UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. NATIONAL BANK AND TRUST COMPANY OF NORWICH and NATIONAL BANK OF OXFORD, Defendants.	Civil Action No.: 83 CIV 537 Filed: May 6, 1983

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 under Section 15 of the Clayton Act (15 U.S.C. § 25), to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18).

2. Each of the defendants has its principal place of business, transacts business, and is found within the Northern District of New York.

II.

DEFENDANTS

3. National Bank and Trust Company of Norwich ("Norwich Bank") is made a defendant herein. Norwich Bank is a national banking association organized and existing under the laws of the United States of America, with its principal place of business at 52 South Broad St., Norwich, Chenango County, New York. Norwich Bank operates 17 offices located in Central New York State, including nine offices in Chenango County. As of December 31, 1982, Norwich Bank held total deposits of $268 million, total assets of $304 million, and total loans of $160 million. Norwich Bank's Chenango County offices hold total deposits of $147 million.

4. National Bank of Oxford ("Oxford Bank") is made a defendant herein. Oxford Bank is a national banking association organized and existing under the laws of the United States of America with its only place of business at State Street, Oxford, Chenango County, New York. As of December 31, 1982, Oxford Bank held total deposits of $15 million, total assets of $17 million, and total loans of $7 million.

5. Defendants are each engaged in retail banking and commercial banking.

III.

DEFINITIONS

6. "Depository institution" means a commercial bank, or thrift institution (savings bank, savings and loan association, or credit union), or other organization 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.

7. "Retail banking" means banking services offered to individual customers, including:

(a) "time deposits," i.e., money deposited for a fixed term at an agreed upon interest rate, withdrawable before the expiration of that term only with payment of a penalty;

(b) "savings deposits," i.e., money deposited at an agreed upon interest rate, often withdrawable as of right only upon fourteen days notice, but withdrawable in practice upon demand, excluding negotiable order of withdrawal ("NOW") accounts;

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

(d) "consumer loans," i.e., secured or unsecured loans to an individual banking customer, including loans for automobiles, retail purchases, and debt consolidation; and

(e) "residential mortgage loans," i.e., long-term first mortgage loans against individual dwellings for one to four families.

Retail banking excludes banking services offered to commercial customers.

8. "Commercial banking" means banking services offered to commercial customers, including:

(a) "transaction account deposits," "time deposits," and "savings deposits," as those terms are defined in Paragraph 7, held in accounts of commercial customers; and

(c) "commercial loans," i.e., secured or unsecured loans to commercial customers.

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

10. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of three firms with shares of 50, 30, and 20 percent each, the HHI is 3800 ($50^2 + 30^2 + 20^2 = 3800$). The HHI takes into

account the relative size and distribution of the firms in a market. It approaches zero when a market is served by a large number of firms of relatively equal size, and reaches its maximum of 10000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size among those firms increases.

IV.

INTERSTATE COMMERCE

11. Customers of Norwich Bank and Oxford Bank regularly utilize interstate communications, including the mails, telephone, and telegraph, to obtain services from and carry on business with each defendant. Norwich Bank and Oxford Bank are federally insured and regulated as national banks, and regularly use the Federal Reserve Check Collection System. Norwich Bank and Oxford Bank utilize interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with other financial institutions. Norwich Bank and Oxford Bank are engaged in and affect interstate commerce.

V.

TRADE AND COMMERCE

12. Although there is some difference in emphasis, depository institutions, such as commercial banks and thrift institutions, are engaged in the business of providing a wide

variety of financial products and services to business and individual customers. 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. While both commercial banks and thrift institutions may provide similar services to individual customers, thrift institutions are constrained to some extent in providing a complete range of products and services to commercial entities.

13. There is a relationship between the ability to accept deposits and the granting of credit and the provision of other services by depository institutions. The deposits accepted by a depository institution are the primary source of the loans made by it and a principal source of funds to support other services. Total deposits are an appropriate measure of a depository institution's market power in retail and commercial banking.

14. Norwich Bank and Oxford Bank offer a variety of personal and commercial banking services to individual and commercial customers, including transaction, time, and savings accounts; and consumer, real estate, commercial, and other types of loans.

15. Chenango County is located in central New York. The economy of Chenango County is diversified; it is generally rural and agricultural, yet it has a significant amount of

industrial activity. Covering an area of approximately 410 square miles, Chenango County had a total 1980 population of 49,344. The largest town in the county is Norwich, population 8,082, the county seat.

16. Norwich Bank and Oxford Bank are direct competitors. Their closest offices are about eight miles apart.

17. In addition to Norwich Bank and Oxford Bank, Chenango County has two other commercial banks. Together these four banks operate a total of 12 offices in Chenango County. On June 30, 1982, these offices had total deposits of approximately $210 million.

18. Chenango County also has one savings bank and one savings and loan association, each with a single office. These thrift institutions had approximately $51 million in total deposits in their offices in Chenango County.

19. Commercial banking is highly concentrated in Chenango County. On June 30, 1982, the four commercial banks with offices in Chenango County held 100% of the total bank deposits in Chenango County. On the same date Norwich Bank ranked first with approximately 69.8% of total bank deposits and Oxford Bank ranked fourth with approximately 7.1% of total bank deposits.

Based on total deposits, the HHI is approximately 5195. Although thrift institutions have had their powers broadened in recent years, they are not now, and are not likely to be, significant competitors in commercial banking in Chenango County in the near future.

20. If Norwich Bank and Oxford Bank merge, the resulting institution would rank first with approximately 76.9% of total deposits held in commercial banking offices in Chenango County. The HHI, increases by 986 to 6181.

21. Retail banking is highly concentrated in Chenango County. On June 30, 1982, the four largest depository institutions with offices in Chenango County held approximately 84% of total deposits. On that same date, Norwich Bank ranked first with approximately 56%, and Oxford Bank ranked sixth with approximately 6%. Based on total deposits, the HHI is approximately 3548.

22. If Norwich Bank and Oxford Bank merge, the resulting institution would rank first with approximately 62% of total deposits held by depository institutions in Chenango County. The HHI increases by 637 to 4185.

VI.

VIOLATION ALLEGED

23. Defendants have entered into an agreement which, if consummated, will result in the merger of Norwich Bank and Oxford Bank. The Comptroller of the Currency approved the proposed merger on April 8, 1983.

24. The effect of the aforesaid merger of Norwich Bank and Oxford Bank 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 Norwich Bank and Oxford Bank in retail and commercial banking in Chenango County will be permanently eliminated;

(b) concentration in retail and commercial banking in Chenango County will be significantly increased; and

(c) competition generally in retail and commercial banking in Chenango County will be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the merger between Norwich Bank and Oxford Bank be adjudged to be in violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting for or on their behalf be enjoined from carrying out the aforesaid merger

agreement or any similar plan or agreement the effect of which would be to merge, consolidate, or in any other way combine the businesses of said defendants.

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

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

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