

acquisition of Midcoast Aviation, Inc. (hereinafter "Midcoast") by Sabreliner Corporation, (hereinafter "Sabreliner") was a violation of Section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition for the sale of jet fuel by fixed base operators ("FBOs") to general aviation aircraft at St. Louis-Lambert International Airport. Sabreliner and Midcoast are the only two providers of jet fuel for transient general aviation customers at Lambert Field.

On February 6, 1995, the United States and defendant also filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, Sabreliner would be required to sell or assign, by May 1, 1995, certain assets and leasehold interests. If it should fail to do so, a trustee appointed by the Court would be empowered to divest these assets.

The United States and Sabreliner have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

On November 2, 1994, Sabreliner, Midcoast, and Trans World Airlines, Inc. (the parent of Midcoast) entered into an agreement under which Sabreliner would acquire all of the stock of Midcoast for approximately \$7.2 million.

Sabreliner, engaged primarily in the business of repairing and overhauling jet aircraft, also operates a FBO service at Lambert Field in St. Louis. Sabreliner's total revenues for fiscal 1994 were over \$100 million.

Midcoast has FBO facilities at Adams Field in Little Rock, AK, Bi-State Parks in Cahokia, IL, and St. Louis-Lambert in St. Louis, MO. From these facilities, Midcoast performs repairs, maintenance, and overhauls in addition to other FBO services, including jet fueling. Midcoast had revenues of \$41 million in 1993.

FBOs provide aircraft terminaling services to general aviation aircraft customers, typically charter operators or other private operators that provide transportation for business executives.

These services principally involve aircraft fueling services and maintenance services, such as aircraft cleaning and de-icing, and also the provision of such facilities as lounges for passengers and flight crews, ground transportation, and canteens. Last year, general aviation customers purchased around \$1 billion of jet fuel from FBOs nationwide.

General aviation customers flying into airports other than the airport where they are based are called "transients." If transient general aviation customers need to purchase fuel away from home, they must purchase fuel from an FBO.

Pilots of corporate and charter jets select the airports to which they will fly based on where their passengers need to go, or where their passengers need to be picked up. The pilots will then choose then FBO at that airport offering the most favorable combination of fuel prices and services. There are no alternative sources to which the pilots would switch to obtain jet fuel if the FBOs raise prices.

Although Lambert Field is one of several airports in the St. Louis area servicing general aviation aircraft, Lambert is the only airport in St. Louis that provides commercial scheduled domestic and international service. In addition, Lambert offers close proximity to downtown St. Louis. Both of these features make Lambert attractive to general aviation passengers.

Because of the large volume of commercial traffic served by Lambert, however, the airport is frequently very congested. To avoid this congestion, general aviation pilots prefer to use other airports in the St. Louis area, which accommodate primarily general aviation traffic. General aviation aircraft usually will fly into Lambert only if it is necessary to satisfy a passenger's travel requirements. Those pilots that select Lambert as their destination airport, therefore, are not likely to change their flight plan to obtain lower fuel prices at other airports.

The Complaint alleges that the sale of jet fuel to transient general aviation customers is a relevant product market for antitrust purposes. The Complaint further alleges that Lambert-St. Louis International Airport is a relevant geographic market within the meaning of Section 7 of the Clayton Act. The Complaint refers to the relevant market as the "Lambert transient general aviation jet fuel market."

Sabreliner and Midcoast have been the only two FBOs providing, and capable of providing in the future, fueling services to general aviation aircraft at Lambert Field. Based on jet fuel sales revenue, Sabreliner has 15%

of that market and Midcoast has 85%. Transient general aviation customers have benefited from competition between these two firms, receiving lower jet fuel prices and improved FBO services. As a result of its acquisition of Midcoast, Sabreliner now has a monopoly of the Lambert transient general aviation jet fuel market, which, absent relief, will likely cause general aviation customers to pay higher prices for jet fuel and received diminished services.

The St. Louis Airport Authority has committed to expanding the amount of space available at Lambert for scheduled commercial traffic and is unlikely to allocate more space to accommodate another FBO in the near future. Therefore, an increase in the price of jet fuel to transient general aviation customers will not be defeated by a new entrant.

III

Explanation of The Proposed Final Judgment

The United States brought this action because the effect of the acquisition of Midcoast by Sabreliner may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the Lambert transient general aviation jet fuel market. The risk to competition posed by this acquisition, however, would be eliminated if the assets and leases currently held by Sabreliner to operate its Lambert transient general aviation fueling business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Sabreliner, by May 1, 1995, to divest either its Transient Fuel Service Business as defined in Section II. D, or its Cargo and General Aviation Business, as defined in Section II. E of the proposed Final Judgment. Divestiture of one of the two groups of assets and leaseholds will cure the potential anticompetitive consequences of Sabreliner's acquisition of Midcoast.

The first group, Sabreliner's Transient General Aviation Business, includes the assets and leases a prospective purchaser would need to effectively operate a stand-alone transient general aviation fueling business. Should a purchaser elect to acquire and operate