

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE,  
  
Plaintiff  
  
v.  
  
BAR HARBOR AIRWAYS  
INCORPORATED d/b/a BAR  
HARBOR AIRLINES,  
  
Defendant

STATEMENT OF THE  
STATE OF MAINE

This document accompanies the Complaint and proposed  
Consent Decree filed today in connection with the  
above-referenced action.

In brief, the Complaint recites that two airlines that are  
serving the State of Maine, Bar Harbor and Valley, intend to  
enter into a transaction by which Bar Harbor will acquire  
Valley. The Complaint alleges that this acquisition threatens  
to substantially lessen competition between the two airlines,  
particularly with respect to Aroostook County customers.

The proposed Consent Decree allows the acquisition to  
proceed, but stipulates that so long as post-acquisition Bar  
Harbor continues to serve Presque Isle, the airline will also  
serve Frenchville directly.


Vc

The proposed Consent Decree addresses the principal concern underlying the Complaint. At present, Valley, with Aroostook County facilities in Frenchville and Presque Isle, competes with Bar Harbor, whose sole Aroostook County facilities are in Presque Isle, for passengers in the St. John River Valley as well as in the area between Frenchville and Presque Isle. The consolidation of these two airlines raises the possibility that all service to Aroostook County will be confined to Presque Isle, thereby eliminating the choice that consumers, particularly in northern Maine, now have between Valley's service to and from Frenchville and Bar Harbor's service to and from Presque Isle. The proposed Consent Decree addresses this concern by stipulating that Bar Harbor, so long as it continues to serve any place in Aroostook County over the next five years, will continue to serve Frenchville. This stipulation preserves the choice that exists under the current competitive market configuration.

For this reason, the State asks the Court to find that the proposed Decree is in the public interest, and to approve the Decree.

Dated:

Apr. 8 1986

  
STEPHEN L. WESSLER  
Assistant Attorney General  
Chief, Consumer & Antitrust Division  
State House Station 6  
Augusta, Maine 04333  
(207) 289-3661

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE,	)	
	)	
Plaintiff	)	
	)	
v.	)	COMPLAINT
	)	(INJUNCTIVE RELIEF REQUESTED)
BAR HARBOR AIRWAYS	)	
INCORPORATED, d/b/a BAR	)	
HARBOR AIRLINES	)	
	)	
Defendant	)	

INTRODUCTION

1. This is an action under 10 M.R.S.A. § 1104 (Supp. 1985), to obtain an injunction to remedy the adverse effects on competition likely to result from Defendant's proposed acquisition of Valley Flying Service, Inc., d/b/a Valley Airlines, (hereinafter referred to as "Valley").

PARTIES AND JURISDICTION

2. Defendant Bar Harbor Airways, Incorporated, (hereinafter referred to as "Bar Harbor") is a Maine corporation with headquarters in Bangor, Penobscot County, Maine.

3. Plaintiff, State of Maine, by and through James E. Tierney, Attorney General, brings this action in the public interest to preserve the benefits of free and open competition between commercial airlines in Penobscot and Aroostook Counties, Maine.

4. This Court has jurisdiction of this cause of action under 10 M.R.S.A. §§ 1101-1108 (1980 & 1985).

DEFINITIONS

5. "Cummuter airline" shall mean an airline regularly flying between two or more airports located within the State of Maine.

NATURE OF TRADE AND COMMERCE

6. Bar Harbor is a commuter airline operating routes within and outside the State of Maine including the following cities: Presque Isle, Bangor, Waterville, Augusta, Lewiston and Portland, Maine, and Boston, Massachusetts.

7. Valley is a commuter airline operating routes within the State of Maine including the following cities: Frenchville, Presque Isle, Bangor, Augusta, and Portland.

MARKET DEFINITION

8. The relevant line of commerce in which to assess Bar Harbor's proposed acquisition of Valley is the operation of commuter airlines.

9. The relevant geographical area in which to assess Bar Harbor's proposed acquisition of Valley is Penobscot and Aroostook Counties, Maine.

MARKET CONCENTRATION

10. The market share of commuter airlines serving airports in Penobscot and Aroostook Counties as of the date of this Complaint is highly concentrated between two competitors.

11. Bar Harbor is the leading commuter airline, by the number of passengers, in Penobscot and Aroostook Counties.

12. Of the 63,758 passengers who flew on commuter airlines departing from Penobscot or Aroostook Counties in 1985 (Bangor, Presque Isle, and Frenchville airports), 59,005 or 92.5% flew on Bar Harbor, while 4,753 or 7.5% flew on Valley.

#### BAR HARBOR'S PROPOSED ACQUISITION

13. Bar Harbor and Valley have reached agreement in principal upon a proposed acquisition of Valley by Bar Harbor. Pursuant to the agreement, Bar Harbor proposes to acquire within the next several weeks the entire assets (including trademark) of Valley.

#### CAUSE OF ACTION

14. Defendant's proposed acquisition of Valley may substantially lessen competition among commuter airlines operating in Penobscot and Aroostook Counties in the following ways:

A. Direct competition will be eliminated between Defendant and Valley;

B. Defendant's market power and ability to affect or control price may be increased;

C. The concentration of market shares among commuter airlines will be increased.

15. Defendant's proposed acquisition of Valley, if completed, would violate 10 M.R.S.A. § 1102-A (Supp. 1985).

REQUEST FOR RELIEF

WHEREFORE, the State of Maine prays that this Court:

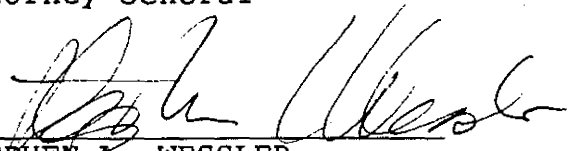
1. Enjoin Defendant from acquiring, purchasing or consolidating with Valley except on condition that certain routes be continued for a reasonable period of time.
2. Award such other relief as the Court deems just and proper.

DATED: April 8, 1986

Respectfully submitted,

JAMES E. TIERNEY  
Attorney General

By:

  
STEPHEN L. WESSLER  
Assistant Attorney General  
Chief, Consumer & Antitrust Division  
State House Station #6  
Augusta, Maine 04333  
(207) 289-3661

Attorney for State of Maine

4-8-86

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE,  
  
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BAR HARBOR AIRWAYS  
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HARBOR AIRLINES,  
  
Defendant

CONSENT DECREE

Plaintiff, the State of Maine, having filed its Complaint on *April 8*, 1986, and Plaintiff and Defendant having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to such issue (except Section I below; now, therefore, before the taking of testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered an decreed as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action. This Complaint states a claim upon which relief may be granted against Defendant under 10 M.R.S.A. § 1104 (Supp. 1985).

## II. DEFINITION

"Bar Harbor Airways, Incorporated" (hereinafter referred to as "Bar Harbor") shall mean Bar Harbor and any and all persons acting for or on its behalf or under its control, including, but not limited to, any agents, employees or subsidiaries.

## III. RELIEF

For a period of five years from the date of Bar Harbor's acquisition of substantially all of the assets or stock of Valley Flying Service, Inc., Bar Harbor shall provide air carrier flight services between Presque Isle and Frenchville with regularity not less than that actually provided by Valley Flying Service, Inc. during the calendar month of March 1986; provided, however, that this provision shall not apply if:

A. Bar Harbor ceases to provide air carrier flight services from any point within or without the State of Maine to Presque Isle or any other point in Aroostook County; or

B. After two years from the date of this Consent Decree Bar Harbor petitions this Court to terminate the Decree on the basis that Bar Harbor has experienced an actual, or will experience a projected, net operating loss in providing such air carrier flight service between Presque Isle and Frenchville. Bar Harbor shall include with its Petition data supporting its claim that it has experienced an actual, or will experience a projected, net operating loss.



1. This Decree shall terminate forty five (45) days after Bar Harbor files its Petition unless the Attorney General requests a hearing within that time period. This 45-day period shall not be extended except for good cause shown.

2. The Court shall hold a hearing within fifteen (15) days after the Attorney General's request. The Court, after hearing, shall terminate the Decree unless the Attorney General establishes that Bar Harbor has not experienced an actual, or will not experience a projected, net operating loss in providing such air carrier flight service between Presque Isle and Frenchville. This 15-day period shall not be extended except for good cause shown.

#### IV. RETENTION OF JURISDICTION

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.


V. PUBLIC INTEREST

Entry of this Consent Decree is in the public interest.

Consented to on behalf of the  
State of Maine by:

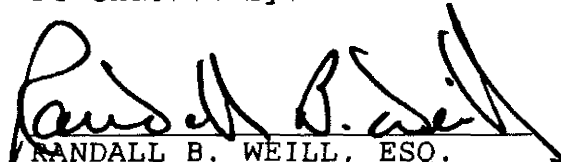
JAMES E. TIERNEY  
Attorney General

DATED: Apr. 18 1986

  
STEPHEN L. WESSLER  
Assistant Attorney General  
Chief, Consumer & Antitrust Division  
State House Station #6  
Augusta, Maine 04333  
(207) 289-3661

Consented to on behalf of  
Defendants by:

DATED: April 7, 1986

  
RANDALL B. WEILL, ESQ.  
Preti, Flaherty & Beliveau  
443 Congress Street  
Portland, Maine 04101  
(207) 775-5831

DATED: April 8, 1986

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JUSTICE, SUPERIOR COURT