

On May 6, 1983, the United States of America filed a civil antitrust action under Section 15 of the Clayton Act, 15 U.S.C. § 25, seeking to enjoin permanently as a violation of

Section 7 of the Clayton Act, 15 U.S.C. § 18, the proposed merger of National Bank and Trust Company of Norwich ("NBT") and National Bank of Oxford ("Oxford Bank"), whose application to merge had been granted by the Comptroller of the Currency ("Comptroller"), Intervenor herein, on April 8, 1983. The complaint alleged that the effect of the proposed merger may be substantially to lessen competition in the provision of retail banking services generally, commercial banking services generally, and certain defined specific banking services in the relevant section of the country, Chenango County, New York. As provided in the Bank Merger Act, 12 U.S.C. § 1828(c)(7)(A), as amended, the timely commencement of this action stayed consummation of the merger. The Comptroller of the Currency intervened in the action on June 10, 1983, pursuant to the provisions of 12 U.S.C. § 1828.

In the midst of trial plaintiff and defendants reached a settlement of this litigation. Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment, and to punish violations of the Judgment. At the time of entry of the Final Judgment, the Comptroller of the Currency intends to withdraw from the case.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

NBT is a national bank chartered by the Comptroller of the Currency. It is headquartered in the City of Norwich, Chenango County, New York and has seventeen offices in four counties in central New York State. Nine of these offices are located in Chenango County. NBT, as of June 30, 1983, had total deposits of \$283,962,000. Oxford Bank is also a national bank chartered by the Comptroller of the Currency. Oxford Bank has its sole office in the village of Oxford, Chenango County, New York. Oxford Bank, as of June 30, 1983, had total deposits of \$16,607,000. The City of Norwich is eight miles from the village of Oxford.

In July 1982, NBT filed an application with the Comptroller seeking approval of a merger of Oxford Bank into NBT. The Department of Justice, in a September 10, 1982 letter to the Comptroller, concluded that the merger would have a "significantly adverse" effect on competition. The Comptroller nonetheless approved the merger on April 8, 1983.

As commercial banks, NBT and Oxford Bank offer the same basic financial products and services to consumers. Those products and services can be separated into two general categories. The first category is consumer (or retail) banking services provided to individuals and households. These services include demand deposit accounts, savings accounts, time deposits, money market deposit accounts, consumer loans,

and residential mortgage loans. The second category is business (or commercial) banking services, including demand deposit accounts and commercial loans.

NBT and Oxford Bank directly compete in providing these services in a market area covering the northern three-fourths of Chenango County. Aside from NBT and Oxford Bank, there are only three other depository institutions that are significant competitors in this market. They are (1) a branch office of the First City division of Lincoln First Bank, N.A.; (2) a branch office of Binghamton Savings Bank; and (3) Chenango Federal Savings and Loan Association. All three of these offices are located in Norwich.

In terms of total deposits in the northern three-fourths of Chenango County, NBT is the largest bank in the market. NBT holds about 55% of total deposits. Oxford Bank holds about 7% of total deposits in the market.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in retail banking and commercial banking in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and

Penalties Act. The proposed Final Judgment contains no admission by either party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment provides that NBT and Oxford Bank may merge, but that in exchange for being allowed to merge with Oxford Bank, NBT will divest two of its offices in Norwich and will end the "home office protection" that currently prevents other depository institutions from opening branches in the City of Norwich. Thus, the Final Judgment will bring actual new entry into the market and will remove existing legal barriers to additional entry. The merger of Oxford Bank into NBT may take place upon the occurrence of the later of: the Court's approval of the proposed Final Judgment in compliance with the terms of the Antitrust Procedures and Penalties Act or the entry of NBT into binding contracts for the sale of its North Plaza and South Plaza Offices.

A. Divestitures of the North Plaza and South Plaza Offices

The proposed Final Judgment requires defendant NBT to divest all ownership interests in two of its existing branch offices: the North Plaza and South Plaza Offices, both located in the Town of Norwich. These offices may be sold separately or to a single purchaser, but must include in their sale all

tangible assets, deposit and loan accounts held by or attributed to each branch, and such other contracts as are appropriate to accomplish the sale of each office as a going concern. The purchaser, who must be either a banking or thrift organization (other than a credit union) not currently located in the northern three-quarters of Chenango County, or a new depository institution, must be reasonably satisfactory to the plaintiff, United States. The purchaser must, in order to be acceptable to the United States, state in writing that it has a present intention of operating each office it purchases.

In connection with the sale of the North Plaza and South Plaza Offices, NBT is prohibited by the proposed Final Judgment from taking any steps designed to cause any person to transfer any account now attributed to either office, from transferring any management personnel from those offices, or from taking any other steps that cause the diminution or destruction of the North Plaza or South Plaza Offices as viable branch offices. Finally, NBT may not reacquire those branches without the prior approval of the Department of Justice for a period of ten years.

B. Home Office Protection Removal

The City of Norwich and the village of Oxford are now closed by New York State Law to branching by other depository financial institutions. N.Y. Banking Law § 105 (Supp. 1983). As a result of the merger, Oxford Bank will become a branch of NBT and "home office protection" in the village of Oxford will

terminate. The proposed Final Judgment requires NBT to take such steps as are necessary to terminate home office protection in the City of Norwich. NBT may satisfy this requirement by any appropriate means so long as it does not result in home office protection being reestablished in the village of Oxford. Moreover, NBT may take no steps to reestablish home office protection in Norwich or Oxford for a period of ten years.

C. Hold Separate Provisions

If defendants elect to merge Oxford Bank and NBT after the approval by the Court of the proposed Final Judgment but before the required divestitures of the North Plaza and South Plaza Offices and the lifting of home office protection for the City of Norwich, NBT expressly assumes the risk of being required to divest Oxford Bank in the event the plaza office divestitures and the lifting of home office protection do not occur within the time periods set out in the proposed Final Judgment. The Oxford Bank divestiture would occur if the divestitures of the North Plaza and South Plaza Offices and the lifting of the Norwich City home office protection have not been completed by August 22, 1984 (or by no later than February 22, 1985, if an extension of time is granted by the Court). The defendants cannot request, and the Court will not grant, a further time extension beyond February 22, 1985.

In order that the Oxford Bank divestiture, if necessary, be a meaningful one, and that it be divested as a going concern, certain interim obligations are imposed on the defendants by the proposed Final Judgment. These obligations, which take effect if defendants choose to merge the banks before the North Plaza and South Plaza Offices are divested and the Norwich City home office protection is lifted, require that the assets and liabilities of Oxford Bank be separately accounted for and that no management personnel shall be transferred from Oxford to any other part of NBT. During this interim period, NBT is prohibited from taking any steps to encourage any customer of Oxford Bank (or any person who approaches Oxford Bank to establish a customer relationship) to transfer any account to any other part of NBT. No action will be taken by the defendants that would cause any diminution or destruction or impairment of the viability of the Oxford Bank.

These "hold separate" restrictions shall terminate 15 days after delivery to the Court and to the Chief of the Special Regulated Industries Section of the Antitrust Division a sworn statement that the divestitures of the North Plaza or South Plaza Offices and the lifting of the Norwich City home office protection have been completed, unless plaintiff notifies the Court that it does not believe that these conditions have been fulfilled. In that event, the Court shall determine whether to terminate these restrictions.

The proposed Final Judgment requires NBT to submit periodic reports to the plaintiff describing the steps it has taken to comply with the proposed Final Judgment. NBT is prohibited, for a period of ten years, from reacquiring either of the divested North Plaza or South Plaza Offices, or from acting to reimpose home office protection in Norwich City or the village of Oxford.

IV. REMEDIES AVAILABLE TO PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment is not expected to either impair or assist the bringing of any private antitrust damage actions, since Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), allows a judgment to be invoked as prima facie evidence in private litigation only where the judgment operates as an estoppel between the parties. The proposed Final Judgment would not appear to have such a prima facie effect.

V. PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment 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 Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides for a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Stanley M. Gorinson, Chief
Special Regulated Industries Section
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to a consent decree, the United States sought a permanent injunction to block the proposed merger of NBT and Oxford Bank. After commencing a trial of a civil action seeking such an injunction, the United States chose to negotiate the proposed Final Judgment since the relief obtained through the settlement, divestiture of two offices together with the removal of the legal barrier to entry into the City of Norwich, a barrier that would have remained in place even if the merger had been enjoined, is believed likely to have at least as much pro-competitive long-term impact as would have flowed from a permanent injunction of the merger.

If NBT elects to consummate the merger with Oxford Bank before it divests the South Plaza and North Plaza Offices and ends home office protection in the City of Norwich, NBT expressly assumes the risk that it will not be able to sell these plaza offices to a satisfactory buyer or buyers. If NBT does not complete the required divestitures and lifting of home office protection within the time period set forth in the Final Judgment, a Court appointed selling agent shall promptly sell Oxford Bank. This sale mechanism provides a viable method of reestablishing the Oxford banking office as a separate competitor in the market.

The relief obtained in the proposed Final Judgment provides important pro-competitive results, primarily in the form of the

introduction of at least one new competitor as a result of the divestitures of the North Plaza and South Plaza Offices, and the removal of legal barriers to additional entry in Norwich City as well as in Oxford village. While different in form than the prayer for injunction of the proposed merger, the relief obtained should have positive competitive results in the market.

Although most provisions of the proposed Final Judgment were revised and refined in the course of negotiations, no other relief substantially different in kind was considered by the United States, except insofar as plaintiff sought the assistance of Intervenor, the Comptroller of the Currency, in policing the "hold separate" provision of the proposed Final Judgment. The Bank Merger Act's automatic injunction provision is a congressional recognition of the difficulty attending efforts to undo a bank merger. The proposed Final Judgment permits the merger under "hold separate" strictures that will facilitate the divestiture of Oxford Bank if the primary relief is not obtained in the time periods required by the proposed Final Judgment. In the event that divestiture should be required, it may be necessary to ascertain whether the hold separate provisions have been strictly complied with by the defendants. While the Comptroller has elected not to be a party to the decree for this purpose, the Department of Justice has been advised by the Comptroller of the Currency that:

[Y]ou may be assured that this Office, as part of its normal bank examination responsibilities, does undertake to determine that each national bank being examined is acting in a safe, sound, and lawful manner. Thus, this Office would determine, in the course of its routine examinations of the Norwich and Oxford banks, whether the banks are in compliance with any outstanding court order, including any consent decree entered in the referenced litigation. We would, of course, advise the Antitrust Division should we find during such examination non-compliance with the terms of the decree. 1/

Thus, the Comptroller will undertake to provide no special assistance in connection with the proposed Final Judgment. In the event the divestiture of Oxford Bank should become necessary, we are not as confident as we otherwise would be that the divestiture will take place without difficulty.

VII. DETERMINATIVE DOCUMENTS

There are no materials or documents that the United States considered determinative in formulating this proposed Final

1/ Letter from Brian W. Smith, Chief Counsel, Comptroller of the Currency, to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, dated February 23, 1984.

Judgment. Therefore, none are being filed along with this
Competitive Impact Statement.

Respectfully submitted,

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Dated: March 6, 1984

CERTIFICATE OF SERVICE

I, Bruce P. White, attorney for Plaintiff, do hereby certify that I have on this date served a copy of the Competitive Impact Statement on the attorneys of record for Defendants National Bank and Trust Company of Norwich and National Bank of Oxford, and intervenor, C.T. Conover, Comptroller of the Currency by hand delivering copies to:

Michael E. Friedlander, Esquire
Metzger, Shadyac & Schwarz
1275 K Street, N.W.
Washington, D.C. 20005

Charles McEnerney, Jr.
Office of the Comptroller of
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490 L'Enfant Plaza, S.W.
Washington, D.C. 20219



Bruce P. White
Attorney
Department of Justice

Dated: March 6, 1984
Washington, D.C.