

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FIVE CENTS SAVINGS  
BANK,

Defendant.

Civil No. 79-1257 Mc

Filed: October 20, 1980

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h), P.L. 93-528 (December 21, 1974)) the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

This is a civil antitrust action by the United States against Warren Five Cents Savings Bank, Peabody, Massachusetts. The complaint, filed on June 29, 1979, alleged that the defendant had entered into an exclusive lease contract at the Northshore Shopping Center, a regional shopping center in Peabody, Massachusetts, and another restrictive contract concerning land adjacent to Northshore, restraining interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The case was brought to enjoin Warren from entering into, maintaining, and enforcing such contracts.

II.

PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Defendant Warren is a state-chartered mutual savings bank having no capital stock. It is operated for the benefit of its depositors by a Board of Trustees. Its main business is receiving time and savings deposits on which it pays interest or dividends and making loans and investments.

On March 19, 1957, defendant entered into a lease agreement for the purpose of opening and operating a branch office at the Northshore Shopping Center. The lease agreement contained a provision called a "Tenant's Exclusive" prohibiting the lessor from leasing space in Northshore to any other financial institution for the twenty-year term of the lease and, at the option of the lessee, for two additional five-year terms. <sup>1/</sup>

In 1969, Essex County Bank & Trust Company, a commercial bank, acquired property adjacent to Northshore to construct a new building to house its executive offices and a retail banking office. On June 3, 1969, defendant filed an action in Essex County Superior Court against Essex County Bank & Trust seeking to enjoin the use of the property for any banking purpose. The parties settled this suit on December 24, 1969. That settlement provided that Warren would dismiss the Superior Court action and Essex Bank & Trust was permitted to construct and occupy its proposed new building with a banking office on the ground floor. However, the settlement agreement also provided that no other financial institution would be permitted to operate an office on land adjacent to the shopping center owned by the corporate parent of Northshore, as long as Warren maintained its office in Northshore.

In 1977, Salem Five Cents Savings Bank, a state-chartered mutual savings bank, arranged to lease space in Northshore for a branch office and attempted to have defendant waive its Tenant's Exclusive. Defendant refused to waive its restriction. On August 3, 1978, defendant obtained a preliminary injunction from the Essex County Superior Court restraining the owner of Northshore from leasing space to Salem and Salem from operating an office in the shopping center. In October 1978, the

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<sup>1/</sup> On the same date, another financial institution, Merchants-Warren National Bank also entered into a separate but similar lease. It also contained provisions prohibiting the lessor from leasing space in Northshore to any other financial institution. In 1977, Merchants' successor waived that restriction.

Commissioner of Banks for the Commonwealth of Massachusetts granted Salem permission to establish a branch office in Northshore. However, on July 12, 1979, the Essex County Superior Court made permanent its injunction against Salem and the shopping center.

The Complaint alleged that the lease agreement between the owner of Northshore and defendant and the 1969 settlement agreement prohibits the owner of Northshore from leasing space in that shopping center to any other financial institution and from allowing the use of certain adjacent property as a retail banking facility by any other financial institution. According to the Complaint, these contracts have had the effect of denying Salem and other financial institutions the opportunity to establish branch offices at Northshore and/or on land adjacent to it; restraining, eliminating, and suppressing competition between defendant and other financial institutions in the area served by Northshore; and denying to the public the benefits of additional competition among financial institutions at Northshore.

### III.

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have agreed that a Final Judgment, in the form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The stipulation provides that there has been no admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Judgment is conditioned upon a determination by the Court that the Judgment is in the public interest.

Section IV of the proposed Final Judgment prevents the defendant from entering into or enforcing any agreement which limits or restricts the number, location or use of financial institution offices or facilities at the Northshore Shopping Center. It also prevents the defendant from entering into any other such restrictive agreements in the future.

The proposed Final Judgment expressly provides in Section III that its terms apply to the defendant's officers, trustees, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

Under Section V of the proposed Final Judgment, the Department of Justice will have access upon reasonable notice to the records and personnel of the defendant in order to assess the defendant's compliance with the provisions of the Final Judgment. Under Section VI of the Final Judgment, jurisdiction is retained by the Court for the purpose of enabling any party to apply for such orders or directions as may be necessary to carry out the Final Judgment, for modification of any of its provisions, or for punishment of violations of it.

Section VII of the proposed Final Judgment limits its force and effect to a period of ten (10) years from the date it is entered by the Court.

#### IV.

##### REMEDIES TO THE PRIVATE PLAINTIFF

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured in his business or property as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action.

Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment, since it is a consent judgment that will be entered before any testimony has been taken, may not be used as prima facie evidence in any subsequent private lawsuit which may be brought against the defendant.

V.  
PROCEDURES AVAILABLE FOR MODIFICATIONS  
OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, Department of Justice, Safeway Building, Room 504, Washington, D.C. 20530, within the 60-day period provided by the Act. These comments and responses to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should be determined that some modification of the Final Judgment is necessary.

VI.  
ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment prohibits the defendant from engaging in the illegal conduct alleged in the Complaint at Northshore Shopping Center, Peabody, Massachusetts. It also prohibits the defendant from entering into any agreement which limits or restricts the number, location or use of any offices or other facilities (e.g., night depository boxes, automated teller machines, automated cash dispensers) by any other financial institution during the term of the proposed Final Judgment.

The only additional relief which would be available and which was considered by the Department of Justice would have prohibited the defendant from maintaining a restrictive lease, similar to that challenged in the Complaint, for a branch office at the King's Plaza Shopping Center. King's Plaza is a small, neighborhood shopping center whose principal tenants are a discount department store and a grocery store (which recently went out of business). It is located in the west end of Peabody, Massachusetts, and is surrounded by residential areas with no room for any significant expansion. Defendant's branch office is a small, drive-up facility located in the parking lot at King's

Plaza, and accounts for 13.8 percent of defendant's time and savings deposits. There is an office of another financial institution located adjacent to King's Plaza. In addition, defendant's lease for its King's Plaza office will expire on January 31, 1983.

In view of the limited commercial significance of King's Plaza, the existence of another financial institution adjacent to King's Plaza and the limited term remaining for defendant's King's Plaza office lease, the Department of Justice has concluded that this single restrictive lease should not be an impediment to settlement of this litigation. Of course, the Department of Justice remains free to challenge defendant's King's Plaza lease under the antitrust laws should it deem such action to be in the public interest.

VII.

OTHER MATERIALS

There are no other materials or documents which the Department of Justice considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Dated:

/s/Thomas A. Schulz  
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THOMAS A. SCHULZ

/s/Rebecca P. Dick  
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