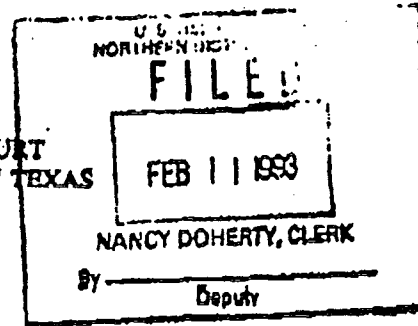


UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS



UNITED STATES OF AMERICA,

Plaintiff,

v.

TEXAS COMMERCE BANKSHARES, INC.
and TEXAS COMMERCE BANK-MIDLAND,
N.A.,

Defendants.

Civ. No.

3-93CV0294-G

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 defendants named herein and complains and alleges as follows:

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 defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. The defendants maintain offices, transact business or are found within the State of Texas.

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

DEFENDANTS

4. Texas Commerce Bancshares, Inc. ("TCB") is made a defendant herein. TCB is a bank holding company organized and existing under the laws of the State of Texas, with its principal place of business in Houston, Texas. TCB controls, among other things, 16 national or state banks operating approximately 110 offices throughout Texas, including defendant Texas Commerce Bank-Midland, N.A. TCB's lines of business include, among other things, commercial and consumer banking. As of September 30, 1992, TCB's affiliates had total assets of more than \$17 billion and total deposits of more than \$13 billion.

5. Texas Commerce Bank-Midland, N.A. ("TCB Midland") is made a defendant herein. TCB Midland is a national bank maintaining its principal place of business in Midland, Texas. TCB Midland is one of the three largest commercial banking institutions in the Midland market, as hereinafter defined.

6. Defendants, directly or through subsidiaries, are engaged in commercial and consumer banking and provide a wide range of banking products and services to business and retail customers throughout the State of Texas.

DEFINITIONS

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

(a) "transaction accounts," i.e., money deposited with a depository institution either at an interest rate or at no interest, in practice withdrawable upon demand, and upon which third-party drafts may be drawn by the depositor, including interest-bearing and non-interest-bearing checking accounts; and

(b) "commercial loans," i.e., secured or unsecured loans to businesses, including but not limited to commercial operating loans, i.e., loans to businesses for operating or cash flow finance, including lines of credit.

Business banking services may also include other services, such as equipment finance loans, loans to finance the purchase or improvement of commercial property, cash and coin, cash management services (including lockbox, account reconciliation and controlled disbursement), and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

8. "Commercial bank" means a national or state bank, i.e., a depository institution authorized to accept deposits and make loans, but does not include thrifts (as hereinafter defined) or credit unions.

9. "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.

10. "Medium-sized businesses" means businesses with annual sales from approximately \$5 million to approximately \$100 million.

11. "New First City-Midland" means New First City Bank-Midland, N.A., one of 20 bridge banks under the control of the Federal Deposit Insurance Corporation ("FDIC"), and reorganized by the FDIC from the assets of the failed First City Bancorporation ("First City").

12. "Relevant geographic market" or "Midland market" means the Midland, Texas, MSA, which consists of Midland County, Texas.

13. "Small businesses" means businesses with annual sales of less than approximately \$5 million.

14. "Thrift" means state or federally chartered savings banks or savings and loan associations, including without limitation Federal Savings Banks ("FSBs") and Federal Savings and Loan Associations ("FSLAs").

INTERSTATE COMMERCE

15. Customers of TCB and New First City-Midland regularly use interstate communications, including the mails, telephone, and telegraph, to obtain services from and conduct business with TCB and with New First City-Midland. Both TCB and New First City-Midland are federally insured and regulated. TCB and New First City-Midland use interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with other financial institutions. TCB and New First City-Midland engage in and affect interstate commerce.

TRADE AND COMMERCE

16. Depository institutions, including 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.

17. Commercial banks, thrift institutions, and credit unions provide similar services to individual retail consumers. However, few depository institutions other than commercial banks provide the full range of business banking services needed by many businesses, including business transaction accounts, commercial operating loans, and cash management services. 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. The thrifts in the Midland market

generally do not offer business banking services in those markets. 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. Thrifts and credit unions in the Midland market do not offer and are not likely to offer most business banking services, and the services they offer are not substitutes for the services offered by commercial banks to small or medium-sized businesses.

18. A significant number of small and medium-sized businesses operate in the Midland market. Many of these businesses can or would use only commercial banks located in the geographic market where the business is situated, and could not practicably turn to depository institutions located outside the market, even in the event of a small but significant and nontransitory increase in prices for business banking services in their home county.

19. Non-depository institutions typically do not provide certain important business banking services to small and medium-sized businesses, such as transaction accounts for business customers, commercial operating loans, and cash management services, which are offered by commercial banks. In addition, the loans to businesses offered by non-depository institutions frequently differ in important characteristics (e.g., price, collateral, terms) from loans offered by commercial banks and certain thrifts. These differences are sufficiently important that most business customers would not turn to non-depository alternatives in the event of a small but significant and nontransitory increase in the price of loans from depository institutions. Thus, loans offered by non-depository institutions are not close substitutes for loans offered by depository institutions.

20. The relevant product markets in which the combination of TCB and New First City-Midland will affect competition include, either individually or collectively, transaction accounts, commercial loans, and other banking services offered to small and medium-sized businesses.

21. The relevant geographic market in which the combination of TCB and New First City-Midland will affect competition is the Midland market.

22. This acquisition will have the greatest effect on small and medium-sized businesses that purchase business banking services in the Midland market. Many such customers purchase business banking services, either singly or in combination, from the merging banks or other commercial banks in the Midland market. The firms that are capable of offering these services to medium-sized businesses are those firms that provide business banking services whose capital and funds allow them to make loans to individual businesses in the amounts needed by those businesses. In the Midland market, many medium-sized businesses need commercial loans of \$750,000 or more. Therefore, not all commercial banks can or do serve medium-sized businesses.

23. TCB and New First City-Midland offer a variety of business banking services to small and medium-sized businesses. A significant number of business customers purchase transaction accounts and commercial loans, as well as other commercial banking services from TCB and New First City-Midland. TCB and New First City-Midland are direct competitors in the provision of business banking services to business customers in the Midland market. Each has offices in the Midland market.

24. 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. Concentration in total commercial bank deposits is one reasonable measure for estimating concentration in business banking services to small businesses. Concentration in the commercial bank deposits of those firms serving medium-

sized businesses is one reasonable measure for estimating concentration in business banking services to medium-sized businesses.

25. There are now seven commercial banks in the Midland market. All seven of these commercial banks now provide business banking services to small businesses, and five now provide business banking services to medium-sized businesses. As of June 30, 1993, TCB ranked third with approximately 12 percent of total commercial bank deposits, and approximately 12 percent of the deposits of those banks now providing business banking services to medium-sized businesses. New First City-Midland ranked second with approximately 23 percent of total commercial bank deposits, and approximately 24 percent of the deposits of those banks now providing business banking services to medium-sized businesses. The markets for business banking services to (1) small businesses, and (2) medium-sized businesses are both highly concentrated.

26. If TCB acquires New First City-Midland, the resulting institution would rank second in the Midland market, with approximately 35 percent of total commercial bank deposits held in that market, and approximately 37 percent of deposits of those banks that currently provide business banking services to medium-sized businesses. The markets for business banking services to both small businesses and medium-sized businesses will be highly concentrated, and the increase in concentration will be substantial.

27. Market factors make it unlikely that entry by other depository institutions would be timely or of sufficient magnitude to ameliorate the lessening of competition in the provision of business banking services to small businesses or medium-sized businesses in the Midland market that would result from the combination of TCB and New First City-Midland.

VIOLATION ALLEGED

28. Prior to October 30, 1992, First City was a bank holding company organized and existing under the laws of the State of Texas, with its principal place of business in Houston, Texas. First City operated approximately 113 offices throughout the State. As of September 30, 1992, First City's affiliates had total deposits of more than \$7 billion statewide.

29. On or about October 30, 1992, the FDIC took control of First City and its affiliates, including the predecessor of New First City-Midland. The FDIC reorganized First City and its affiliates into 20 bridge banks, including New First City-Midland. After establishing the bridge banks, the FDIC solicited bids for the purchase of these banks and on January 26, 1993, the FDIC selected TCB as the winning bidder of New First City-Midland, among others.

30. On or about January 12, 1993, defendants applied to the Comptroller of the Currency (the "Comptroller") to purchase and assume the assets and liabilities of New First City-Midland, among others. The application to acquire New First City-Midland was approved by the Comptroller by decision dated February 8, 1993. TCB will be permitted to acquire New First City-Midland after February 12, 1993, unless stayed by operation of law as a result of the commencement of an action under the antitrust laws, see 12 U.S.C. § 1849(b).

31. The effect of the acquisition of New First City-Midland by TCB 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 TCB and New First City-Midland in business banking services to small and medium-sized businesses in the Midland market will be permanently eliminated; and

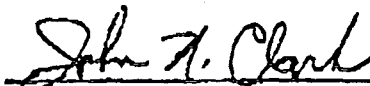
(b) competition generally in the relevant product markets for business banking services provided to small and medium-sized business customers in the Midland market will be substantially lessened.


PRAYER

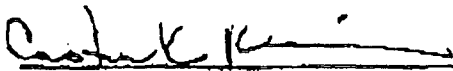
WHEREFORE, plaintiff prays:

1. That TCB's acquisition of New First City-Midland be adjudged to violate Section 7 of the Clayton Act;
2. That defendants and all other persons acting for or on their 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 defendants with New First City-Midland;
3. That defendant be ordered to divest all New First City-Midland banking offices;
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: February 11, 1993


John W. Clark (IN-no bar number)
Acting Assistant Attorney General

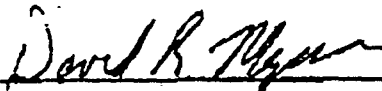

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