



U.S. Department of Justice

Antitrust Division

Liberty Square Building

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May 5, 2014

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A.C. Gonzalez
City Manager
Dallas City Hall
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Re: Divestiture of Love Field Gates in connection with Proposed Final Judgment
in *United States et al. v. US Airways Group, Inc. and AMR Corporation*, Case
No. 1:13-cv-01236 (D.D.C.)

Dear Messrs. Ernst and Gonzalez:

This letter follows-up on my April 16 letter to you concerning American's proposed divestiture of its two Love Field gates to Virgin America. In that letter, I noted that the Antitrust Division had approved the Assignment and Assumption Agreement proposed by American and Virgin America. Since that time, the two airlines have decided to accomplish the divestiture in the form of a Sublease Agreement instead of the Assignment and Assumption Agreement. The Antitrust Division has reviewed the Sublease Agreement and has today informed American and Virgin America that the Sublease satisfies the terms of the Final Judgment in the above-captioned case.

As you are aware, the U.S. Department of Justice and several states filed a Complaint seeking to permanently enjoin the proposed merger of American Airlines and US Airways as anticompetitive under the federal antitrust laws. During the course of the ensuing litigation, the parties proposed to settle the suit by stipulating to a proposed final court order in which the airlines agreed to divest certain gates and slots at seven key airports, including American's two gates at Love Field, to assure that the merger would not harm competition. By resolving the competitive concerns, the settlement allowed the airlines to proceed with their merger free from the risk of the antitrust lawsuit and the uncertainties associated with it and American's efforts to emerge from bankruptcy. The "new" American is now operating as a merged company with its combined headquarters in the Dallas/Fort Worth area.

On April 25, 2014, the Court, after the completion of a public notice and comment period, entered the Final Judgment, finding the settlement to be in the public interest. The Final Judgment requires that American complete the agreed-upon divestitures, and the Court has

retained jurisdiction to issue further orders and directions as may be necessary to ensure and enforce compliance with the Final Judgment.

The Final Judgment sets forth processes for the various slot and gate divestitures, including a requirement that in each instance it is demonstrated to the satisfaction of the United States that the divestitures will remedy the competitive harm alleged in the Complaint. We are therefore required by the Final Judgment to consider the proposals of those airlines that wish to acquire divestiture assets to determine whether a proposed acquirer would fulfill the purpose of the settlement.

Having considered the proposals of Delta Airlines, Southwest Airlines, and Virgin America for the Love Field gates, we have concluded that divestiture to Virgin America, which has no existing presence at Love Field and will introduce a new competitor at that airport, accomplishes the goal of the Final Judgment. The other two proposed acquirers do not. Delta, a legacy carrier, is not an appropriate divestiture candidate for reasons the Antitrust Division has explained in its filings with the Court.¹ We rejected the proposal by Southwest given its already significant presence at Love Field, an airport that is gate constrained pursuant to law. Southwest already controls 16 of the 20 Love Field gates. If it obtained the two American gates, it would then dominate 90% of Love Field gates, thereby denying consumers the benefits of meaningful competition at this facilities-constrained airport. We would also reject a proposal from the City of either of these two acquirers.

We understand that American has the legal right under its preferential-use lease at Love Field to sublet its gates to an airline of its choosing, subject to approval of the City Manager. In the past, American has sub-let its gates as a matter of course to different airlines, including Seaport Air, without any objection by the city. We have not seen anything in the lease or the Sublease or any other facts that would foreclose or call into question Virgin America as an acceptable sub-lessee. American and Virgin America will soon be requesting your official approval of the Sublease pursuant to the terms of American's lease. We would appreciate your approval of that request. Doing so will allow American to fulfill its agreed-upon – and Court-ordered – divestiture requirement and will help ensure a smooth transition and additional competitive benefits for Dallas passengers.

Please feel free to contact me if I can be of any assistance.

Sincerely,



William H. Stallings
Chief, Transportation, Energy &
Agriculture Section

¹ See Response of Plaintiff United States to Public Comments on the Proposed Final Judgment, at 39-44, available at <http://www.justice.gov/atr/cases/f304200/304233.pdf>.