

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Washington, D.C. 20001

Plaintiff,

v.

USAIR GROUP, INC.,
2345 Crystal Drive
Arlington, VA 22227

Defendant.

Civil Action No. 93 0530

3/15/93

COMPLAINT

(For Violation of Section 7 of the Clayton Act)

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by the defendant, as herein alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, with respect to the defendant, since the defendant named herein is a corporation that transacts business and is found in the District of Columbia.

II.

DEFENDANT

3. USAir Group, Inc. ("USAir") is made a defendant. USAir is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal offices in Arlington, Virginia. USAir provides scheduled airline passenger service through its wholly owned subsidiary, USAir, Inc. It has been designated by the United States Government as having the right to provide scheduled air passenger service to London from three U.S. cities. USAir is engaged in interstate commerce, in commerce between the United States and foreign nations, and in activities affecting such commerce. USAir's combined domestic and international operating revenues in 1992 were more than \$6 billion.

III.

BRITISH AIRWAYS

4. British Airways PLC ("BA") is a foreign corporation organized and existing under the laws of England and Wales. It has been designated by the Government of the United Kingdom of

Great Britain and Northern Ireland (the "U.K.") as having the right to provide scheduled airline passenger service between the U.K. and 15 U.S. cities.

IV.

TRADE AND COMMERCE

5. For a significant number of passengers travelling between cities or metropolitan areas in the United States and London there is no substitute for scheduled airline passenger service to which such passengers could turn in response to a small but significant and nontransitory increase in the price of scheduled airline passenger service. Scheduled airline passenger service between cities or metropolitan areas in the United States and London, England constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

6. Scheduled airline passenger service between cities is provided either without stops at any intermediate point or with a stop or change of aircraft at one or more intermediate points. Nonstop scheduled airline passenger service is faster and more reliable than scheduled airline passenger service that requires the passenger to stop or change planes at an intermediate point. A significant number of passengers travelling between cities or metropolitan areas in the United States and London value their time highly (for business purposes or for other reasons). In city pairs where nonstop

service is available, one-stop or connecting airline passenger service is not a substitute to which such passengers could turn in response to a small but significant and nontransitory increase in the price of nonstop service.

7. Nonstop scheduled airline passenger service between cities or metropolitan areas in the United States and London, England constitutes a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

8. United States cities and metropolitan areas from which scheduled airline passenger service and nonstop scheduled airline passenger service to London are provided each constitute a section of the country and a relevant geographic market within the meaning of Section 7 of the Clayton Act.

9. Air transportation between the United States and London is governed by a bilateral air services agreement between the United States and the U.K. Pursuant to that agreement, airlines may be designated by the two governments to provide scheduled airline passenger service only between specified gateway cities, and the number of carriers providing service from each gateway city and the amount of service they provide are limited. Scheduled airline passenger service between cities that are not gateways or between a gateway city and a non-gateway city must connect or stop at a gateway. Moreover, airlines offering service between the United States and the U.K. are permitted by their respective governments to meet

under the aegis of the International Air Transport Association and agree with one another on the prices they will charge for such service.

10. BA provides scheduled airline passenger service between the United States and London via fourteen U.S. gateways, including Philadelphia and Baltimore/Washington. BA is the largest provider of scheduled airline passenger service between the U.S. and London, providing approximately 38% of all seats on nonstop flights operated in such service.

11. USAir provides scheduled airline passenger service between cities or metropolitan areas in the United States and London via three U.S. gateways, including Philadelphia, and Baltimore/Washington and Charlotte. USAir is the sixth largest provider of scheduled airline passenger service between the U.S. and London, providing approximately 3% of all seats on nonstop flights operated in such service.

12. USAir and BA compete in the provision of scheduled airline passenger service between London and U.S. cities or metropolitan areas located in the Northeastern and Mid-Atlantic regions of the United States, and in the provision of nonstop scheduled airline passenger service between Philadelphia and London and Baltimore/Washington and London.

13. USAir and BA are the only airlines authorized to provide nonstop scheduled passenger airline service in the Philadelphia-London market and are two of the only three airlines authorized to provide nonstop scheduled passenger airline service in the Baltimore/Washington-London market.

14. The Herfindahl-Hirschman Index ("HHI") is a measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

15. As measured by the number of seats operated from gateways that offer reasonably convenient connections, markets for the provision of scheduled airline passenger service between London and U.S. cities and metropolitan areas located in the Northeastern and Mid-Atlantic regions of the United States are highly concentrated. The gateway capacity HHIs for such service are 2150 for cities and metropolitan areas located in the northeastern region of the United States and 1993 for those located in the Mid-Atlantic region. The effect of a combination of USAir and BA as competitors would be to increase the HHI for northeastern cities by 349 to 2499, and to increase the HHI for Mid-Atlantic cities by 466 to 2459.

IV.

ALLEGED VIOLATION

16. On January 21, 1993, BA acquired approximately 20% of the voting stock of USAir for \$300 million, and acquired an option to purchase an additional 25% of USAir's equity for an additional \$450 million. On that date, USAir and BA also agreed to conduct joint operations on scheduled airline passenger service to London via USAir's Philadelphia, Baltimore and Charlotte gateways using shared airline designator codes, coordinated schedules, and integrated advertising and reservations. USAir and BA intend to begin joint operations over a nine-month time period beginning in May, 1993.

17. Following implementation of the agreements described in paragraph 16, BA will have a significant interest in any profits or losses incurred by USAir on its U.S.-London routes and USAir will have an interest in increasing BA's traffic and profits on its U.S.-London routes. These interests in each others' profits and losses will reduce the two carriers' incentives to compete against one another in the provision of scheduled airline passenger service between cities and metropolitan areas in the Northeastern and Mid-Atlantic regions of the United States and London, and nonstop scheduled airline passenger service between Philadelphia and London and Baltimore/Washington and London.

18. The effect of the agreements, if carried out, will be to lessen competition in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act, in the following ways, among others:

a. Actual and potential competition between BA and USAir in the provision of scheduled airline passenger service and nonstop scheduled airline passenger service in the aforementioned U.S.-London markets will be reduced or eliminated through the integration of services and operations of BA and USAir.

b. Competition generally in the provision of scheduled airline passenger service and nonstop scheduled airline passenger service in the aforementioned U.S.-London markets may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

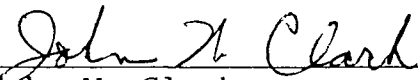
1. That the proposed agreements between USAir and BA be adjudged in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

2. That USAir be ordered to divest any authority to provide nonstop scheduled airline passenger service between Baltimore and London, Philadelphia and London, and Charlotte and London;


3. That plaintiff have such other and further relief as the Court may deem just and proper;

4. That plaintiff recover the costs of this action.

Dated: March 15, 1993



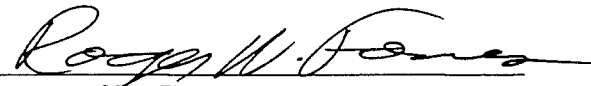
John W. Clark
Acting Assistant Attorney
General



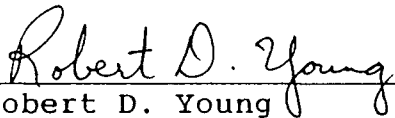
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