

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Bank and Trust Co. of Norwich and National Bank of Oxford., U.S. District Court, N.D. New York, 1984-2 Trade Cases ¶66,074, (Jun. 12, 1984)

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United States v. National Bank and Trust Co. of Norwich and National Bank of Oxford.

1984-2 Trade Cases ¶66,074. U.S. District Court, N.D. New York, Civil Action No. 83-CV-537, Entered Filed June 12, 1984, (Competitive impact statement and other matters filed with settlement: 49 *Federal Register* 9630). Case No. 3076, Antitrust Division, Department of Justice.

Clayton Act

Mergers and Acquisitions: Banks: Required Divestiture of Acquiring Bank Offices: Hold-Separate Order for Non-Compliance: Consent Decree.— The statutory stay against a bank merger was lifted under a consent decree, except that consummation of the merger was enjoined for 15 days, during which time the acquiring bank was to divest two offices. In the event that the merger was consummated prior to the required divestiture, the acquired bank was to be held separate from the acquiring bank until the divestiture was completed.

For plaintiff: J. Paul McGrath, Asst. Atty. Gen., Douglas H. Ginsburg, Joseph H. Widmar, Stanley M. Gorinson and Jeffrey Blumenfeld, Attys., Antitrust Div., U.S. Dept. of Justice, John V. Thomas, Bruce P. White and David Schertler, Trial Attys., Antitrust Div., Washington, D. C. **For defendants:** Eugene J. Metzger and Michael E. Friedlander, of Metzger, Shadyac & Schwarz, Washington, D. C. **For intervenor:** Eugene Charles H. McEnerney and Eugene Katz, Office of the Comptroller of the Currency, Washington, D. C.

Final Judgment

Miner, D.J.: Plaintiff, United States of America, having filed its Complaint on May 6, 1983, defendants and intervenor having filed their respective answers thereto, trial having commenced, but the Court having entered no substantive findings of fact or conclusions of law; and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment, and without this Final Judgment constituting an admission by any party with respect to any issue of law or fact herein, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under [Section 7 of the Clayton Act](#), as amended ([15 U.S.C. §18](#)).

II.

[Definitions]

As used in this Final Judgment:

(A) "NBT" shall mean defendant National Bank and Trust Company of Norwich.

(B) "Oxford Bank" shall mean defendant National Bank of Oxford or, where the context so requires, that office of NBT which operates the business previously conducted by National Bank of Oxford while it operated as a separate legal entity.

(C) "Person" shall mean any individual, partnership, firm, corporation, association or any other business or legal entity.

(D) The "North Plaza Office" shall mean that branch of NBT currently situated adjacent to the North Plaza shopping center in the town of Norwich, Chenango County, New York.

(E) The "South Plaza Office" shall mean that branch of NBT currently situated in the South Plaza shopping center in the town of Norwich, Chenango County, New York.

(F) "Depository institution" shall mean any commercial bank, savings bank or savings and loan association.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to defendants NBT and Oxford Bank and to their directors, officers, employees, agents, affiliates, successors, assigns, and to all persons in active concert or participation with them, who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Injunction*]

A. Upon entry of this Final Judgment, the statutory stay, imposed under 12 U.S.C. §1828(c)(7)(A), that currently enjoins the merger of Oxford Bank into NBT, shall terminate. However, defendants are enjoined from consummating this merger until fifteen (15) days after defendants file with the Court, with a copy hand-delivered to the Chief, Special Regulated Industries Section, Antitrust Division, an affidavit stating that NBT has entered into binding contracts consistent with the terms of Section V below to sell the North Plaza and South Plaza Offices, together with a copy of said contract(s). Defendants also shall cooperate in providing to plaintiff such additional information about the purchaser as is in their possession. If within said fifteen day period, plaintiff files an objection with the Court, the Court shall determine whether to continue this injunction based solely upon whether defendants have entered into contracts consistent with the terms of Section V. It is further provided that plaintiff may, in its sole discretion, shorten the fifteen day period by agreeing in writing that it has no objection.

B. In the event Oxford Bank is merged into NBT before completion of all of the divestitures and the lifting of home office protection required by Section V. below, the assets and liabilities of Oxford Bank shall be held separate from the other assets and liabilities of NBT. This hold separate obligation shall require that: (1) all deposit and loan accounts of Oxford Bank acquired by NBT through the merger, or subsequently generated at the NBT office in Oxford, shall be accounted for separately by NBT; (2) NBT shall take no action designed or intended to cause any existing or prospective customer of Oxford Bank to transfer accounts from the banking office in Oxford to any other office of NBT; (3) all other assets and liabilities of Oxford Bank acquired by NBT through the merger, or subsequently generated at the NBT office in Oxford, shall not be commingled with the other assets and liabilities of NBT in a way which would prevent such assets and liabilities from being readily identifiable as of the close of any business day; (4) NBT shall not transfer managerial employees of Oxford Bank to any other NBT office; and (5) no action shall be taken or omitted that would impair the viability of the NBT office in Oxford as a bank. In the event that it becomes necessary to divest the Oxford office pursuant to the provisions of Section VI of the Final Judgment, these separately accounted for assets and liabilities which are part of or derived from the Oxford Bank office shall all be divested, together with such personnel as wish to stay with the divested office. Except as set forth above, nothing herein shall preclude NBT, following the merger, from operating or managing the NBT office in Oxford in any manner it deems appropriate.

C. The restrictions imposed by paragraph B of this Section IV automatically shall terminate fifteen (15) calendar days after defendants file with the Court, with a copy hand-delivered to the Chief, Special Regulated Industries Section, Antitrust Division, an affidavit that the acts required by Section V have been completed; *provided, however*, that these restrictions shall not be lifted at the completion of the fifteen day period if during that period plaintiff files its objections with the Court. If such an objection is filed, the Court shall determine whether to lift

the conditions imposed by paragraph B of this Section IV based upon whether defendants have complied with Section V. It is further provided that plaintiff may, in its sole discretion, shorten the fifteen day period by agreeing in writing that compliance is complete.

V.

[Divestiture]

A. NBT shall divest all direct and indirect ownership interest in and control over the North Plaza Office and the South Plaza Office. These two offices may be sold either separately or to a single purchaser, at the option of NBT. The purchaser(s) shall be independent of NBT, and shall be subject to approval by plaintiff; however, plaintiff may not unreasonably withhold its approval. The purchaser must be a depository institution, or a holding company for a depository institution, other than a depository institution that currently has a deposit taking office in Chenango County (other than in the towns of Greene, Coventry, Afton and Bainbridge). Any such purchaser must state in writing its present intention to make a good faith effort to operate each office it purchases within the city or town of Norwich, although such statement will not create any contractual right enforceable by any party hereto. Nothing herein shall preclude a purchaser from being acceptable solely on the grounds that the purchaser plans to relocate a purchased office to some other place within the city or town of Norwich.

B. NBT shall not transfer any management personnel out of these offices nor take any steps designed or intended to cause the diminution or destruction of the North Plaza or South Plaza Offices as viable branch offices, or designed or intended to cause any person to transfer any account attributable to such office to any other office of NBT; provided, however, that nothing herein shall preclude NBT from engaging in general advertising or from creating or expanding other banking offices or facilities.

C. NBT shall take all such steps as are necessary to end so-called "home office protection" as to it for the City of Norwich under N.Y. Banking Law §105. NBT may accomplish this result through any appropriate means, provided that NBT may not end home office protection for the City of Norwich in a manner that results in NBT enjoying "home office protection" in the Village of Oxford.

D. The divestitures and termination of home office protection specified in paragraphs A through C of this Section V are to be accomplished no later than August 22, 1984. If all such acts will not be accomplished before August 22, 1984, NBT may make a single application to the Court, in advance of August 22, 1984, for an extension of not more than six months within which to accomplish these acts. Upon such an application, and a showing of good cause, the Court shall grant an extension of time for accomplishing the required divestitures and lifting of home office protection, which extension shall be not more than six (6) months, or until February 22, 1985.

E. Under no circumstances will the acts required by Section V be completed later than February 22, 1985. The provisions of Section VI of this order will become automatically and irrevocably effective on August 22, 1984, unless that date is extended by the Court, and, if that date is extended under the terms of this Final Judgment, Section VI shall be automatically and irrevocably effective upon the expiration of that extension and in no event later than February 22, 1985.

VI.

[Effect of Non-Compliance]

A. If all acts of the divestiture of both the North Plaza and South Plaza Offices, as well as lifting home office protection for the City of Norwich, as required by Section V of this Final Judgment, are not accomplished by the expiration of defendants' time under Section V to complete those acts, an independent sales agent shall be appointed by the Court, on notice to plaintiff and NBT. Such agent shall be appointed thirty (30) days prior to the expiration of defendants' time under Section V, including any extensions. The sales agent shall immediately begin preparations for the possible sale of the Oxford Bank branch office, and if Section V has not been fully complied with prior to February 22, 1985, the sales agent shall on that date immediately act to sell that branch. This sale shall be required without regard to any partial performance by NBT. However, if in good faith NBT has

been unable to complete compliance, but does complete compliance with the requirements of Section V after the expiration of the above referenced deadline, but prior to a sales contract being obtained by the sales agent, then such sale will not be required and NBT shall be deemed in full compliance. NBT shall fully cooperate with the selling agent to accomplish this sale. The sale of the Oxford Bank branch shall be conducted in a commercially reasonable manner; however, the sale shall be made at whatever price the selling agent is able to obtain at that time, and without regard to whether NBT believes the sale price is fair or reasonable. The sales agent shall notify the parties of the purchaser thirty (30) days prior to the sale. The sale of the Oxford Bank branch shall be to a purchaser reasonably satisfactory to plaintiff. The selling agent's reasonable fees and expenses shall be paid by NBT.

B. NBT may, if it so desires, elect to sell the Oxford Bank branch. NBT shall notify plaintiff of the purchaser thirty (30) days prior to the sale. The purchaser shall be reasonably satisfactory to plaintiff, but plaintiff may not unreasonably withhold its approval. If such sale is completed prior to August 22, 1984, or any Court extension of that date, then NBT will be relieved of its obligations under Sections V and VI.A. of this Final Judgment, and Section VI.A. shall no longer apply.

VII.

[10-year Period]

At any time during the period of ten (10) years from the date of entry of this Final Judgment, and absent prior written approval of the plaintiff, NBT is enjoined and restrained from (a) acquiring directly or indirectly any branch office divested pursuant to the terms of this Final Judgment; or (b) taking any action to reestablish home office protection for the City of Norwich or the Village of Oxford.

VIII.

[Reporting Requirements]

Sixty (60) days after the date of entry of this Final Judgment and every sixty days thereafter until NBT has complied with Section V hereof, NBT shall submit written reports to the plaintiff, addressed to the Chief, Special Regulated Industries Section, Antitrust Division, describing the steps which have been taken to comply with this Final Judgment. Each report from NBT shall include the name and address of each person, if any, who, since the last report (or in the case of the first report, each person who has to that date), made an offer, expressed an interest, or entered into negotiations to acquire either office to be divested.

IX.

[Compliance]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to NBT or Oxford Bank made to their principal offices, be permitted:

- (i) Access during regular office hours of NBT or Oxford Bank to inspect and copy all non-privilege relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of NBT or Oxford Bank and without restraint or interference from NBT or Oxford Bank, which may have counsel present; and
- (ii) Subject to the reasonable convenience of NBT or Oxford Bank and without restraint or interference from them, to interview, under oath and on the record if requested by plaintiff, officers, employees, and agents of NBT or Oxford Bank, who may have counsel present.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to NBT's or Oxford Bank's principal offices, they shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

X.

[Retention of Jurisdiction]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof and for the enforcement of compliance therewith and the punishment of any violation hereof; provided, however, that there shall be no modification of the February 22, 1985 deadline absent a showing that defendants were unable to meet this deadline as a result of plaintiff's unreasonable conduct.

XI.

[Abandonment of Merger]

If at any time before the consummation of the proposed merger of NBT and Oxford Bank the defendants definitely abandon the proposed merger, or if subsequent to the merger, the Oxford Bank office is sold pursuant to the terms of this Final Judgment, then this Final Judgment shall no longer enjoin the actions of NBT and Oxford Bank.

XII.

[Public Interest]

Entry of this Final Judgment is in the public interest.