

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA,
Plaintiff,

v.

FLEET/NORSTAR FINANCIAL GROUP, INC.,
Defendant.

Civil Docket No. 91-0221-P

Filed: July 5, 1991

COMPLAINT

The United States of America, 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, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. The defendant maintains offices, transacts business and is found within the District of Maine.

3. Venue is proper in the District of Maine under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

II. DEFENDANT

4. Fleet/Norstar Financial Group, Inc. ("Fleet") is made a defendant herein. Fleet is a bank holding company organized and existing under the laws of the State of Rhode Island with its principal place of business in Providence, Rhode Island. Fleet is a diversified national financial services company with approximately 1,000 offices in 40 states. It provides, among other things, commercial and consumer banking, mortgage banking, consumer finance, asset-based lending, trust banking, student loan processing, and investment banking. As of March 31, 1991, Fleet had total assets of \$32.6 billion and total deposits of \$23.5 billion.

5. Defendant, directly or through subsidiaries, operates a commercial bank within the State of Maine under the name of Fleet Bank of Maine. Fleet is engaged in commercial and consumer banking and provides a wide range of products and services to business and retail customers. As measured by total deposits, Fleet is the largest commercial bank organization operating in the State of Maine. As of December 1990, Fleet had total deposits of \$2.9 billion in the State of Maine, which accounted for approximately 22 percent of the total deposits from commercial banks and thrift institutions in the state. Fleet operates approximately 110 branch offices located throughout the State of Maine.

III. DEFINITIONS

6. "Business banking services" means banking services offered to business customers, including at least:

- (a) "transaction account deposits, " i.e., money deposited with a depository institution either at an agreed upon interest rate or at no interest, which in practice is withdrawable upon demand and upon which third-party drafts may be drawn by the depositor, including checking accounts and NOW accounts; and
- (b) "commercial loans," i.e., secured or unsecured loans to businesses, excluding commercial mortgages.

Business banking services may also include other services, such as cash and coin, lockbox, cash management, and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

7. "Commercial mortgages" means loans secured by real estate as evidenced by mortgages or other liens on business and industrial properties.

8. "Depository institution" means a commercial bank, savings bank, savings and loan association, or credit union that is authorized, among other things, both to accept demand, time, savings or other deposits, all or in part insured by a governmental agency, and to make loans.

9. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting

numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increase.

10. "NMNB" or "New Maine National Bank" means the FDIC bridge bank currently under the control of the Federal Deposit Insurance Corporation ("FDIC").

11. "Relevant geographic market" means any or all of the following geographic areas:

- (a) the "Bangor market" means the Bangor MSA plus the Penobscot County townships of Alton, Amherst, Argyle, Bradford, Bradley, Carmel, Charlestown, Clifton, Corinth/East Corinth, Dixmont, Etna, Greenbush, Greenfield, Hudson, LaGrange, Levant, Milford, Newburgh and Stetson; the Hancock County townships of Bucksport, Castine, Dedham, Orland, Otis and Verona; the Waldo County townships of Frankfort, Prospect and Stockton Springs; and unorganized townships T1N.D. and T32M.D. in the State of Maine;
- (b) the "Pittsfield market" means the Waldo County township of Burnham; the Somerset County townships of Cambridge, Detroit, Harmony, Hartland, Palmyra, Pittsfield, Ripley

and St. Albans; the Penobscot County townships of Corinna, Dexter, Exeter, Garland, Newport and Plymouth; and the Piscataquis County township of Wellington in the State of Maine; and

- (c) the "Presque Isle-Caribou market" means the Aroostook County townships of Ashland, Blaine, Bridgewater, Caribou, Castle Hill, Caswell, Chapman, Connor, Cox Patent, Easton, Fort Fairfield, Garfield, Limestone/Loring AFB, Mapleton, Mars Hill, Masardis, Nashville, New Sweden, Oxbow, Perham, Portage Lake, Presque Isle, Squapan, Stockholm, Wade, Washburn, Westfield, Westmanland and Woodland, plus unorganized townships T14R-5, T13R-5, T9R-5, T9R-4, T9R-3, T11R-4, T10R-6, T10R-3, TDR-2 and TEP1. in the State of Maine.

12. "Thrift" means state or federally chartered savings banks or savings and loan associations.

13. "Total deposits" means all deposits, regardless of type of depository institution or account.

IV.

INTERSTATE COMMERCE

14. Customers of Fleet and New Maine National Bank regularly utilize interstate communications, including the mails, telephone, and telegraph, to obtain services from and carry on business with the defendant and New Maine National Bank. Both Fleet and New Maine National Bank are federally insured and regulated. Fleet and New Maine National Bank utilize interstate communications, including the mails, telephone, and telegraph, to

conduct business with customers and with other financial institutions. Fleet and New Maine National Bank engage in and affect interstate commerce.

V.

TRADE AND COMMERCE

15. Depository institutions, such as commercial banks and thrift institutions, are engaged generally in the business of providing a wide variety of financial products and services to business and retail consumers. These products and services include the acceptance of various types of deposits, including transaction, time, and savings deposits, and the granting of various types of credit, including loans.

16. Commercial banks, thrift institutions and credit unions provide similar services to individual retail consumers. However, there are significant limitations upon the services which business firms may obtain from depository institutions other than commercial banks. Savings and loan associations and some savings banks are limited by law in the extent to which they may make commercial loans, and are further limited in offering services to businesses by capital requirements and their own capital positions. Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, new, more stringent capital requirements and other restrictions were imposed upon the lending activities of certain thrifts. These restrictions may limit the ability of some thrifts to offer the full line of business banking services purchased by many business customers. Credit unions offer services to individual consumers but are

limited by regulation in the type of services they can offer to business customers and do not offer most of the business banking services provided by commercial banks.

17. Non-depository institutions may provide one or even a few of the services provided by commercial banks or certain thrift institutions. For example, investment or brokerage houses offer products that appear comparable to the various savings account products that are offered by commercial banks or thrift institutions. Non-depository institutions, however, do not provide certain important business banking services, such as transaction accounts for business customers which are offered by commercial banks and some thrift institutions. In addition, the loan products of these non-depository institutions tend not to be comparable in terms of price or conditions to those offered by commercial banks and some thrifts. For these reasons, non-depository institutions are not suppliers in the relevant markets.

18. Numerous small and medium-sized businesses operate in the State of Maine. Many such businesses are economically able to obtain business banking services only from banks located in the geographic market where the business is situated.

19. Business customers often utilize a number of different banking services from the bank with which they do business. For example, a commercial customer might use the bank for a checking account, credit for the purchase of inventory, payroll services, night deposit, and cash and coin. There are a large number of such customers that purchase at least one of these services from

the merging banks, and many that purchase more than one service or a bundle of many different services from the banks.

20. The relevant product markets in which this acquisition will affect competition include, either individually or collectively, transaction accounts, commercial loans, or other business banking services offered to small and medium-sized businesses in the relevant geographic markets. The firms that are capable of offering these services are those depository institutions that provide business banking services.

21. There is a relationship between the ability to accept deposits and the granting of credit and the provision of other business banking services by depository institutions. The deposits accepted by a depository institution are an important source of the loans made by it and an important source of funds to support other services. Bank deposits are, therefore, an appropriate indicator of a depository institution's capacity to provide business banking services.

22. Fleet and New Maine National Bank offer a variety of business banking services to business customers. A significant number of business customers purchase transaction accounts, commercial loans, as well as other commercial banking services from Fleet and New Maine National Bank. Fleet and New Maine National Bank are direct competitors in the provision of business banking services to business customers in the Bangor, Pittsfield, and Presque Isle-Caribou markets. Each has offices in these relevant geographic markets.

23. Regulatory conditions and other market factors make it unlikely that effective entry would ameliorate the lessening of competition flowing from the proposed acquisition in the relevant markets.

24. The markets for the provision of business banking services by commercial banks and thrift institutions in the Bangor, Pittsfield and Presque Isle-Caribou markets are highly concentrated.

25. Seven commercial banks or thrift institutions compete in the Bangor market. As of March 31, 1991, Fleet ranked first with approximately 43.7 percent of total bank deposits and NMNB ranked fifth with approximately 5.8 percent of total deposits. Based on total deposits, the HHI is approximately 2761.

26. If Fleet acquires NMNB, the resulting institution would rank first in the Bangor market with approximately 49.5 percent of total deposits held in the Bangor market. The HHI would increase by 510 to 3271.

27. Five commercial banks or thrift institutions compete in the Pittsfield market. As of March 31, 1991, Fleet ranked fifth with approximately 15.5 percent of total deposits and NMNB ranked fourth with approximately 17.9 percent of total deposits. Based on total deposits, the HHI is approximately 2049.

28. If Fleet acquires NMNB, the resulting institution would rank first in the Pittsfield market with approximately 33.4 percent of total deposits held in the Pittsfield market. The HHI would increase by 556 to 2605.

29. Seven commercial banks or thrift institutions compete in the Presque Isle-Caribou market. As of March 31, 1991, Fleet ranked fourth with approximately 11.8 percent of total deposits and NMNB ranked fifth with approximately 9.0 percent of total deposits. Based on total deposits, the HHI is approximately 2005.

30. If Fleet acquires NMNB, the resulting institution would rank third in the Presque Isle-Caribou market with approximately 20.8 percent of total deposits held in the Presque Isle-Caribou market. The HHI would increase by 213 to 2218.

VI.

VIOLATION ALLEGED

31. Prior to January 6, 1991, Maine National Bank was a corporation organized and existing under the laws of the State of Maine, with its principal place of business in Portland, Maine. As measured by December 1990 total deposits in the State of Maine, Maine National Bank was the fifth largest commercial bank in the State. Maine National Bank operated approximately 44 branches throughout the State. As of December 1990, Maine National Bank had total deposits of \$959,712,000.

32. On January 6, 1991, pursuant to 12 U.S.C. § 1821, the FDIC was appointed as receiver for Maine National Bank. The FDIC established the bridge bank under the new name New Maine National Bank to hold the assets and liabilities of this bank. After establishing the bridge bank, the FDIC solicited bids for the purchase of this bank and on April 22, 1991, the FDIC selected Fleet as the winning bidder of this bridge bank.

33. On or about May 31, 1991, the defendant entered into an interim management agreement and a purchase agreement which, if ultimately consummated, will result in the acquisition of NMNB by Fleet.

34. Pursuant to the Bank Merger Act, 18 U.S.C. § 1828(c), Fleet submitted an application for approval of its acquisition of NMNB to the Federal Reserve Board on May 14, 1991, and the Federal Reserve Board approved its application for purchase of NMNB on July 1, 1991.

35. The effect of the aforesaid acquisition of NMNB by Fleet 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 Fleet and NMNB in business banking services in the Bangor, Pittsfield, and Presque Isle-Caribou markets will be permanently eliminated;
- (b) concentration in the relevant product markets in the Bangor, Pittsfield, and Presque Isle-Caribou markets will be significantly increased; and
- (c) competition generally in the relevant product markets for business banking services in the Bangor, Pittsfield, and Presque Isle-Caribou markets will be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That Fleet's acquisition of NMNB be adjudged to be in violation of Section 7 of the Clayton Act;

2. That defendant and all other persons acting for or on its behalf be enjoined from carrying out the aforesaid acquisition agreement or any similar plan or agreement the effect of which would be to merge, consolidate or in any other way to combine the businesses of defendant with NMNB in the Bangor, Pittsfield and Presque Isle-Caribou markets;

3. That defendant be ordered to divest all NMNB banking branches in the Bangor market and a sufficient number of Fleet or NMNB banking branches in the Pittsfield and Presque Isle-Caribou markets in order to preserve existing competition;

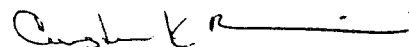
4. That the United States have such other and further relief as the Court may deem just and proper; and

5. That the United States recover the costs of this action.

Dated: July 5, 1991

James F. Rill
Assistant Attorney General

Charles A. James
Deputy Assistant
Attorney General



Constance K. Robinson
Chief
Communications & Finance
Section



Donald J. Russell
Assistant Chief
Communications & Finance
Section

U.S. Department of Justice
Antitrust Division

Richard S. Cohen
United States Attorney
District of Maine

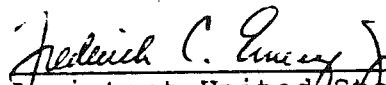


Patricia A. Shapiro
Bernard J. O'Reilly
Jennifer L. Otto
Laury E. Bobbish
Kenneth W. Gaul

Attorneys

U.S. Department of Justice

Antitrust Division
Room 8104
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 514-5796



Assistant United States
Attorney
District of Maine
100 Middle Street
East Tower-6th Floor
Portland, Maine 04104
(207) 780-3257

District of Maine