

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VIRGINIA NATIONAL BANKSHARES,
INC.; VIRGINIA NATIONAL BANK;
and FIRST STATE BANK OF WISE,

Defendants.

Civil Action No. 82-0083

Filed: 2/26/82

COMPLAINT

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 relief against the above-named defendants, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed under Section 15 of the Clayton Act (15 U.S.C. § 25), to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18).

2. Each of the defendants transacts business and is found within the Western District of Virginia.

II.

DEFENDANTS

3. Virginia National Bankshares, Inc. ("Bankshares") is made a defendant herein. Bankshares is a bank holding company organized and existing under the laws of the State of Virginia, with its principal place of business in the City of Norfolk, Virginia. Bankshares is the second largest commercial banking organization headquartered in the State of Virginia, as measured by total deposits and assets. On December 31, 1981, it had total deposits of \$2.5 billion and total assets of \$3.2 billion. Bankshares's only depository institution subsidiary is Virginia National Bank.

4. Virginia National Bank ("Virginia National") is made a defendant herein. Virginia National is a national banking association organized and existing under the laws of the United States of America, with its principal place of business in the City of Norfolk, Virginia. It operates 184 offices throughout the State of Virginia, including two offices in Coeburn, Wise County, Virginia. Virginia National is the second largest commercial bank in the State of Virginia, as measured by total deposits and assets. On December 31, 1981, Virginia National held total deposits of \$2.5 billion, total assets of \$3.2 billion, and total loans of \$1.7 billion.

5. First State Bank of Wise ("First State") is made a defendant herein. First State is a commercial bank organized and existing under the laws of the State of Virginia, with its principal place of business in Wise, Wise County, Virginia. It operates its main office in Wise and one branch in the City of Norton, Virginia. On December 31, 1981, First State held total deposits of \$58.3 million, total assets of \$68.2 million, and total loans of \$36.2 million.

6. Defendants, directly or through a subsidiary, are each engaged in retail banking and wholesale banking.

III.

DEFINITIONS

7. "Depository institution" means a commercial bank, thrift institution (e.g., savings and loan association) or other organization that is authorized, among other things, to accept demand, time, savings or other deposits, all or in part insured by a governmental agency, and to make loans.

8. "Retail banking" means all banking services offered to individual customers, including:

- (a) "time deposits," i.e., money deposited for a fixed term at an agreed upon interest rate, withdrawable before the expiration of that term only with payment of a penalty;

- (b) "savings deposits," i.e., money deposited at an agreed upon interest rate, often withdrawable as of right only upon fourteen days' notice, but withdrawable in practice upon demand;
- (c) "transaction accounts," including checking accounts and negotiable order of withdrawal ("NOW") accounts, i.e., money deposited with a depository institution either at an agreed upon interest rate or at no interest, withdrawable as of right upon demand or upon fourteen days' notice, but withdrawable in practice upon demand, and upon which third-party drafts may be drawn by the depositor;
- (d) "consumer loans," i.e., secured or unsecured loans to an individual banking customer, including loans for automobiles, retail purchases and debt consolidation; and
- (e) "residential mortgage loans," i.e., long-term loans against individual dwellings for one to four families.

Retail banking excludes banking services offered to commercial customers.

9. "Wholesale banking" means all banking services offered to commercial customers, including:

- (a) "demand deposits," i.e., money deposited with a bank that can be withdrawn as of right upon demand, including but not limited to checking accounts;
- (b) "time deposits" and "savings deposits," as those terms are defined in Paragraph 8, held in accounts of commercial customers; and

(c) "commercial loans," i.e., secured or unsecured loans to commercial customers.

10. "IPC demand deposits" means all demand deposits held by depository institutions in accounts of individuals, partnerships or corporations.

11. "IPC time and savings deposits" means time and savings deposits deposited by individuals, partnerships, and corporations, i.e., all time and savings deposits other than government funds.

12. "Total deposits" means all deposits, regardless of the type of depositor or account.

13. "Wise County" means the geographic area that comprises Wise County, including the independent City of Norton, Virginia, located within Wise County.

IV.

INTERSTATE COMMERCE

14. Customers of Virginia National and First State regularly utilize interstate communications, including the mails, telephone, and telegraph, to obtain services from and carry on business with each defendant. Virginia National and First State regularly utilize interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with other financial institutions. Virginia National and First State are engaged in and affect interstate commerce.

V.

TRADE AND COMMERCE

15. Depository institutions, such as commercial banks and thrift institutions, are engaged in the business of providing a wide variety of financial products and services to business and individual customers. These products and services include the acceptance of various types of deposits, including demand, time and savings deposits, and the granting of various types of credit, including loans. While both commercial banks and thrift institutions may provide similar services to individual customers, thrift institutions are precluded by law from

providing most products and services to commercial entities. In addition, credit unions are not open to the general public, as membership is confined to persons associated by a common bond, such as employment with a particular employer.

16. There is a relationship between the ability to accept deposits and the granting of credit and the provision of other services by depository institutions. The deposits accepted by a depository institution are the primary source of the loans made by it and a principal source of funds to support other services.

17. Virginia National and First State offer a variety of retail and wholesale banking services to individuals and commercial customers, including demand, time and savings accounts; and consumer, real estate, commercial and other types of loans.

18. Depository institutions are highly regulated at both the federal and state levels. Among other things, this regulatory scheme imposes restrictions on the formation and geographic expansion of national and state banking associations. As a result, the ability of additional banks to enter a given geographic area is seriously limited. For example, Virginia State banking law confines branching to the city or county in which the main office is located; to cities contiguous to the county or city in which the main office is located; and within a 15-mile radius of the boundary line of the county or city in which the main office is located. Va. Code § 6.1-39.

19. Wise County is located in the southwestern tip of Virginia in the Central Appalachian Mountains. It is bordered on the north and northwest by the State of Kentucky and to the south, one county away, is the State of Tennessee. The county is predominantly rural with small towns and communities scattered in the flatter areas of its otherwise mountainous terrain. Covering an area of approximately 410 square miles, Wise County had a total 1980 population of 48,620. The three largest cities and towns in the county are the City of Norton,

located in the center of the county, with a 1980 population of 4,757; the town of Big Stone Gap, located in the southwestern tip of the county, with a 1980 population of 4,748; and the town of Wise, located five miles north of Norton, with a 1980 population of 3,894. The economy of Wise County is dominated by coal mining, and the overall economic well-being of the county depends upon the demand for, and the ability to produce, coal.

20. Virginia National and First State are direct competitors. Their Wise County offices are about eight miles apart.

21. In addition to Virginia National and First State, Wise County has five other commercial banks. Together these seven banks operate a total of 18 banking offices in the county. On June 30, 1981, these offices had total deposits of \$308.3 million, IPC demand deposits of \$52.8 million, and IPC time and savings deposits of \$238.8 million.

22. Wise County also has two savings and loan associations. On June 30, 1981, these savings and loan associations had total deposits of \$25 million in their offices in the county.

23. Wholesale banking in Wise County is highly concentrated. On June 30, 1981, the top four of the seven commercial banks with offices in the county held 88.48% of the IPC demand deposits and 87.93% of the total bank deposits in the county.

24. On June 30, 1981, First State ranked third with 18.01% of the IPC demand deposits held in banking offices in Wise County. Virginia National ranked fourth with 11.39%. On the same date, First State ranked third with 19.65% of total bank deposits in the county. Virginia National ranked fourth with 10.89%.

25. If Virginia National and First State merge, the resulting institution would rank second with 29.40% of the IPC demand deposits and 30.53% of the total deposits held in banking offices in Wise County.

26. Retail banking in Wise County is also highly concentrated. On June 30, 1981, the top four depository institutions with offices in the county held 79.22% of the IPC time and savings deposits and 81.32% of total deposits in the county.

27. On June 30, 1981, First State ranked third with 16.26% of the IPC time and savings deposits held by depository institutions in Wise County. Virginia National ranked fourth with 9.87%. On the same date, First State ranked third with 18.17% of the total deposits in the county. Virginia National ranked fourth with 10.07%.

28. If Virginia National and First State merge, the resulting institution would rank second with 26.13% of the IPC time and savings deposits and 28.24% of the total deposits held by depository institutions in Wise County.

VI.

VIOLATION ALLEGED

29. Defendants have entered into an agreement which, if consummated, will result in the merger of Virginia National and First State. The Comptroller of the Currency approved the proposed merger on January 28, 1982.

30. The effect of the aforesaid merger of Virginia National and First State may be substantially to lessen competition in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) existing competition and the potential for increased competition between Virginia National and First State in retail and wholesale banking in Wise County will be permanently eliminated;
- (b) concentration in retail and wholesale banking in Wise County will be significantly increased; and
- (c) competition generally in retail banking and wholesale banking in Wise County may be substantially lessened.

Prayer


WHEREFORE, plaintiff prays:

1. That the merger described between Virginia National and First State be adjudged to be in violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid merger agreement or any similar plan or agreement the effect of which would be to merge, consolidate, or in any other way combine the business of said defendants.

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

4. That the plaintiff recover the costs of this action.


WILLIAM F. BAXTER
Assistant Attorney General



MARTHA L. COULTER


RONALD G. CARR

DARYL ANNE MILLER


MARK LEDDY

Attorneys,
Department of Justice


STANLEY M. GORINSON

ROBERT E. HAUBERG, JR.

Attorneys,
Department of Justice

John P. Alderman
United States Attorney

Assistant United States Attorney

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