

## AMR's Approved Plan Unlikely To Sway DOJ In Merger Fight

By Maria Chutchian

*Law360, New York (September 13, 2013, 9:15 PM ET)* -- As AMR Corp. battles the federal government's efforts to block its proposed merger with US Airways Group Inc., the airline could try to use Thursday's court approval of its bankruptcy plan to pressure the government into a settlement, but experts say it's unlikely to gain much leverage.

The U.S. Department of Justice is going to focus its efforts to block the proposed \$11 billion merger on the impact it would have on a market already consolidated by the mergers that produced the present-day Delta Air Lines Inc. and United Air Lines Inc. The DOJ probably won't see a bankruptcy judge's blessing of the merger as a reason to back off, experts say.

"The DOJ are professionals. They're looking to block this transaction, and they're going to play it out. And just because the plan's been confirmed is not going to change that," Jonathan Lewis of BakerHostetler said.

Even though U.S. Bankruptcy Judge Sean H. Lane has **confirmed** the American Airlines Inc. parent's reorganization plan, AMR is still a long way from exiting bankruptcy. Its plan is contingent on the US Airways merger — but it can't consummate the deal until it resolves the **DOJ lawsuit** contending the merger would harm competition in the airline industry and plague consumers with higher ticket prices.

Judge Lane has made clear that he believes the bankruptcy proceeding and the antitrust litigation can coexist without either interfering with the other. And bankruptcy and antitrust lawyers agree that the plan confirmation probably won't make any real difference with respect to the legal or practical matters surrounding the litigation.

"There's certainly concern over whether AMR can get a confirmable plan, [if it needs] to go back and reach deals with, for instance, the unions," Jeff Eler of Gruber Hurst Johansen Hail Shank LLP said.

"That being said," he added, "I don't think you can't overstate the decision because it ... doesn't try to usurp what's going on in the DOJ litigation."

While both sides appeared amenable to a settlement when the DOJ first filed its suit in August, they are now set to duke it out in a trial beginning Nov. 25. If the matter is not resolved and merger is not consummated by Dec. 17, the agreement between the two airlines requires that the deal be terminated, though a recent report in The Wall Street Journal cites sources saying the expiration date may be pushed back.

The litigation centers on antitrust concerns, but its outcome may rest partly on how much deference the judge gives the bankruptcy judge. Some federal district judges weigh the decisions of bankruptcy judges more heavily than others, Don Gaffney of Snell & Wilmer LLP said.

“If a district judge has a high respect for the bankruptcy court, he may have a little more willingness to bend in favor of the confirmed plan,” Gaffney said.

If the district judge sides with the DOJ and halts the merger, AMR will be forced to return to the drawing board in bankruptcy court. This could mean either proposing a plan in which it exits bankruptcy on its own or else finding another partner. Either option would draw out the bankruptcy even longer, causing more fees to pile up.

Whether or not the airline will be forced to craft another plan is tough to predict, experts say. Some say the merger could still happen under a settlement. Rumors floating among industry experts hint that the government is really angling for airport slots in the Northeast and Washington, D.C., and would be willing to allow the merger to go through if AMR gave up those slots.

The merger could also be approved if the court decided the government had waited too long to take a stand on megamergers in the airline industry. Allowing the Delta and Northwest Airlines merger or the United and Continental Airlines Inc. mergers may come back to haunt it, experts say.

“I do think if the DOJ was going to be making these arguments, it might’ve been better doing it a while back,” Jan Hayden of Baker Donelson Bearman Caldwell & Berkowitz PC said.

On the other hand, the Justice Department could win on an argument that current market conditions leave no room for another megamerger. Decades after the industry was deregulated, the DOJ is being forced to consider the nationwide impact of airline mergers on competition, which it hadn't in the past, John Briggs of Axinn Veltrop & Harkrider LLP said.

“I personally think the DOJ is likely to prevail on that argument,” Briggs said.

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