licenses, permits, and authorizations issued by any governmental organization primarily relating to the business of providing FBO Services at the Divestiture Airports, subject to the licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings primarily relating to the business of providing FBO Services at the Divestiture Airports, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records, and all other records primarily relating to the business of providing FBO Services at the Divestiture Airports; and all intangible assets primarily used in the development, production, and sale of FBO Services at the Divestiture Airports, 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.

J. "FBO Services" means all services relating to providing fixed base operations at an airport, including but not limited to aircraft fueling; aircraft ground handling, including marshalling, towing, staging, deicing, pre-heating and air conditioning, providing ground power and equipment, interior and exterior cleaning, lavatory service, and water service; aircraft parking and storage, including tie-down and hangar rental; flight planning and support services; and passenger and crew services, including baggage handling, catering, concierge and errand services, office space rental, conference room and lounge services, and arranging for U.S. customs clearance, lodging, and ground transportation; but, for the avoidance of doubt, excluding aircraft maintenance, repair and overhaul services.

K. "Full-Service FBO" means a facility that provides FBO Services, including selling aircraft fuel (at least jet fuel) and pumping fuel into aircraft.

L. "HPN" means Westchester County Airport, located in White Plains, New York.

M. "IAD" means Washington Dulles International Airport, located in Dulles, Virginia.

N. "Landmark FBO Assets" means all rights, titles, and interests, including all fee, leasehold, and real property rights, in Landmark's existing and future FBO Facilities at the Divestiture Airports that BBA acquires in the Proposed Transaction.

O. "Proposed Transaction" means the proposed acquisition by BBA of all of the interests in CP V Landmark Investors Corp. Holdings Partnership, L.P., CP V Landmark Corp. Holdings Partnership, L.P., Landmark U.S. Corp. LLC, and LM U.S. Member LLC pursuant to the Securities Purchase Agreement dated September 23, 2015.

P. "SDL" means Scottsdale Municipal Airport, located in Scottsdale, Arizona.

Q. "TRM" means Jacqueline Cochran Regional Airport, located in Thermal, California.

III. APPLICABILITY

A. This Final Judgment applies to BBA and Landmark, 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 Sections IV and 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 an acquirer of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed, within (i) ninety (90) calendar days after the filing of the Complaint in this matter or (ii) 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 or Acquirers 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 during the period set forth in this Section IV.A, the United States will not withhold its agreement to such an extension or extensions. Defendants agree to use their best efforts to complete the required divestitures as expeditiously as possible.

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

C. 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 the 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

relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States information relating to the personnel at the Divestiture Airports involved in the operation, management, and sales 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 sales of the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; 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.

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

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will continue to be

used by the Acquirer as part of a viable, ongoing business engaged in providing FBO Services at the Divestiture Airports. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete effectively in the provision of FBO Services at the Divestiture Airports; 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 give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV.A., Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture 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 Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture 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 Divestiture 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 Divestiture Trustee may hire, at the cost and expense of Defendants, any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

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

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture 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. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture 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 Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter 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 Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture 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 the Divestiture Trustee is responsible, it 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 or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the 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 Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture 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 Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture 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 Defendants' limited right to object to the sale 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, a divestiture proposed under Section IV or Section 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 Sections 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 its 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) calendar 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 Acquirers, 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 Defendants, including limitation on information, shall be made within fourteen (14) calendar 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 such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Order, 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, 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 to 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 notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NOTIFICATION

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Defendant BBA, without providing advance notification to the Antitrust Division, shall not directly or indirectly assume a lease from, acquire assets of, or acquire interest in any entity engaged in provision of FBO Services during the term of this Final Judgment at (i) BFI; or (ii) an airport where BBA is already providing FBO Services in the United States unless (1) the assumption or acquisition is valued at less than $20 million dollars, or (2) at least two Full-Service FBOs not involved in the transaction provide FBO Services at the airport where the assumption or acquisition will take place.

B. Such notification shall be provided to the Antitrust Division in the same format as and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about the provision of FBO Services. Notification shall be provided within five (5) business days of entering into a definitive assumption or acquisition agreement and at least thirty (30) calendar days prior to acquiring any such interest and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, any management or strategic plans discussing the proposed transaction, and a reference to this Final Judgment. Should BBA contact an airport authority formally requesting approval of a lease transfer in a transaction that would require the notification described in this Section prior to entering into a definitive acquisition agreement, BBA shall report that communication to the Division within two (2) business days, though the thirty (30)

day waiting period shall not begin until the Division receives the information provided in the Notification and Report Form. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendants shall not consummate the proposed assumption or acquisition agreement until thirty (30) calendar days after submitting all such additional information.

C. Early termination of the waiting period in this Section may be requested, and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. NO REACQUISITION

Defendants may not reacquire, manage, or operate any part of the Divestiture Assets during the term of this Final Judgment.

XIII. 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.

XIV. EXPIRATION OF FINAL JUDGMENT

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

XV. 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' responses to such 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.

Date: _____

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

_____

United States District Judge

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