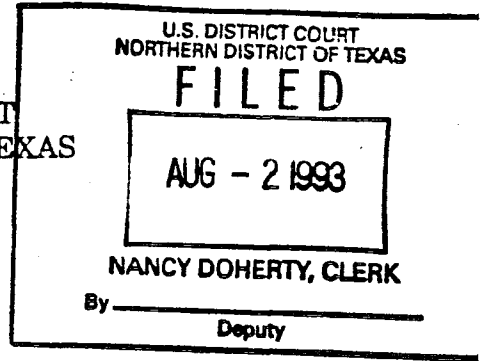


UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 TEXAS COMMERCE BANCSHARES, INC.)
 and TEXAS COMMERCE BANK-MIDLAND,)
 N.A.,)
)
 Defendants.)

No. 3-93CV0294-G
Entered: August 2, 1993
ENTERED ON DOCKET
PURSUANT
TO F. R. C. P. RULES
58 AND 79a

FINAL JUDGMENT

WHEREAS, Plaintiff United States of America, having filed its Complaint herein on February 11, 1993, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestitures of a bank, bank office, deposits and commercial loans are the essence of this agreement, and defendants have represented to plaintiff that the defendants believe the divestitures required herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties 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

A. As used in this Final Judgment:

1. "Acquisition" means the acquisition of assets and deposit liabilities of New First City-Midland, N.A., by Texas Commerce Bank-Midland, N.A.

2. "Business banking services" means banking services offered to business customers, including at least:

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

b. "commercial loans," i.e., secured or unsecured loans to businesses, including but not limited to commercial operating loans, i.e., loan to businesses for operating or cash flow finance, including lines of credit.

Business banking services may also include other services, such as equipment finance loans, loans to finance the purchase or improvement of commercial property, cash and coin, cash management services (including lockbox, account reconciliation and controlled disbursement), and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

3. "Defendants" means Texas Commerce Bancshares, Inc. ("TCB"), its parent (Chemical Banking Corporation), and subsidiaries, including without limitation Texas Commerce Bank-Midland, N.A.

4. "Divestiture Assets" means all assets and deposit liabilities of New First City Bank-Midland, N.A. ("New First City-Midland") acquired by TCB from the Federal Deposit Insurance Corporation ("FDIC"), including:

a. all personal property; cash on hand; all safe deposit boxes at the Divestiture Office, exclusive of contents; all prepaid expenses, including security deposits of the Office, determined in accordance with generally accepted accounting principles, as of the closing date; all rights of defendants to all contracts relating to the Office; all records and original documents in defendants' possession pertaining to the leasehold or the personal property; all loans originated at, serviced at or booked to the Office; any leasehold; any real estate, buildings, structures, drive-in teller facilities, ATMs, fixtures and improvements thereon which are owned and used by defendants as premises for the Office; and any other assets so acquired that are required for the Office to compete effectively in offering business banking services; and

b. all deposit liabilities that constitute the unpaid balance of money or its equivalent received or held by New First City-Midland in the usual course of business and for which the Office has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, investment, retirement or thrift account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the Office.

Notwithstanding the foregoing, Divestiture Assets do not include those assets that at the request of the purchaser are excluded from a sale, including among other things signs and computer equipment not useful to a purchaser. Moreover, Divestiture Assets will not include (1) Trust Assets, or (2) New First City-Midland's indirect consumer loans, subject to the provisions of Section IV.G of this Final Judgment.

5. "Divestiture Office" or "Office" means the main office of New First City-Midland, located at 500 West Texas Avenue, Midland, Texas 79701, including all Divestiture Assets, as herein defined.

6. "Medium-sized business" means a business with annual sales from approximately \$5 million to approximately \$100 million.

7. "Relevant geographic market" or "Midland market" means the Midland, Texas, MSA, which consists of Midland County, Texas.

8. "Small business" means a business with annual sales of less than approximately \$5 million.

9. "Trust assets" means all trust accounts maintained by New First City-Midland, all trust assets under management, and all ancillary papers, files, and other assets dedicated to that business.

III. APPLICABILITY

A. The provisions of this Final Judgment shall apply to the defendants; to their successors and assigns; to their subsidiaries, affiliates, directors, officers, managers, agents, and employees; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the negotiated sale or other negotiated disposition of the Divestiture Office, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. DIVESTITURE OF OFFICE AND ASSETS

A. Defendants are hereby ordered and directed to divest to a qualified purchaser, within three (3) months of the date of entry of this Final Judgment, all of their direct and indirect ownership and control of the Divestiture Office. The purchaser shall be independent of defendants; shall be a federally insured financial institution that offers to business customers, at a minimum, transaction accounts and commercial loans; and shall deliver promptly to plaintiff following the execution of a binding contract, an affidavit from an authorized officer stating a present intention that the Office purchased will offer business banking services to small businesses and medium-sized businesses in the geographic market served by the Office. Plaintiff in its sole discretion shall have the right to approve any purchaser as competitively suitable. The obligation to divest shall be satisfied if, within three (3) months of the date of entry of this Final Judgment, defendants enter into a binding contract with a qualified purchaser for the sale of the Divestiture Office to a purchaser according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable date for closing after compliance with all federal or state bank regulatory requirements and if the sale is completed pursuant to the contract. In the event that any proposed sale of the Divestiture Office is denied approval by any applicable

federal or state bank regulatory agency, the time period specified herein in which defendants must satisfy the obligation to divest will still expire on the three (3) month anniversary date of the entry of this Final Judgment, unless plaintiff under Section IV.B. grants additional time.

B. If defendants have not accomplished the required divestitures, within three (3) months of the entry date of this Final Judgment, plaintiff may, in its sole discretion, extend this time period for divestiture for an additional period of time, if defendants request such an extension and demonstrate to plaintiff's satisfaction that it is then engaged in negotiations with a prospective purchaser that are likely to result in the required divestitures but that the contract cannot be completed by the three (3) month anniversary date of the entry of this Final Judgment.

C. Defendants agree to take all reasonable steps to accomplish said divestitures promptly. In carrying out their obligation to divest the Divestiture Office, defendants may at their election divest along with the Divestiture Office any other assets of TCB or of New First City-Midland.

D. Defendants shall use reasonably diligent means to solicit purchasers for the Divestiture Office. In the event Defendants' efforts do not, within two (2) months of the date of this Final Judgment, yield a prospective purchaser with whom Defendants have by then reached agreement or are then in good faith negotiations for sale of the Divestiture Office, Defendants shall promptly thereafter make known in the Wall Street Journal, the American Banker, and in the State of Texas, by usual and customary means, the availability of the Divestiture Office for sale as an ongoing office that offers business banking services, and shall also make known by the same means the availability of the Divestiture Assets. The defendants shall notify any person making an inquiry regarding

the possible purchase of the Divestiture Office and any or all of the Divestiture Assets that the sale is being made pursuant to this Final Judgment and that this Final Judgment requires approval of this Court. The defendants shall provide any such person with a copy of this Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of the Divestiture Office, subject to customary confidentiality assurances, all pertinent information regarding the Divestiture Office and the Divestiture Assets. Defendants shall provide such information to the plaintiff as soon as possible, but no later than two (2) business days after it furnishes such information to any other person. Defendants shall permit prospective purchasers of the Divestiture Office to consult personnel at such Office, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the Divestiture Office. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to defendants' banking business, except to the extent it relates to the Divestiture Office's operations and business. Defendants shall not object to any application for new bank charters sought to facilitate any divestitures.

E. Following accomplishment of the divestiture, defendants shall not acquire or attempt to acquire from the purchaser the Divestiture Office or any Divestiture Assets divested pursuant to this Final Judgment without first receiving prior approval from the plaintiff during the duration of this Final Judgment.

F. Except to the extent otherwise approved by plaintiff, the Divestiture Office divested pursuant to this Final Judgment shall be divested free and clear of (1) all mortgages, encumbrances and liens to defendants, and (2) any contractual commitments or obligations to defendants existing as of the date of divestiture, unless plaintiff is

satisfied that the purchaser of the Divestiture Office wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

G. Notwithstanding the provisions of Section II.4, defendants shall be required to divest the indirect consumer loans of New First City-Midland to the purchaser of the Divestiture Office, if said purchaser can demonstrate to the plaintiff in its sole discretion that those loans are reasonably necessary for purchaser to operate as a viable bank offering business banking services to small and medium-sized business customers in the Midland market.

V. APPOINTMENT OF TRUSTEE

A. If defendants have not accomplished the divestitures required by this Final Judgment by the two (2) month anniversary date of the entry of this Final Judgment, defendants shall notify plaintiff in writing of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section IV.B., whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed

and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court with the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestitures required by this Final Judgment at the expiration of the time period specified in Sections IV.A. or IV.B. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the not yet divested Divestiture Office according to the terms of this Final Judgment; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendants have notified plaintiff pursuant to Section VI of this Final Judgment of the proposed divestiture of the Divestiture Office, and plaintiff has not filed a written notice that it objects to said proposed divestiture.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Divestiture Office or any Divestiture Assets as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestitures to a purchaser acceptable to the plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the Divestiture Office or Divestiture Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff

and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based upon a fee arrangement which includes an incentive based upon the price of the divestitures and the speed with which they are accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all costs and expenses incurred in connection with this matter. After approval by the Court of the trustee's accounting, including fees and reasonable expenses for his or her services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures and shall, if requested by the trustee, use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Office which the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the Divestiture Office and Divestiture Assets being divested as the trustee may request.

F. After his or her appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestitures as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days,

made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted, or made an inquiry about acquiring, any ownership interest in the Divestiture Office or Divestiture Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Divestiture Office or Divestiture Assets, and shall provide additional information to plaintiff upon its request.

G. Within six (6) months after his or her appointment has become effective, if the trustee has not accomplished the divestitures required by this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why any required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish the report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust and the term of the trustee's appointment.

VI. NOTIFICATION

Immediately following execution of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestitures pursuant to Section IV. of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, he or she shall similarly notify defendants. The notice shall set forth the details of the proposed transactions and list the name, address, and

telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Divestiture Office or Divestiture Assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestitures and the proposed purchaser. Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than the defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendant and to the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestitures may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section V.C. Upon objection by plaintiff, a divestiture proposed under Section IV. shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V.C., a divestiture proposed under Section V. shall not be consummated unless approved by the Court. The requirements of this Section VI are subject to waiver by the plaintiff.

VII. AFFIDAVITS

Within fifteen (15) business days of entry of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestitures passes to the trustee pursuant to Section V. of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV. of this Final Judgment. Each such affidavit shall include the name,

address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the Divestiture Office or Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest the Divestiture Office and Divestiture Assets.

VIII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV. or V. of this Final Judgment without plaintiff's prior consent.

IX. PRESERVATION OF ASSETS

Until the divestiture of the Divestiture Office and Divestiture Assets, as required by this Final Judgment, have been accomplished:

A. The defendants shall take all steps necessary to manage the Divestiture Office and Divestiture Assets prudently so as to maintain the Divestiture Office as an economically viable, ongoing office that offers business banking services. Defendants shall hold the Divestiture Office and all Divestiture Assets separately from their own operations, and shall operate the Divestiture Office separately from the management and personnel of defendants. The defendants shall use all reasonable efforts to maintain and increase sales of business banking services provided through the Divestiture Office, and continue with any current plans for development of business banking services at those locations. Defendants shall not solicit any existing or new small or medium-sized business customers of the Divestiture Office except for the account and benefit of the Divestiture Office.

B. The defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, any Divestiture Assets required to be divested pursuant to this Final Judgment, except that any component of such Divestiture Assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide and maintain sufficient working capital to preserve the business of the Divestiture Office and of the Divestiture Assets, including funds for commercial lending, as a viable, ongoing office that offers business banking services.

D. Defendants shall, to the extent they do not acquire ownership or leasehold interests for the physical premises now occupied by the Divestiture Office (including all office, parking and support facilities) in the Acquisition, arrange to lease or otherwise occupy such physical premises during the period pending divestiture. In the event that the FDIC or its successor, or other owner or lessee, does not permit defendants to continue to occupy the premises, defendants will make other reasonable arrangements, upon prior consent of plaintiff or of the Court, consistent with defendants' obligations to preserve the businesses of the Divestiture Office as viable businesses as set forth in this Section IX.

E. Defendants shall preserve the physical assets of the Divestiture Office, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of the

Divestiture Office or otherwise related to the Divestiture Assets until the date of divestiture.

F. Pending completion of the divestiture, except in the ordinary course of business, or as is otherwise consistent with the requirements of Section X., the defendants shall refrain from terminating or altering any current employment, salary, or benefit agreements for any managerial or commercial loan personnel of the Divestiture Office, and shall refrain from transferring any employee so employed without the prior written approval of plaintiff.

G. Defendants shall refrain from taking any action that would jeopardize the sale of the Divestiture Office or the Divestiture Assets.

X. EMPLOYMENT OFFERS

Defendants are hereby enjoined and restrained until two (2) years following the date of divestiture, from employment of, or making offers of employment to, any person who currently is a commercial loan manager, officer or representative, (1) the preponderance of whose duties relate to the successful operation of the Divestiture Office, or (2) who is reasonably needed by the purchaser to continue the successful operation of the Divestiture Office and the servicing of the business customers of the Divestiture Office. This provision, however, does not apply to any employee who is terminated by the purchaser of the Divested Office. Defendants shall make available for interview and employment offers by purchaser sufficient Divestiture Office personnel needed to handle the business customers of the Divestiture Office. Defendants shall encourage and facilitate employment by the purchaser of such employees, and shall remove any impediments that may deter such employees from accepting employment with the purchaser of any Divestiture Office, including, but not limited to, the payment of all

bonuses accrued up to the closing date of sale of the Divestiture Office to which such employees would otherwise have been entitled had they remained in the employment of defendants until the date of said closing. In connection with the purchaser's solicitation of any employees under this Section, defendants shall not make competing offers.

XI. VISITORIAL CLAUSE

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 written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, be permitted:

1. Access during office hours of the defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendants and without restraint or interference from it, to interview officers, employees and agents of the defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendants at their principal offices, the defendants 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.

No information or documents obtained by the means provided in this Section XI shall be divulged by any 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 (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by the defendants to plaintiff, the defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendants are not a party.

XII. EXPIRATION OF JUDGMENT

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XIII. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court 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, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. STATEMENT OF PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: Dallas, Texas
August 2, 1993

A. J. Fitch

United States District Judge