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Anthony E. Desmond
Jill Nickerson
Crossan R. Andersen
Antitrust Division
Department of Justice
450 Golden Gate Avenue
San Francisco, California 94102

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) v.)
)
) BANKAMERICA CORPORATION;)
) BANK OF AMERICA NATIONAL TRUST)
) & SAVINGS ASSOCIATION;)
) BANKERS TRUST NEW YORK)
) CORPORATION;)
) BANKERS TRUST COMPANY;)
) THE PRUDENTIAL INSURANCE)
) COMPANY OF AMERICA;)
) E. HORNSBY WASSON; and)
) PAUL A. GORMAN,)
)
) Defendants.)

Civil Action No.
75-2109 RFP

Filed: 3

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On October 6, 1975, the Department of Justice filed a civil antitrust suit alleging that a director of BankAmerica Corporation ("BankAmerica") and its wholly-owned subsidiary Bank of America National Trust & Savings Association

1 ("Bank of America"), and a director of Bankers Trust
2 New York Corporation ("Bankers") and its wholly-owned
3 subsidiary Bankers Trust Company ("Bankers Trust") were
4 serving concurrently on the board of directors of The
5 Prudential Insurance Company ("Prudential") in violation
6 of Section 8 of the Clayton Act. BankAmerica, Bank of
7 America, Bankers, Bankers Trust, Prudential and E. Hornsby
8 Wasson and Paul A. Gorman were named as defendants in the
9 complaint.

10 Section 8 of the Clayton Act prohibits an individual
11 from serving at the same time as a director of two or
12 more corporations, one of which has capital holdings of
13 more than one million dollars and is engaged in interstate
14 commerce, if such corporations are "competitors". The
15 term "competitors" is defined in the Act as corporations
16 so situated that the elimination of competition by agreement
17 between them would constitute a violation of any of the
18 antitrust laws. The complaint alleges that BankAmerica,
19 Bank of America, Bankers and Bankers Trust compete with
20 Prudential in offering various forms of credit. Therefore,
21 Mr. Wasson's service as a director of BankAmerica, Bank of
22 America and Prudential and Mr. Gorman's service as a
23 director of Bankers, Bankers Trust and Prudential violate
24 Section 8.

25 II.

26 EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

27 The Government contends that activities of commercial
28 banks and life insurance companies make them competitors
29 within the meaning of Section 8 of the Clayton Act. Both
30 make real estate mortgage loans which finance the purchase
31 of land and the construction of commercial and industrial
32 buildings, factories, farms, and multiple and single family

1 housing and both make consumer loans.

2 The complaint alleges that Bank of America, and its
3 parent BankAmerica, and Prudential have competed in making
4 real estate mortgage loans, particularly in the State of
5 California. In 1974 Bank of America was the nation's
6 largest real estate lender, holding real estate mortgage
7 loans of approximately \$5 billion, a substantial portion of
8 which were held on California real estate. Prudential for
9 the same period held real estate mortgage loans in excess
10 of \$12 billion, of which \$1.6 billion were held on California
11 real estate. E. Hornsby Wasson is a director of Prudential
12 and until June 5, 1975, had been a director of BankAmerica
13 and Bank of America. Following notice of the Government's
14 intention to sue, Mr. Wasson resigned from the boards of
15 BankAmerica and Bank of America.

16 III.

17 PROPOSED CONSENT JUDGMENT

18 The proposed consent judgment enjoins E. Hornsby Wasson
19 from serving as a director of BankAmerica and Bank of America
20 or any subsidiary thereof, while serving as a director of
21 Prudential or any of its subsidiaries.

22 IV.

23 ANTICIPATED EFFECTS ON COMPETITION

24 The evidence in this case did not encompass known
25 restraints of trade but did encompass the probability that
26 such restraints might result from the interlocking direc-
27 torates involved. Thus, the impact on competition of the
28 proposed consent judgment cannot be measured in terms of
29 specific effects which might release identifiable com-
30 petitive forces. The sole anticipated effect upon com-
31 petition is the removal of the danger that anticompetitive
32 effects will result from the interlocking directorates.

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V.

REMEDIES AVAILABLE TO
POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they may have had, were the proposed consent judgment not entered. However, this judgment may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

VI.

PROCEDURES AVAILABLE FOR
MODIFICATION OF CONSENT JUDGMENT

By its terms, the proposed consent judgment provides for retention of jurisdiction of this action in order, among other things, to permit either E. Hornsby Wasson or the United States to apply to the Court for such orders as may be necessary or appropriate for its modification.

As provided by the Antitrust Procedures and Penalties Act, any persons believing that the proposed consent judgment should be modified may submit written comments to Dwight B. Moore, United States Department of Justice, Antitrust Division, 1444 United States Court House, Los Angeles, California 90012. Such comments, together with responses thereto, will be filed with the Court and published in the Federal Register.

VII.

ALTERNATIVES TO PROPOSAL
ACTUALLY CONSIDERED BY UNITED STATES

The principal alternative relief against defendant Wasson considered by the Department of Justice is the relief requested in the complaint. The complaint asks

1 the Court to enjoin Mr. Wasson from serving simultaneously
2 as a director of any two or more competing corporations,
3 any one of which has assets of over \$1 million.

4 The relief provided in the proposed consent judgment
5 achieves one principal objective of the complaint, the
6 elimination of the interlocks between BankAmerica, Bank
7 of America and Prudential. An injunctive provision pro-
8 hibiting defendant Wasson from again violating Section 8
9 was considered unnecessary because the Department expects
10 that the filing of the complaint and the successful
11 litigation of the action against the other defendants
12 will cause individual directors and corporations to
13 voluntarily terminate directorates which violate Section 8
14 of the Clayton Act. Moreover, the Department has the con-
15 tinuing ability to file other suits to attack such
16 violations.

17 VIII.

18 DETERMINATIVE DOCUMENTS

19 There were no materials and documents which the
20 Government considered determinative in formulating this
21 proposed consent judgment. Therefore, none is being filed
22 along with this Competitive Impact Statement.

23 Dated:
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27 JILL NICKERSON
28 Attorney, Department of Justice
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