DEPARTMENT OF JUSTICE
Antitrust Division

UNITED STATES v. LM U.S. CORP ACQUISITION INC. and ROSS AVIATION, LLC

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. LM U.S. Corp Acquisition Inc. and Ross Aviation, LLC, Civil Action No. 1:14-cv-01291. On July 30, 2014, the United States filed a Complaint alleging that the proposed acquisition by LM U.S. Corp Acquisition Inc. (doing business as Landmark Aviation "Landmark") of the fixed base operator ("FBO") assets of Ross Aviation, LLC ("Ross") at Scottsdale Municipal Airport ("SDL") in Arizona would violate Section 7 of the Clayton Act, 15 U.S.C. §18. The proposed Final Judgment, filed the same time as the Complaint, requires Landmark to sell the FBO assets it is acquiring from Ross at SDL.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW, Suite 1010, 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 60 days of the date of this notice. Such comments,

including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet website, filed with the Court and, under certain circumstances, published in the *Federal Register*. Comments should be directed to William H. Stallings, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202-514-9323).

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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 8000
Washington, D.C. 20530

Plaintiff,

v.

LM U.S. CORP ACQUISITION INC.,
1500 CityWest Blvd.
Suite 600
Houston, TX 77042

and

ROSS AVIATION, LLC,
3033 East First Avenue
Suite 815
Denver, CO 80206

Defendants.

CASE: 1:14-cv-01291

JUDGE: Royce Lamberth

FILED: 07/30/2014

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 LM U.S. Corp Acquisition Inc. (with affiliated companies doing business as Landmark Aviation, "Landmark") of Ross Aviation, LLC ("Ross") (collectively, "Defendants") and to obtain other equitable relief. The United States alleges as follows:

I.

NATURE OF THE ACTION

1. On April 19, 2014, Landmark and Ross signed an agreement for Landmark to acquire Ross's United States fixed base operators ("FBOs") for approximately $330 million. FBOs provide flight support services—including fueling, ramp and hangar rentals, office space rentals, and other services—to general aviation customers. Landmark is the third largest fixed base operator in the United States and operates over 40 FBOs at airports around the country. Ross operates FBOs at 19 airports in the United States. Both Landmark and Ross operate FBOs at the Scottsdale Municipal Airport ("SDL").

2. Landmark and Ross are the only two FBOs operating at SDL. They compete directly on price and quality of FBO services for general aviation customers. Thus, the proposed acquisition would eliminate this head-to-head competition and create an FBO monopoly at SDL. The proposed acquisition would also give Landmark the ability to raise prices and lower the quality of services at SDL 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 SDL 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. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Landmark and Ross 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. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Defendants have consented to venue and personal jurisdiction in this District.

III.

DEFENDANTS AND THE PROPOSED TRANSACTION

6. LM U.S. Corp Acquisition Inc. is a Delaware corporation with its principal place of business in Houston, Texas. LM U.S. Corp Acquisition Inc. is a subsidiary of CP V Landmark II, L.P. CP V Landmark II, L.P. and CP V Landmark, L.P., which are both limited partnerships within the Carlyle Group, control all the companies doing business as Landmark Aviation. CP V Landmark II, L.P., CP V Landmark, L.P., and Carlyle Partners V, L.P. (collectively, "Landmark") are all limited partnerships within the Carlyle Group with the same or similar investors. Landmark owns and operates more than 40 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Landmark Aviation–SDL.

7. Ross is a Delaware limited liability company with its principal place of business in Denver, Colorado. Ross owns and operates 19 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Scottsdale AirCenter.

8. On April 19, 2014, Landmark and Ross executed a Transaction Agreement under which Landmark will acquire all of Ross's FBO assets for approximately $330 million.

IV.

TRADE AND COMMERCE

A. 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 often 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.

11. General aviation customers cannot obtain fuel, hangar, ramp or related services at SDL, except through the FBOs authorized to sell such products and services by the local airport authority. Consequently, general aviation customers landing at SDL have no option other than to use Landmark and Ross FBOs for these services. Obtaining FBO services at another airport would not provide an economically practical alternative for these general aviation customers because they purposely select SDL due to its proximity to Scottsdale. Thus, a small but significant post-acquisition increase in the prices for fuel, hangar space, and other FBO services at SDL would not cause general aviation customers to switch to other airports in sufficient quantities to make such a price increase unprofitable.

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

B. Anticompetitive Effects

13. The market for FBO services at SDL is highly concentrated, with only two providers—Landmark and Ross. If Landmark acquires the Ross FBO facility, it will have a monopoly in the market for FBO services at SDL.

14. Competition between Landmark's and Ross's FBO facilities currently limits the ability of each 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 imposes on the other.

15. Thus, the proposed acquisition would lead to a monopoly at SDL, which, in turn, would likely result in higher prices for FBO services and a lower quality of service for customers in violation of Section 7 of the Clayton Act, , 15 U.S.C. § 18.

16. Successful entry into the provision of FBO services at SDL by a new competitor would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Entry sufficient to replace the market impact of Ross would be unlikely for several reasons. First, Landmark and Ross both hold long-term leases from SDL for their FBO Facilities. Additionally, the new FBO provider would need to get the approval of the airport authority, obtain permits, and construct facilities prior to beginning its operations at SDL. This process would require extensive lead time to complete and there is no guarantee that the new provider would be able to obtain the necessary approvals and permits. Thus, timely and successful entry at SDL by a new provider of FBO services would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

V.

VIOLATION ALLEGED

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

18. Unless enjoined, Landmark's proposed acquisition of Ross is likely to substantially lessen competition and restrain trade for FBO services at SDL in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways:

a. actual and potential competition between Landmark and Ross for FBO services at SDL will be eliminated;

b. competition for FBO services at SDL will be eliminated; and

c. prices for FBO services for general aviation customers at SDL will likely increase and quality of service will likely decrease.

VI.

REQUEST FOR RELIEF

19. The United States requests that:

a. Landmark's proposed acquisition of Ross's FBO facility at SDL 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 Landmark's and Ross's FBO facilities and assets at SDL;

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.

Dated this 30th day of July, 2014.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/
WILLIAM J. BAER (D.C. BAR # 324723)
Assistant Attorney General for Antitrust

/s/
DAVID I. GELFAND
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/s/
PATRICIA A. BRINK
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. LM U.S. CORP ACQUISITION INC., and ROSS AVIATION, LLC, *Defendants*.	**CASE: 1:14-cv-01291** **JUDGE: Royce Lamberth** **FILED: 07/30/2014**

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 LM U.S. Corp Acquisition Inc. (with affiliated companies doing business as Landmark Aviation, "Landmark") and Defendant Ross Aviation, LLC ("Ross") (collectively, "Defendants") entered into an Agreement, dated April 19, 2014, pursuant to which Landmark will acquire the fixed base operators ("FBO") of Ross Aviation for approximately $330 million.

The United States filed a civil antitrust Complaint on July 30, 2014, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to combine the only providers of FBO services at Scottsdale Municipal Airport ("SDL"), thereby creating a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in both (1) higher prices for fuel and other FBO services and (2) a reduction in the quality of FBO services offered at SDL.

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 Ross's FBO assets at SDL, which currently operate as a wholly owned subsidiary: Ross Scottsdale LLC (the "Divestiture Assets"). Under the terms of the Hold Separate Stipulation and Order, Defendant Landmark will take certain steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable and ongoing business concern 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*

LM U.S. Corp Acquisition Inc. is a Delaware corporation with its principal place of business in Houston, Texas. LM U.S. Corp Acquisition Inc. is a subsidiary of CP V Landmark II, L.P. CP V Landmark II, L.P. and CP V Landmark, L.P., which are both limited partnerships within the Carlyle Group, control all the companies doing business as Landmark Aviation. CP V Landmark II, L.P., CP V Landmark, L.P., and Carlyle Partners V, L.P. (collectively, "Landmark") are all limited partnerships within the Carlyle Group with the same or similar investors. Landmark owns and operates more than 40 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Landmark Aviation–SDL.

Ross Aviation, LLC ("Ross") is a Delaware limited liability company with its principal place of business in Denver, Colorado. Ross is a subsidiary of Genossenschaft Constanter, a Swiss company. Ross owns and operates 19 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Scottsdale AirCenter.

The proposed transaction, as initially agreed to by Defendants on April 19, 2014, would result in Landmark's acquisition of Ross's United States FBO locations for $330 million. SDL is the only airport at which Landmark and Ross currently compete in the provision of FBO services. Defendants are the only two full-service FBOs operating at SDL, and successful entry into the provision of FBO services at SDL by a new competitor would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on July 30, 2014.

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 SDL in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. 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 passenger and cargo airline operators and military flying.

Fuel sales are the largest source of revenues for FBOs. FBOs often do not charge separately for services such as conference rooms, pilot lounges, newspapers, or baggage handling. Instead, they recover the cost of these services through fuel revenues. FBOs also derive income from hangar and office rentals, aircraft storage, tie-down and ground services, and deicing.

General aviation customers cannot obtain fuel, hangar, ramp, and related services at SDL except through an FBO authorized to sell such services by the local airport authority. Consequently general aviation customers departing from or landing at SDL have no option other than to use Landmark and Ross FBOs for these services. Obtaining FBO services at other airports in the Scottsdale region would not provide an economically practical alternative for these general aviation customers because many general aviation customers select SDL over other airports in the area for its proximity to Scottsdale. General aviation customers at SDL would not switch to other airports in the Scottsdale region in sufficient numbers to prevent anticompetitive price increases for fuel and other FBO services at SDL.

2. The Proposed Merger Would Produce Anticompetitive Effects

Landmark and Ross are the only two providers for FBO services at SDL. Competition between them currently limits the ability of each to raise prices for FBO services. This head-to-

head competition also forces each company to offer better service to general aviation customers at SDL. The proposed acquisition would eliminate the competitive constraint each provider imposes upon the other and lead to a monopoly at SDL. This would result in higher prices for fuel and other FBO services and a lower quality of services in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Successful entry into the provision of FBO services at SDL by a new competitor would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Entry sufficient to replace the market impact of Ross would be unlikely for several reasons. Landmark and Ross both hold long-term leases from SDL for their FBO Facilities. Additionally, the new FBO provider would need to get the approval of the airport authority, obtain permits, and construct facilities prior to beginning its operations at SDL. This process would require extensive lead time to complete and there is no guarantee that the new provider would be able to obtain the necessary approvals and permits. Thus, timely and successful entry at SDL by a new provider of FBO services 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

A. *Divestiture of Ross's FBO at SDL*

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 SDL by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires the Defendants to divest, as a viable ongoing business, the Divestiture Assets. The Divestiture Assets must be divested to Signature Flight

Support Corporation ("Signature") or to another acquirer in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly. In order to provide greater certainty and efficiency in the divestiture process, the United States has approved Defendants' proposed Acquirer, Signature Flight Support Corporation ("Signature"). If Defendants do not sell the assets to Signature, they shall cooperate with prospective purchasers to accomplish the divestiture expeditiously.

In antitrust cases involving acquisitions in which the United States requests a divestiture remedy, the United States seeks to require completion of the divestiture within the shortest period of time reasonable under the circumstances. Section IV(A) of the proposed Final Judgment requires the Defendants to complete the divestiture within ten (10) days after the Court signs the Hold Separate Stipulation and Order. 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 ninety (90) calendar days, and shall notify the Court in such circumstances. A prompt divestiture has the benefits of restoring competition lost as a result of the acquisition and reducing the possibility that the value of the assets will be diminished. Section V(B) of the Hold Separate Stipulation and Order specifies that the divestiture assets will be maintained as a viable business and that Landmark employees will not gain access to customer or supplier lists specific to the divestiture assets prior to divestiture.

Section IV(B) of the proposed Final Judgment requires the Defendants to furnish information to prospective acquirers in an attempt to sell the divestiture assets. In this instance, the United States has already approved Signature as an appropriate acquirer for the divestiture

assets. If Defendants sell the divestiture assets to Signature, no additional time will be needed for the United States to approve the acquirer, and Defendants will not need to furnish information to prospective acquirers.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States to effect the sale of the Divestiture Assets. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the Divestiture Trustee. The Divestiture Trustee's commission will be structured so as to incentivize the Divestiture Trustee to complete the divestiture as quickly as possible while trying to obtain the highest possible price for the Divestiture Assets. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States which set forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the Divestiture 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 Divestiture 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 SDL.

B. ***Notification***

Section XI of the proposed Final Judgment requires Landmark to provide advance notification of certain future acquisitions from entities providing FBO services that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The notification provision of the proposed Final Judgment is intended to inform the Division of

transactions that raise competitive concerns similar to those remedied here, and if necessary, to seek to enjoin any transaction pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment provides that Landmark shall not directly or indirectly acquire any leases from, assets of, or interests in any entity providing FBO services at an airport in the United States where Landmark is providing FBO services, without prior notification to the United States. Notification is not required if the value of the assets, interests, or leases is $20 million or less, or if there is another full service FBO facility at the airport that is not involved in the transaction. The proposed Final Judgment requires that 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. If Landmark formally requests approval for a lease transfer from an airport authority in writing prior to entering into an agreement, Landmark shall report this request to the Antitrust Division within two (2) days; however, the thirty (30) day waiting period shall not begin until the Antitrust Division receives the Notification and Report Form.

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:

William H. Stallings
Chief, Transportation, Energy, and Agriculture Section
Antitrust Division
United States Department of Justice
450 5th St. NW
Suite 8000
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 Landmark's acquisition of Ross's FBO assets at SDL. 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 SDL. 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. 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

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court 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). 2004 amendments "effected minimal changes" to Tunney Act review).

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 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"); *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

[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 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'").

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; *see also 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 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 Sen. John 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]

[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, at *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.").

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 30, 2014

Respectfully submitted,

_____/s/_____

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. LM U.S. CORP ACQUISITION INC., and ROSS AVIATION, LLC, *Defendants*.	**CASE: 1:14-cv-01291** **JUDGE: Royce Lamberth** **FILED: 07/30/2014**

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on July 30, 2014, the United States and Defendants, Defendant LM U.S. Corp Acquisition Inc. and Defendant Ross Aviation, 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 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, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means Signature Flight Support Corporation, or another entity to whom Defendants divest the Divestiture Assets.

B. "Landmark" means Defendant LM U.S. Corp Acquisition Inc., a Delaware corporation with its headquarters in Houston, Texas, CP V Landmark L.P., CP V Landmark II, L.P., any party that acquires all or substantially all of the assets by which any of the foregoing (in the aggregate, with their subsidiaries taken as a whole) performs FBO Services, Carlyle Partners V, L.P., and their subsidiaries, divisions, groups, partnerships, joint ventures, directors, officers, managers, and employees.

C. "Ross" means Defendant Ross Aviation, LLC, a Delaware corporation with its headquarters in Denver, Colorado, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. One of Ross's wholly owned subsidiaries, Ross Scottsdale LLC, a Delaware limited liability corporation headquartered in Scottsdale, Arizona, operates the Divestiture Assets.

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

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

F. "FBO Services" means any or all services relating to providing fixed based operator services, including, but not limited to, selling fuel; leasing hanger, ramp, and office space; providing flight support services; performing maintenance; providing access to terminal facilities; or arranging for ancillary services such as limousines, rental cars, or hotels.

G. "FBO Facilities" means any and all tangible and intangible assets that comprise the business of providing 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 and maintenance equipment, and other tangible property and all assets used exclusively in connection with the business of providing FBO Services; all licenses, permits, and authorizations issued by any governmental organization relating to the business of providing 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 FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records, and all other records relating to the business of providing FBO Services; all intangible assets used in the development, production, servicing, and sale of 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.

H. "Full Service FBO" means a facility that provides FBO Services, including pumping fuel into aircraft, and sells all fuel types (Jet A and/or avgas) sold by FBOs at that airport.

I. "Divestiture Assets" means Ross Scottsdale LLC, a Delaware limited liability company, including all rights, titles and interests, including all fee, leasehold and real property rights in Ross's FBO Facilities at SDL Airport.

J. "Proposed Transaction" means Landmark's proposed acquisition of certain assets from Ross pursuant to the Transaction Agreement by and among Ross Aviation Holdco LLC, Ross Aviation, LLC, and LM U.S. Corp Acquisition Inc., dated April 19, 2014.

III. Applicability

A. This Final Judgment applies to Landmark and Ross, 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 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 the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ten (10) calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, 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. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

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 the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than Signature, 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 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.

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. The foregoing Sections IV.C through IV.G shall not apply in the event that the acquirer of the Divestiture Assets is Signature pursuant to the Interest Purchase Agreement dated as of May 23, 2014 by and among Signature Flight Support Corporation, LM U.S. Corp Acquisition, Inc. and, as of the Closing, Ross Aviation, LLC.

I. Unless the United States otherwise consents in writing, the divestiture 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 be used by the Acquirer as part of a viable, ongoing business engaged in providing FBO Services at SDL Airport. 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's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the provision of FBO Services at SDL Airport; 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 in 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.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants, 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 Landmark 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.

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. 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 reports contains information that the Divestiture Trustee deems confidential, such reports 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 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 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

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 Landmark, 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 at an airport where Landmark is already providing FBO Services in the United States during the term of this Final

Judgment, unless the assumption or acquisition (1) is valued at less than $20 million dollars or (2) at least one Full Service FBO, not involved in the transaction, provides FBO Services at the airport where the assumption or acquisition will take place.

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. Should Landmark contact an airport authority formally requesting approval of a lease transfer in a transaction that would require the notification described in this paragraph prior to entering into a definitive acquisition agreement, Landmark 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.

Early termination of the waiting period in this paragraph may be requested and may be granted by the Antitrust Division in its sole discretion. 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 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'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.

Date: _____

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

_____

United States District Judge

[FR Doc. 2014-18744 Filed 08/07/2014 at 8:45 am; Publication Date: 08/08/2014]