

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff,

v.

GOOGLE INC.

and

ITA SOFTWARE, INC.

Defendants.

Case: 1:11-cv-00688 (RLW)

**UNITED STATES' MOTION TO ENTER FINAL JUDGMENT AND SUPPORTING
MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (attached as [Exhibit A](#)) may be entered at this time without further hearing if the Court determines that entry is in the public interest.¹ The Defendants have stipulated to entry of the proposed Final Judgment without further notice to any party or other proceedings. No party or member of the public has requested a hearing. The Competitive Impact Statement ("CIS"), filed by the United States on April 8, 2011, explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance (attached as

¹ The proposed Final Judgment attached to this Motion is the same as the one originally filed on April 8, 2011.

[Exhibit B](#)) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting periods have expired.

I. BACKGROUND

On April 8, 2011, the United States filed the Complaint in this matter, alleging that Google's proposed acquisition of ITA, if permitted to proceed, would substantially lessen competition in the market for comparative flight search services, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States also filed a Stipulation and Order and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the agreement, and a CIS. The proposed Final Judgment is designed to preserve competition in the market for comparative flight search services by mandating certain conduct remedies. First, the proposed Final Judgment requires Google to continue to license and improve ITA's flight search technology. Second, the proposed Final Judgment requires Google to observe strict firewall commitments to ensure the confidentiality of licensee information. Finally, the proposed Final Judgment requires Google to report to the United States certain complaints that it receives that it has acted unfairly towards any online travel company in flight search advertising.

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. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United

States filed a CIS in this Court on April 8, 2011; published the proposed Final Judgment and CIS in the *Federal Register* on April 14, 2011, *see* 76 Fed. Reg. 21,017 (2011); and caused to be published in *The Washington Post* a summary of the terms of the proposed Final Judgment for seven days during the time period between April 13, 2011 and April 22, 2011. The 60-day period for public comments ended on June 21, 2011 and no comments were received. The Certificate of Compliance filed with this Motion as Exhibit B recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall 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).

In its CIS filed on April 8, 2011, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, have had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS, the proposed Final Judgment is within the range of settlements consistent with the public interest and the United States therefore requests that this Court enter the proposed Final Judgment.

IV. CONCLUSION

For the reasons set forth in this Motion and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment attached hereto be entered as soon as possible.

Dated: July 7, 2011

Respectfully submitted,

/s/

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