

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA, Plaintiff,
v. Civil Action No. EP-72-CA-83
TRANS TEXAS BANCORPORATION, INC.,
EL PASO NATIONAL BANK, FIRST
STATE BANK, NORTHGATE NATIONAL
BANK OF EL PASO, and BORDER
CITY BANK, Filed: March 29, 1972
Defendants.

AMENDED 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 and this action is instituted under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

2. Each of the defendants has its principal place of business, transacts business, and is found within the Western District of Texas, El Paso Division.

THE DEFENDANTS

3. Trans Texas Bancorporation, Inc. (hereinafter referred to as "Trans Texas") is made a defendant herein. Trans Texas is a registered bank holding company organized and existing under the laws of the State of Texas, and has its principal place of business in El Paso, El Paso County, Texas.

4. El Paso National Bank (hereinafter referred to as "El Paso National") is made a defendant herein. El Paso National is a banking association organized and existing under the laws of the United States of America, and has its principal place of business in El Paso, El Paso County, Texas. El Paso National, through its nonledger subsidiary, El Paso International Company, a corporation organized and existing under the laws of the State of Texas, presently owns common stock of each of the other three defendant banks.

5. First State Bank (hereinafter referred to as "First State") is made a defendant herein. First State is a banking association organized and existing under the laws of the State of Texas, and has its principal place of business in El Paso, El Paso County, Texas.

6. Northgate National Bank of El Paso (hereinafter referred to as "Northgate") is made a defendant herein. Northgate is a banking association organized and existing under the laws of the United States of America, and has its principal place of business in El Paso, El Paso County, Texas.

7. Border City Bank (hereinafter referred to as "Border City") is made a defendant herein. Border City is a banking association organized and existing under the laws of the State of Texas, and has its principal place of business in El Paso, El Paso County, Texas.

III

TRADE AND COMMERCE

8. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrator of the nation's check payment system. Through the making of loans to individuals and business firms, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills, and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

9. "Trans Texas" was recently organized for the purpose of acquiring the defendant banks and then operating as a registered bank holding company. It does not presently control any subsidiary bank.

10. El Paso National is the largest commercial bank in El Paso County. As of June 30, 1971, El Paso National had total assets of \$227.3 million, total deposits of \$201.4 million, and loans and discounts of \$108.2 million.

11. First State is the fifth largest commercial bank in El Paso County. As of June 30, 1971, First State had total assets of \$20.8 million, total deposits of \$18.6 million, and loans and discounts of \$11.0 million.

12. Northgate is the sixth largest bank in El Paso County. As of June 30, 1971, Northgate had total assets of \$15.9 million, total deposits of \$14.0 million, and loans and discounts of \$5.9 million.

13. Border City is the thirteenth largest bank in El Paso County. As of June 30, 1971, Border City had total assets of \$1.7 million, total deposits of \$1.0 million, and loans and discounts of \$429,000.

14. El Paso National currently operates its only office in downtown El Paso. El Paso National is located approximately 2.7 miles southwest of First State's only office, approximately 12.2 miles southwest of Northgate's only office, and approximately 9 miles west of Border City's only office. First State's office is located approximately 7.5 miles southwest of Northgate's office, and approximately 7.1 miles west of Border City's office. Border City's office is located approximately 12.5 miles south of Northgate's office. The predominant share of the business of El Paso National, First State, Northgate, and Border City is derived from El Paso County.

15. El Paso National, First State, Northgate, and Border City are significant competitors of each other and other commercial banks in El Paso County. As of June 30, 1971,

El Paso National held approximately 35.5 percent of total deposits held by commercial banks located in El Paso County. As of the same date, First State, Northgate, and Border City held approximately 3.3, 2.5, and .2 percent, respectively, of total deposits held by commercial banks located in El Paso County.

16. El Paso County is a highly concentrated banking market. As of June 30, 1971, the two largest banks together held approximately 67.6 percent of total county deposits; the three largest banks held approximately 79.5 percent of such deposits; and the four largest banks held approximately 84.2 percent of such deposits. If the proposed acquisitions of El Paso National, First State, Northgate, and Border City by Trans Texas are consummated, banking concentration in El Paso County will be significantly increased, the combined shares of the two, three, and four largest banking organizations being increased to 73.5, 85.4, and 90.1 percent of total county deposits, respectively.

17. Customers of El Paso National, First State, Northgate, and Border City regularly utilize interstate communications including the mails, telephone, and telegraph, to carry on their business with, and apply for and obtain the services provided by, these banks. Each of the defendant banks regularly utilizes interstate communications including the mails, telephone, and telegraph, and conducts business with, or provides services to, customers, institutions and other banks located in states other than Texas. Each of the defendant banks is engaged in interstate commerce.

OFFENSE ALLEGED

18. Defendants Trans Texas, El Paso National, First State, Northgate, and Border City have entered into agreements which will result in the acquisition by Trans Texas of 80 percent or more of the voting shares of El Paso National, First State, Northgate, and Border City. The Board of Governors of the Federal Reserve System issued an order approving the proposed acquisitions on February 29, 1972.

19. The effect of the acquisitions described in Paragraph 18 may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual competition and the potential for increased competition among defendants El Paso National, First State, Northgate, and Border City will be eliminated;
- (b) competition generally in commercial banking in El Paso County may be substantially lessened; and
- (c) concentration in commercial banking in El Paso County will be substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the agreements described in Paragraph 18 of this complaint be adjudged to be unlawful and in violation of Section 7 of the Clayton Act.
2. That the defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid acquisition agreements, or any similar plans or agreements, the effect of which would be to merge, consolidate, or in any other way combine the businesses of said defendants.

3. That the defendant Trans Texas be enjoined for a period of ten years from the date of judgment in this action from acquiring any interest in, or merging, consolidating or combining with, any commercial banking organization operating in El Paso County, Texas other than El Paso National; and that the defendant El Paso National be divested of all its stock interest, directly or indirectly owned, in each of the other three defendant banks.

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

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

CERTIFICATION

I, James F. Falco, attorney for the Department of Justice, hereby certify that the foregoing allegations and prayers truly and accurately incorporate the allegations contained in the Complaint of the United States filed March 29, 1972 in the above-entitled cause, as amended by Order of the Court from the bench on May 19, 1972, granting Plaintiff's Motion for Leave to Amend Complaint; directing the filing of an Amended Complaint dated May 19, 1972; and, reserving judgment on the relation back of the Amended Complaint to the date of the Original Complaint.

JAMES F. FALCO
Attorney for Plaintiff

Dated: May 23, 1972

CERTIFICATE OF SERVICE

I, James F. Falco, attorney, United States Department of Justice, do hereby certify that I have on this day served copies of the attached Amended Complaint on the attorney of record for the defendants by placing true copies thereof in the United States mails, postage prepaid, addressed as follows:

William T. Deffebach, Esquire
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Hardie & Galatzan
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JAMES F. FALCO
Attorney, Department of Justice

Dated: May 23, 1972

FILED: May 31, 1972
U.S.D.C. W.D. of Texas
Dan W. Benedict, Clerk
By: ⁴Jeanne Boykin,
Deputy