

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

SOCIETY CORPORATION and
AMERITRUST CORPORATION,
Defendants.

Civil No. 1:92CV0525
Filed: March 13, 1992
Judge Bell

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25,

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

2. Each of the defendants maintains offices, transacts business, and is found within the Northern District of Ohio.

3. Venue is proper in the Northern District of Ohio under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

DEFENDANTS

4. Society Corporation ("Society") is made a defendant herein. Society is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Cleveland, Ohio. Society is the third largest bank holding company in Ohio, with total assets of \$15.3 billion, total deposits of \$11.6 billion, and total domestic commercial and industrial loans of \$1.5 billion in five commercial bank subsidiaries in three states on December 31, 1991.

5. Ameritrust Corporation ("Ameritrust") is made a defendant herein. Ameritrust is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cleveland, Ohio. Ameritrust is the fifth largest bank holding company in Ohio, with total assets of \$10.6 billion, total deposits of \$8.7 billion, and total domestic commercial and industrial loans of \$1.7 billion in six commercial bank subsidiaries in three states on December 31, 1991.

6. Defendants, directly or through their commercial bank subsidiaries, are each engaged in commercial banking and provide a wide range of products and services to business customers.

DEFINITIONS

7. "Business banking services" means banking services offered to commercial customers, including:

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

(b) "commercial loans," i.e., secured or unsecured loans to businesses, excluding commercial mortgages.

"Business banking services" also includes other services, such as cash and coin, lockbox, cash management, and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

8. "Commercial bank" means a state or federally chartered commercial bank.

9. "Commercial mortgage" means a loan secured by real estate as evidenced by a mortgage or other lien on business or industrial property.

10. "Depository institution" means a commercial bank, savings bank, savings and loan association, or credit union 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.

11. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increase.

12. "Small business" means a business with annual sales of ten million dollars or less.

13. "Thrift" means a state or federally chartered savings bank or savings and loan association.

INTERSTATE COMMERCE

14. Customers of Society and Ameritrust regularly utilize interstate communications, including the mails, telephone, and telegraph, to obtain services from and carry on business with each defendant. Society and Ameritrust are federally insured and regulated. Society and Ameritrust utilize interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with other financial

institutions. Society and Ameritrust are engaged in and affect interstate commerce.

TRADE AND COMMERCE

15. Depository institutions are engaged generally in the business of providing a wide variety of financial products and services to businesses and individual consumers. These products and services include the acceptance of various types of deposits, including transaction (checking) and savings deposits, and the granting of various types of credit, including term loans and lines of credit.

16. Commercial banks, thrift institutions, and credit unions provide similar services to individual consumers. There are significant limitations, however, on the services that depository institutions other than commercial banks may offer to business customers. Thrift institutions currently may face incentives to limit their non-mortgage lending to business customers, for adverse tax consequences may otherwise result. Many thrifts must also limit their lending to business customers in order to satisfy new, more stringent capital requirements and other restrictions imposed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Most of the thrift institutions in Cuyahoga and Lake Counties do not currently offer many of the business banking services offered by commercial banks and do not appear likely to do so in the event of a supracompetitive increase in the prices of those services. Credit unions offer financial products and services to

individual consumers, but regulation limits the services they may offer to business customers. They do not offer and are not likely to offer most business banking services in Cuyahoga or Lake Counties.

17. The relevant product markets in which the combination of Society and Ameritrust will affect competition include, either individually or collectively, transaction accounts, commercial loans, and other business banking services offered to small businesses.

18. Non-depository institutions may provide one or even a few of the services provided by commercial banks or certain thrift institutions. Non-depository institutions do not, however, provide transaction accounts or other business banking services essential for most business customers. In addition, loans offered by non-depository institutions such as commercial loan companies frequently differ in important characteristics (e.g., price, collateral, term) from loans offered by commercial banks and certain thrifts. These differences are sufficiently important that most business customers would not turn to non-depository alternatives in the event of a supracompetitive increase in the price of loans from depository institutions. Thus loans offered by non-depository institutions are not close substitutes for loans offered by depository institutions.

19. There is a relationship between the amount of deposits a depository institution holds and its ability to grant credit and offer other business banking services. The deposits

accepted by a depository institution are the primary and often the least expensive source of funds for the loans it makes and a principal source of the funds it needs to support the other services it offers. Total deposits in a market thus are one useful indicator of a depository institution's capacity to provide business banking services in that market.

20. Banking organizations in Cuyahoga and Lake Counties that accept deposits in more than one market may have the ability to shift funds from one market to another, offering more services, particularly loans, in one market than deposits in that market alone would support. There are, however, constraints on the amount of out-of-market funds that a depository institution can effectively utilize for loans in a market. In addition to considerations relating to risk, an institution needs an effective means of delivering banking services, including loans, to customers. Among other things, it needs a network of branch offices and trained loan personnel sufficient to provide convenient service to customers throughout the relevant market. It is particularly important to small business customers that an office of their depository institution be convenient to their place of business. Thus the number of offices a depository institution has in a market can also be a useful indicator of its capacity to provide business banking services in that market.

21. Because of the statutory and regulatory constraints on the offering of non-mortgage commercial loans by thrifts, the

capacity of a thrift to offer business banking services, particularly commercial loans, is less than that of a comparably sized commercial bank. On average, the capacity of those thrifts that offer business banking services is about 40% of that of commercial banks. Thus, when calculating measures of concentration in markets for business banking services, it is appropriate to weight the total deposits and offices of participating thrifts at 40% while weighting commercial bank deposits and offices at 100%.

22. Business customers often obtain a number of different services at a single institution. Many business customers find it convenient and efficient to bank at one location or with one depository institution, and depository institutions often find it more efficient to serve both the deposit and credit needs of a customer. Many depository institutions in Cuyahoga and Lake Counties encourage a business customer to maintain its main transaction account at the institution as long as the institution is the customer's leading source of depository institution credit.

23. Numerous small businesses operate in Cuyahoga and Lake Counties. For a variety of reasons, including but not limited to convenience, such businesses generally must obtain their business banking services from depository institution offices in their home county. They could not practicably turn to a depository institution located outside their home county, even in the event of a supracompetitive increase in the prices for business banking services in their home county.

24. The relevant geographic markets in which the combination of Society and Ameritrust will affect competition are reasonably approximated by:

- (a) Cuyahoga County, Ohio, and
- (b) Lake County, Ohio.

25. Society and Ameritrust offer a variety of business banking services to commercial customers. A significant number of business customers purchase transaction accounts, commercial loans, and other business banking services from Society or Ameritrust. Society and Ameritrust are direct competitors in the provision of business banking services to business customers. Each has offices in Cuyahoga and Lake County.

26. Sixteen commercial banks operate in the Cuyahoga County market and nine operate in the Lake County market. In addition, five thrifts in the Cuyahoga County market and four thrifts in the Lake County market either offer business banking services or are likely to do so in the face of a supracompetitive rise in the price of these services. As of June 30, 1991, Ameritrust ranked first among these institutions in Cuyahoga County with approximately 30% of deposits and 26% of offices. Society ranked third, with approximately 21% of deposits and 16% of offices. In Lake County, Ameritrust ranked second, with approximately 14% of deposits and 9% of offices. In Lake County, Society ranked fourth, with approximately 11% of deposits and 16% of offices.

27. The markets for the provision of business banking

services to small businesses in Cuyahoga and Lake Counties are highly concentrated.

28. If Society and Ameritrust combine, the resulting institution would rank first in the Cuyahoga County market with approximately 51% of deposits held by institutions offering business banking services or likely to do so in the event of a supracompetitive rise in the price of such services. The HHI for deposits would rise by 1265 points to 3416. The HHI for offices would rise by 833 points to 2342.

29. If Society and Ameritrust combine, the resulting institution would rank second in the Lake County market with approximately 26% of deposits held by institutions offering business banking services or likely to do so in the event of a supracompetitive rise in the price of such services. The HHI for deposits would rise by 323 points to 2274. The HHI for offices would rise by 277 points to 1629.

30. Statutory and regulatory constraints and other market factors make it unlikely that entry by other depository institutions would be sufficiently timely or of sufficient magnitude to ameliorate the lessening of competition in the provision of business banking services to small businesses in Cuyahoga County and Lake County that would result from the combination of Society and Ameritrust. The need to limit risk and the need for an adequate branch network, as well as other market factors, make it unlikely that expansion by other depository institutions already in the market would be

sufficiently timely or of sufficient magnitude to ameliorate the lessening of competition.

VIOLATION ALLEGED

31. On or about September 12, 1991, the Defendants entered into an agreement that, if consummated, will result in the combination of Society and Ameritrust. The Federal Reserve Board approved the proposed transaction on February 13, 1992.

32. The effect of the combination of Society and Ameritrust 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 Society and Ameritrust in the provision of business banking services to small business customers in Cuyahoga County and in Lake County will be permanently eliminated;

(b) competition generally in the provision of business banking services to small business customers in Cuyahoga County and in Lake County will be substantially lessened.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the combination of Society and Ameritrust be adjudged to be in violation of Section 7 of the Clayton Act.

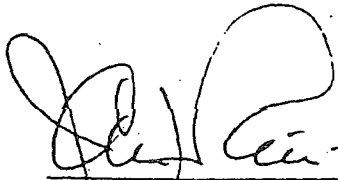
2. That the Defendants and all other persons acting for or on their behalf be enjoined from implementing the aforesaid agreement or any similar plan or agreement, the effect of which

would be to merge, consolidate or in any other way combine the businesses of the Defendants;

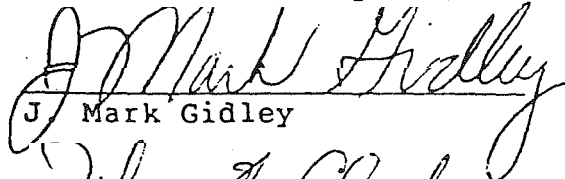
3. That the United States have such other and further relief as the Court may deem just and proper; and

4. That the United States recover the costs of this action.

Dated: March 13, 1992



James F. Rill
Assistant Attorney General



J. Mark Gidley



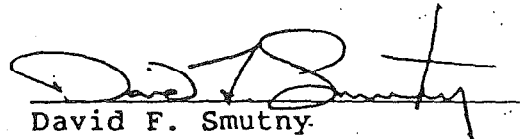
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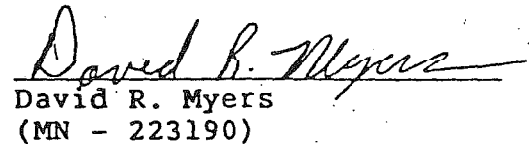
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