

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

2019 MAR 19 PM 4:11

CLERK

BY Law
DEPUTY CLERK

UNITED STATES OF AMERICA,
Plaintiff,

v.

Civil Action No. 6088

COUNTY NATIONAL BANK OF
BENNINGTON AND CATAMOUNT
NATIONAL BANK,
Defendants.

5:19-mc-32

**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF
THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENT**

The United States respectfully submits this Memorandum in support of its Motion to Terminate the Judgment in the above-captioned antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. This Court entered the above-captioned judgment, which enjoined the Defendant banks from merging with one another, nearly fifty years ago, in 1972. After examining the judgment and subsequent developments involving the Defendants—and after soliciting public comments on the judgment’s proposed termination—the United States has concluded that termination of this judgment is appropriate. Termination will permit the Court to clear its docket, the United States to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.¹ Such

¹ The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgment the United States seeks to terminate here concerns a

perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice (“Antitrust Division”) adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them.

Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or company defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, none of these judgments likely continue to do so because of changed circumstances.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division’s Judgment Termination Initiative encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.² In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.³ The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division is examining each judgment to ensure that it is suitable for termination.

violation of the Clayton Act.

² Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

³ <https://www.justice.gov/atr/JudgmentTermination>.

The Antitrust Division is giving the public notice of—and the opportunity to comment on—its intention to seek termination of its perpetual judgments.

In brief, the process by which the United States is identifying judgments it believes should be terminated is as follows:

- The Antitrust Division reviews each perpetual judgment to determine whether it no longer serves to protect competition such that termination would be appropriate.
- If the Antitrust Division determines a judgment is suitable for termination, it posts the name of the case and the judgment on its public Judgment Termination Initiative website, <https://www.justice.gov/atr/JudgmentTermination>.
- The public has the opportunity to submit comments regarding each proposed termination to the Antitrust Division within thirty days of the date the case name and judgment are posted to the public website.
- After having received no comments regarding the perpetual judgment in this case, the United States is moving to terminate it.

The United States followed this process for the judgment it seeks to terminate by this motion.⁴

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction and the applicable legal standards for terminating the judgment in the above-captioned case. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old presumptively should be terminated. This section also discusses why the judgment in this case is no longer necessary in light of the subsequent

⁴ The United States followed this process to move several other district courts to terminate legacy antitrust judgments. See *United States v. Am. Amusement Ticket Mfrs. Ass'n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five judgments); *United States v. The Wachovia Corp. and Am. Credit Corp.*, Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, Case No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

acquisition of each of the Defendants by larger banks. Appendix A attaches a copy of the Final Judgment that the United States seeks to terminate. Appendix B is a Proposed Order Terminating Final Judgment.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENT

This Court has jurisdiction and authority to terminate the judgment in the above-captioned case. Section IV of the judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction. In addition, the Federal Rules of Civil Procedure grant the Court authority to terminate the judgment. Specifically, Rule 60(b)(5) and (b)(6) provides that, “[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)-(b)(6). *See also Tapper v. Hearn*, 833 F.3d 166, 170 (2d Cir. 2016) (“The third clause of [Rule 60(b)(5)] . . . codified a power that courts had long been exercising: to modify their decrees or injunctions in light of changed circumstances.”); *Aczel v. Labonia*, 584 F.3d 52, 61 (2d Cir. 2009) (describing Rule 60(b)(6) as a “catchall provision . . . that allows courts to vacate judgments whenever necessary to accomplish justice” but one that requires a showing of “extraordinary circumstances” to justify relief). Given the authority conferred by Rule 60(b)(5) and (b)(6), this Court may terminate the judgment in question for any reason that justifies relief, including that the judgment no longer serves its original purpose of protecting competition.⁵ For the reasons set forth below,

⁵ In light of the circumstances surrounding the judgment for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of the judgment to terminate it under Fed. R. Civ. P. 60(b)(5) or (b)(6). The Final Judgment would have terminated long ago if the Antitrust Division had the foresight to limit it to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstances since its entry, as described in this memorandum, means that it is likely that the judgment no longer serves its original purpose of protecting competition.

termination of the Final Judgment is warranted.

III. ARGUMENT

It is appropriate to terminate the Final Judgment in this case because it is no longer needed to protect competition. The United States believes that the Final Judgment presumptively should be terminated because its age alone suggests it no longer protects competition. In addition, the Final Judgment should be terminated in light of the subsequent acquisition of each of the Defendants by larger banks, which has rendered it unnecessary to protect competition. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

A. The Final Judgment

The Final Judgment, attached as Appendix A, prohibits the two Defendants—County National Bank of Bennington and Catamount National Bank—from, among other things, merging or consolidating with each other, acquiring assets or stock in the other Defendant, exercising control over the other Defendant, or permitting any person to serve as an officer or director of both Defendants at once. The Final Judgment was the result of a civil antitrust action brought by the United States in 1970, challenging the proposed merger of County National Bank of Bennington and Catamount National Bank, alleging that the merger would eliminate the competition between these two banks and result in the merged bank having an approximately 61 percent share of the relevant market.

B. The Final Judgment Presumptively Should Be Terminated Because of Its Age

As a general matter, permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These

changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. These considerations, among others, led the Antitrust Division in 1979, to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.⁶

The Final Judgment in this matter, which was entered in 1972 and is thus almost five decades old, presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years.

C. The Final Judgment Should Be Terminated Because Subsequent Changes to the Defendants Render It Unnecessary to Protect Competition

In addition, due to the changes in the structure of both of the Defendants, the Final Judgment is no longer necessary to protect competition. The essence of the Final Judgment was to prevent a merger between County National Bank of Bennington and Catamount National Bank, or the exercise of control by one bank over the other. However, both banks have since been acquired by larger banks, and therefore the merger that was the subject of the Final Judgment is no longer possible.⁷ Moreover, any merger by the banks that acquired each of the Defendants would be subject to review and approval by the banking regulator that oversees the acquiring banks, as well as review by the Antitrust Division, ensuring that the competitive effects of any such transaction would be examined.⁸ Therefore, the Final Judgment no longer

⁶ U.S. Dep't of Justice, Antitrust Division Manual, at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.

⁷ See Catamount National Bank Institution History, Federal Financial Institutions Examination Council National Information Center ("FFIEC"), https://www.ffiec.gov/nicpubweb/nicweb/InstitutionHistory.aspx?parID_RSSD=579908&parDT_END=20170512 (last visited Mar. 14, 2019); County National Bank of Bennington History, FFIEC National Information Center, https://www.ffiec.gov/nicpubweb/nicweb/InstitutionProfile.aspx?parID_Rssd=253806&parDT_END=19730830 (last visited Mar. 14, 2019).

⁸ For additional explanation about the review of bank mergers by the banking regulators

continues to serve any valid purpose.

D. There Has Been No Public Opposition to Termination

The United States provided adequate notice to the public regarding its intent to seek termination of this Final Judgment. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments.⁹ On June 15, 2018, the Antitrust Division listed the Final Judgment in this case on its public website, describing its intent to move to terminate the judgment.¹⁰ The notice identified the associated case, linked to the Final Judgment, and invited public comment.¹¹ In this case, the Division received no comments concerning the Final Judgment.

IV. CONCLUSION

For the foregoing reasons, the United States believes termination of the Final Judgment in the above-captioned case is appropriate. Therefore, the United States respectfully requests that this Court enter the order attached in Appendix B terminating the Final Judgment.

and the Antitrust Division, *see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995> and <https://www.justice.gov/sites/default/files/atr/legacy/2014/10/09/308893.pdf>.

⁹ Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate “Legacy” Antitrust Judgments, (April 25, 2018), <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

¹⁰ <https://www.justice.gov/atr/JudgmentTermination>, link titled “View Judgments Proposed for Termination in Vermont, District of.”


¹¹ The United States identified on its public website the judgment entered by this Court in *United States v. County Nat’l Bank of Bennington and Catamount Nat’l Bank*, Civil Action No. 6088 (D. Vt. Nov. 5, 1970).

Respectfully submitted,

Dated: March 19, 2019

CHRISTINA E. NOLAN
United States Attorney for the
District of Vermont

By:



Julia Torti
Assistant U.S. Attorney
United States Courthouse and Federal Building
Post Office Box 570
11 Elmwood Avenue, 3rd Floor
Burlington, VT 05402-0570
(802) 951-6725
Julia.torti@usdoj.gov

/s/
Siddharth Dadhich
Attorney
United States Department of Justice
Antitrust Division
Defense, Industrials, and Aerospace Section
450 Fifth Street, N.W., Suite 8652
Washington, D.C. 20530
(202) 598-2375
Siddharth.Dadhich@usdoj.gov