

James D. ...

REGULATION OF BANK MERGERS

REPORT

OF THE

COMMITTEE ON BANKING AND CURRENCY

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

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ON

S. 1062



MARCH 23, 1960.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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REGULATION OF BANK MERGERS

MARCH 23, 1960.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SPENCE, from the Committee on Banking and Currency, submitted the following

R E P O R T

[To accompany S. 1062]

The Committee on Banking and Currency, to whom was referred the bill (S. 1062) to amend the Federal Deposit Insurance Act to provide safeguards against mergers and consolidations of banks which might lessen competition unduly or tend unduly to create a monopoly in the field of banking, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That subsection (c) of section 18 of the Federal Deposit Insurance Act is amended by striking out the third sentence and inserting in lieu thereof the following: "No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank without the prior written consent (i) of the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank, or (ii) of the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank), or (iii) of the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank). Notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, in a form approved by the Comptroller, the Board, or the Corporation, as the case may be, shall (except in a case where the furnishing of reports under the seventh sentence of this subsection is not required) be published, at appropriate intervals during a period (prior to the approval or disapproval of the transaction) at least as long as the period allowed under such sentence for furnishing such reports, in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located (or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto). In granting or withholding consent under this subsection, the Comptroller, the Board, or the Corporation, as the case may be, shall consider the financial history and condition

of each of the banks involved, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served, and whether or not its corporate powers are consistent with the purposes of this Act. In the case of a merger, consolidation, acquisition of assets, or assumption of liabilities, the appropriate agency shall also take into consideration the effect of the transaction on competition (including any tendency toward monopoly), and shall not approve the transaction unless, after considering all of such factors, it finds the transaction to be in the public interest. In the interests of uniform standards, before acting on a merger, consolidation, acquisition of assets, or assumption of liabilities under this subsection, the agency (unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved) shall request a report on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection (which report shall be furnished within thirty calendar days of the date on which it is requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action). The Comptroller, the Board, and the Corporation shall each include in its annual report to the Congress a description of each merger, consolidation, acquisition of assets, or assumption of liabilities approved by it during the period covered by the report, along with the following information: the name and total resources of each bank involved; whether a report has been submitted by the Attorney General hereunder, and, if so, a summary by the Attorney General of the substance of such report; and a statement by the Comptroller, the Board, or the Corporation, as the case may be, of the basis for its approval."

Amend the title so as to read: "An Act to amend the Federal Deposit Insurance Act to require Federal approval for mergers and consolidations of insured banks."

WHAT THE BILL WOULD DO

The bill as reported by your committee prohibits mergers¹ of federally insured banks without the approval of the appropriate Federal bank supervisory agency. If the merger is to result² in a national bank or a District of Columbia bank, approval must be obtained from the Comptroller of the Currency; if it is to result in a State bank that is a member of the Federal Reserve System, approval must be obtained from the Federal Reserve Board; if it is to result in an insured nonmember State bank, approval must be obtained from the Federal Deposit Insurance Corporation. In acting on a merger application, the agency having jurisdiction over the transaction will consider the following factors: The financial history and condition of each of the banks involved, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served, whether the bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act, and the effect of the transaction on competition (including any tendency toward monopoly). Approval will not be given unless, after considering all such factors, the agency finds the transaction to be in the public interest. Except where immediate action is needed to save a failing bank, the agency having jurisdiction over the transaction will request a report on the competitive factors involved from the other two banking agencies and from the Attorney General.

¹ For ease of reading this report ignores the technical distinctions between a true merger and other transactions by which two banks may end up as one through consolidation, acquisition of assets, or assumption of liabilities. The bill, however, covers all such cases.

² As indicated in footnote 1, this report ignores certain technical distinctions. The report uses "resulting bank" to include what is more accurately described in the bill as the "acquiring, assuming, or resulting bank."

THE COMMITTEE AMENDMENT

Your committee has agreed upon an amendment to the bill, striking out all after the enacting clause and inserting substitute provisions worked out by Subcommittee No. 2 of this committee, under the able chairmanship of Hon. Paul Brown. The principal effect of the substitute amendment relates to the standard used in acting on mergers. Both the Senate bill and the committee substitute require the appropriate banking agency to consider the six banking factors listed first in the preceding paragraph. The Senate bill added a seventh factor to be considered: whether the transaction would "unduly lessen competition or tend unduly to create a monopoly." The committee substitute requires consideration of the six banking factors plus "the effect of the transaction on competition (including any tendency toward monopoly)"; it also bars approval unless, after weighing all these factors, the agency finds the transaction to be in the public interest.

The committee substitute also makes certain changes in the procedures for obtaining reports from the other banking agencies and the Attorney General, and for reporting actions on bank mergers to Congress. These changes are explained more fully in the discussion of the reporting provisions of the bill (beginning p. 12).

The committee substitute also provides for notice of proposed mergers to be published in newspapers. This provision is explained on page 14.

NEED FOR IMPROVED CONTROLS OVER BANK MERGERS

Vigorous competition between strong, aggressive, and sound banks is highly desirable. Competition in banking takes many forms—competition for deposits by individuals and corporations and by personal and business depositors; competition for individual, business, and governmental loans; competition for services of various sorts. Competition for deposits increases the amounts available for loans for the development and growth of the Nation's industry and commerce. Competition for loans gives the borrowers better terms and better service and furthers the development of industry and commerce. Vigorous competition in banking stimulates competition in the entire economy, in industry, commerce, and trade. There is no question that competition is desirable in banking, and that competitive factors should be considered in all aspects of the supervision and regulation of banks.

The number of commercial banks in the United States has been slowly but steadily declining in the past 10 years. On January 1, 1950, there were 14,174 commercial banks in the country, but on December 31, 1959, the number had dropped to 13,460, a loss of 714 banks for the period. This occurred in spite of a tremendous increase in the country's need for banking services, and despite the fact that 887 new banks were chartered during the period. The net loss resulted from a strong trend toward mergers; on the average, 150 banks per year ceased to exist as separate institutions during this period. The 1,503 banks which disappeared represent more than 10 percent of all the banks in the country.

Annual figures for this period, as furnished by the Comptroller of the Currency during the hearings on this bill, are as follows:

All commercial banks, 1950-59

Jan. 1, 1950:				
Total number of commercial banks	.....			14,174
Less:				
New banks chartered during 1950	.....	67		
Banks absorbed by merger during 1950	.....	91		
Other banks discontinuing business during 1950	.....	13		
			104	-37
Total commercial banks, Dec. 31, 1950	.....			14,137
Jan. 1, 1951:				
Total number of commercial banks	.....			14,137
Less:				
New banks chartered during 1951	.....	64		
Banks absorbed by merger during 1951	.....	84		
Other banks discontinuing business during 1951	.....	10		
			94	-30
Total commercial banks, Dec. 31, 1951	.....			14,107
Jan. 1, 1952:				
Total number of commercial banks	.....			14,107
Less:				
New banks chartered during 1952	.....	71		
Banks absorbed by merger during 1952	.....	99		
Other banks discontinuing business during 1952	.....	12		
			111	-40
Total commercial banks, Dec. 31, 1952	.....			14,067
Jan. 1, 1953:				
Total number of commercial banks	.....			14,067
Less:				
New banks chartered during 1953	.....	65		
Banks absorbed by merger during 1953	.....	115		
Other banks discontinuing business during 1953	.....	7		
			122	-57
Total commercial banks, Dec. 31, 1953	.....			14,010
Jan. 1, 1954:				
Total number of commercial banks	.....			14,010
Less:				
New banks chartered during 1954	.....	72		
Banks absorbed by merger during 1954	.....	216		
Other banks discontinuing business during 1954	.....	6		
			222	-150
Total commercial banks, Dec. 31, 1954	.....			13,860
Jan. 1, 1955:				
Total number of commercial banks	.....			13,860
Less:				
New banks chartered during 1955	.....	115		
Banks absorbed by merger during 1955	.....	225		
Other banks discontinuing business during 1955	.....	13		
			238	-123
Total commercial banks, Dec. 31, 1955	.....			13,737
Jan. 1, 1956:				
Total number of commercial banks	.....			13,737
Less:				
New banks chartered during 1956	.....	122		
Banks absorbed by merger during 1956	.....	186		
Other banks discontinuing business during 1956	.....	13		
			199	-77
Total commercial banks, Dec. 31, 1956	.....			13,660
Jan. 1, 1957:				
Total number of commercial banks	.....			13,660
Less:				
New banks chartered during 1957	.....	86		
Banks absorbed by merger during 1957	.....	165		
Other banks discontinuing business during 1957	.....	3		
			168	-80
Total commercial banks, Dec. 31, 1957	.....			13,580

All commercial banks, 1950-59—Continued

Jan. 1, 1958:			
Total number of commercial banks.....			13,580
New banks chartered during 1958.....		100	
Less:			
Banks absorbed by merger during 1958.....	151		
Other banks discontinuing business during 1958.....	15		
		166	-66
Total commercial banks Dec. 31, 1958.....			13,514
Jan. 1, 1959:			
Total number of commercial banks.....			13,514
New banks chartered during 1959.....		123	
Less:			
Banks absorbed by merger during 1959.....	171		
Other banks discontinuing business during 1959.....	6		
		177	-54
Total commercial banks Dec. 31, 1959.....			13,460
SUMMARY			
Total number of commercial banks Jan. 1 1950.....			14,174
New banks chartered during period 1950-59.....		887	
Less:			
Banks absorbed by merger during period 1950-59.....	1,503		
Other banks discontinuing business during period 1950-59.....	98		
		1,601	-714
Total commercial banks Dec. 31, 1959.....			13,460

The large numbers of mergers in recent years, the vast resources involved in these mergers, and the increases in the size of the largest banks, particularly those which have grown through mergers, all give rise to concern for the maintenance of vigorous competition in the banking system and in the industry and commerce served by the banking system. The reduction in the number of banks and the loss of competition between merged banks also give rise to concern. There are differing views about the effect and the significance of the mergers which have taken place. But there is general agreement that legislation providing for uniform and effective regulation of mergers is required for the future.

Controls over bank mergers are incomplete and confusing, particularly with respect to the competitive factors involved. There are gaps in the controls exercised by the Federal banking agencies under banking statutes, and even where Federal approval is required before a merger may be completed, the standards are not clearly spelled out. Only two State statutes regulating bank mergers specifically authorize consideration of competition as a factor in approving or disapproving a merger, although in other States this factor is undoubtedly considered under some other standards. The Federal antitrust laws are also inadequate to the task of regulating bank mergers; while the Attorney General may move against bank mergers to a limited extent under the Sherman Act, the Clayton Act offers little help.

MERGERS COVERED BY THE BILL

S. 1062 would apply to all bank mergers involving a bank insured by FDIC—National banks, State member banks, and insured nonmember banks. This would cover the vast majority of American banks. Approximately 95 percent of the banks in the United States are insured, and the insured banks hold over 97 percent of the total assets of all banks in the United States. The coverage of the bill can be judged by the following chart, showing a breakdown of bank mergers

for the past 3 years as to type of bank, which was furnished by the Federal Deposit Insurance Corporation:

Distribution of absorbed commercial banks by class and size of bank; absorptions, consolidations, and mergers in the United States (continental United States and other areas), 1957-59

NUMBER OF ABSORBED COMMERCIAL BANKS

Classification	Total	Insured			Non-insured ¹
		National	State, members Federal Reserve System	Not members Federal Reserve System	
All absorbed commercial banks, 1957-59...	472	188	92	176	16
Included at beginning of year of absorption among the—					
100 largest commercial banks.....	4	-----	4	-----	-----
2d 100 largest commercial banks....	3	2	1	-----	-----
3d 100 largest commercial banks....	3	1	2	-----	-----
With assets over \$10,000,000, but not among 300 largest banks ²	138	71	41	26	-----
With assets of \$10,000,000 or less.....	324	114	44	150	16

ASSETS (IN THOUSANDS) OF ABSORBED COMMERCIAL BANKS

	\$7, 837, 769	\$2, 720, 491	\$3, 997, 298	\$1, 094, 544	\$25, 436
All absorbed commercial banks, 1957-59...					
Included at beginning of year of absorption among the—					
100 largest commercial banks.....	2, 498, 488	-----	2, 498, 468	-----	-----
2d 100 largest commercial banks....	504, 959	354, 731	150, 228	-----	-----
3d 100 largest commercial banks....	313, 158	122, 304	190, 854	-----	-----
With assets over \$10,000,000, but not among 300 largest banks ²	3, 269, 556	1, 742, 981	973, 571	583, 004	-----
With assets of \$10,000,000 or less.....	1, 221, 628	500, 475	184, 177	511, 540	25, 436

¹ For 1957 and 1958 from table 101, Annual Report of the Federal Deposit Insurance Corporation for the indicated year; for 1959 from tabulations to be included in the annual report for 1959.

² Includes banks of deposit and trust companies not regularly engaged in deposit banking.

³ The largest 300 banks included those with assets of more than \$85,000,000 in 1957; \$89,000,000 in 1958; and \$95,000,000 in 1959 (at beginning of year).

⁴ From "Polk's Bank Directory"; data as of nearest available midyear or yearend date prior to absorption.

PRESENT FEDERAL BANKING LAWS ON BANK MERGERS

National banks

Where a proposed merger will result in a national bank, it can normally be completed only if the Comptroller of the Currency approves. But the statute governing such mergers sets forth no standards for the Comptroller to follow in acting on such proposals. In addition, there are special cases where, due to the form the transaction takes, approval is not directly required. That is, if the transaction is not a merger or consolidation in the technical sense, but takes the form of a national bank purchasing the assets and assuming the liabilities of another bank, the Comptroller's approval is not directly required unless the capital stock or surplus of the assuming bank will be less than the aggregate capital or surplus of the combining banks. Where there is no such diminution, the Comptroller can exercise indirect control through his power to approve the necessary increase in the capital of the assuming bank, and if one of the banks is to be continued as a branch, his approval is also required. The bill, however, would remove any confusion or doubt about the Comptroller's

power to act directly in these cases, and would set forth the standards on which he is to act, including the competitive factor specifically.

Federal Reserve member banks

The only direct authority the Federal Reserve Board has over mergers of member banks derives from section 18(c) of the Federal Deposit Insurance Act, which requires advance approval of the Board before a merger may take place which will result in a member bank with a smaller capital or surplus than the combined capital or surplus of the banks involved in the transaction. In most cases the resulting bank can be provided with capital and surplus as high as those of the merging banks. This means that usually the absorbing bank has it in its own power to prevent the Board from reviewing the merger directly.

The Board exercises an indirect control over mergers where one of the banks involved will continue as a branch of the resulting member bank, since the Board's approval is required before such a branch may be established. In such a case, the Board considers what effect the branch will have on competition, but the Board's authority to do so has been challenged in recent litigation; it was upheld in the trial court but appeal has been taken.³

In 1959, out of 42 mergers resulting in member banks, 19 mergers, involving total resources of almost \$2 billion, did not require direct approval of the Board.

Insured State nonmember banks

The Federal Deposit Insurance Corporation's approval is required before any bank whose deposits it insures may merge with any non-insured bank. It also has, with respect to insured nonmember banks, the same power the Federal Reserve Board has with respect to member banks, in merger cases involving diminution of capital or surplus. Its power to exercise indirect control by approving or disapproving establishment of branches is also comparable to that of the Federal Reserve Board.

In the past 5 years there have been 162 mergers resulting in a State nonmember bank; in 66 of these FDIC approval was not required. In 1959, FDIC passed on 23 of 40 possible cases; in the 17 cases not requiring FDIC approval, total assets of \$106 million were involved—75 percent more than the assets involved in the cases where approval was required.

The Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, a former chairman and long-time member of the Banking and Currency Committee, Hon. Jesse P. Wolcott, summed up this state of affairs as follows: "There is no question, then, that our present act is largely ineffective when it comes to control of bank mergers."

Summary

The effect of the gaps in Federal banking laws on mergers in recent years is summarized in the following material furnished by the Comptroller of the Currency:

³ *Old Kent Bank & Trust Co. v. Martin et al.* (U.S. District Court for the District of Columbia, Civil Action No. 1943-58).

REGULATION OF BANK MERGERS

Recapitulation of consolidations, mergers, assumptions, not requiring approval of appropriate Federal bank supervisory agency, 1955 through 1959

I. State bank member of Federal Reserve System the continuing bank: Approval of Board of Governors of Federal Reserve System not required because the total capital stock or surplus of the resulting or assuming bank was not less than the aggregate capital stock or aggregate surplus, respectively, of all the merging or consolidating banks or all of the parties to the assumption of liabilities.

Year	Requiring Board approval	Not requiring Board approval	Total	Total resources, cases not requiring Board's approval
1955	38	30	68	\$6,431,058,718
1956	30	24	54	214,314,252
1957	27	20	47	276,574,435
1958	21	23	44	523,258,520
1959	23	19	42	1,985,983,797
Total	133	116	249	9,434,189,722

II. State bank insured by Federal Deposit Insurance Corporation, but not a member of Federal Reserve System, the continuing bank: Approval of Federal Deposit Insurance Corporation not required because the total capital stock or surplus of the resulting or assuming bank was not less than the aggregate capital stock or aggregate surplus, respectively, of all the merging or consolidating banks or all of the parties to the assumption of liabilities.

Year	Requiring FDIC approval	Not requiring FDIC approval	Total	Total resources, cases not requiring FDIC approval
1955	25	9	34	\$28,592,419
1956	16	11	27	30,472,858
1957	14	21	35	286,765,741
1958	18	8	26	92,336,858
1959	25	17	40	105,621,323
Total	98	66	162	543,789,199

III. National bank the continuing bank: Approval of Comptroller of the Currency not required to assumption of liabilities cases only because the capital stock or surplus of the assuming national bank was not less than the aggregate capital stock or aggregate surplus, respectively, of all the parties to the assumption of liabilities. While the Comptroller had no authority to approve or disapprove these transactions because there was no diminution in capital or surplus, the increase in capital by the resulting national bank did require the approval of the Comptroller. (Comptroller of the Currency required to approve or disapprove all consolidations or mergers where the continuing bank is a national bank under the provisions of specific statutes.)

Year	Consolidations and mergers requiring Comptroller's approval	Assumption cases		Total	Total resources, cases not requiring Comptroller's approval
		Requiring Comptroller's approval	Not requiring Comptroller's approval		
1955	73	51	2	126	\$13,490,708
1956	69	32	4	105	36,950,783
1957	62	20	1	83	1,285,741
1958	53	30		83	
1959	73	11	2	86	19,357,185
Total	330	144	9	483	71,064,412

¹ Includes 3 District of Columbia nonnational banks.

CONTROL OVER BANK MERGERS UNDER ANTITRUST LAWS

The Sherman Antitrust Act prohibits any contract, combination, or conspiracy in restraint of interstate or foreign trade or commerce, and makes it illegal to monopolize, or to combine, conspire, or attempt to monopolize, any part of such trade or commerce. Section 7 of the Clayton Act prohibits acquisitions of bank stock "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." Because section 7 is limited, insofar as banks are concerned, to cases where a merger is accomplished through acquisition of stock, and because bank mergers are accomplished by asset acquisitions rather than stock acquisitions, the act offers "little help," in the words of Hon. Robert A. Bicks, acting head of the Antitrust Division, in controlling bank mergers. Although the Sherman Act applies to asset acquisitions as well as to stock acquisitions, it has been of little use in controlling bank mergers. It has been used only once in court (in a proceeding initiated in March 1959) against a bank merger.

S. 1062 would not in any way affect the applicability of the Sherman Act or the Clayton Act to bank mergers.

SPECIAL STANDARDS NEEDED TO CONTROL BANK MERGERS

Sad experiences in our history have demonstrated that to maintain a sound banking system in this country banks must be regulated much more strictly than ordinary businesses. A bank charter may be obtained only after the supervisory authorities are convinced that there is a need for the bank in the community and its prospects of success are good. Once it is in operation, it is subjected to careful and continuing supervision, in order to avoid "wildcat banking" and other excesses which did much to bring on panics in earlier days.

This point is brought out in the following quotation from "Banking Under the Antitrust Laws," by A. A. Berle (49 *Columbia Law Review* (1949) 589, at 592):

Operations in deposit banking not only affect the commercial field, but also determine in great measure the supply of credit, the volume of money, the value of the dollar, and even, perhaps, the stability of the currency system. Within this area considerations differing from and far more powerful than mere preservation of competition may be operating under direct sanction of law. It is the theory, in ordinary commercial fields, that competition is the desirable check on price levels—the process by which the efficient are rewarded by survival, and the inefficient eliminated by failure. The price of business failures is not regarded as too high for the community to pay in view of advantages to consumers, stimulus toward greater efficiency, and freedom of enterprise. But it is doubtful (to say the least) whether any such assumption is indulged in with respect to deposit banks; certainly the theory is not there accepted to the full extent of its logic. A bank failure is a community disaster, however, wherever, and whenever it occurs.

Because banking is a licensed and strictly supervised industry that offers problems acutely different from other types of business, the

bill vests the ultimate authority to pass on mergers in the Federal bank supervisory agencies, which have a thorough knowledge of the banks, their personnel, and their types of business. For the same reason, the bill requires consideration of the six banking factors now listed in section 6 of the Federal Deposit Insurance Act. Thus the supervisory agency would consider the financial history and condition of each of the banks involved, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served, and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

Reference to these factors, while essential, would not alone suffice, because the section 6 standards do not give sufficient weight to the factor of competition.

THE COMPETITIVE FACTOR

The most difficult task your committee faced in considering the bill was in framing a standard to guide the supervisory agencies in weighing the effects of a proposed merger on competition. But out of the hearings one principle emerged, on which all witnesses seemed to agree, as a starting point: Some bank mergers are in the public interest, even though they lessen competition to a degree. Thus, most witnesses agreed that a bank merger would serve the public interest, even though it might lessen competition substantially, where there is a reasonable probability of the ultimate failure of the bank to be acquired; or where because of inadequate or incompetent management the acquired bank's future prospects are unfavorable and can be corrected only by a merger with the resulting bank; or where the acquired bank is a problem bank with inadequate capital or unsound assets and the merger is the only practicable means of solving the problem; or where several banks in a small town are compelled by an overbanked situation to resort to unsound competitive practices, which may eventually have an adverse effect on the condition of such banks, and the merger would correct this situation.

Recognizing that other factors may outweigh an adverse effect on competition, the Senate bill provided that the banking agency acting on a proposed merger should consider whether it would "unduly lessen competition or tend unduly to create a monopoly." In the Senate Banking and Currency Committee's report this language was interpreted as follows:

The word "unduly" is used to show that any lessening of competition or tendency to monopoly which may be found by the agency—whether "appreciable," "perceptible," "slight," "substantial," "serious," or "great"—must be weighed and considered by the banking agency as just one of the several factors which will go to form its balanced judgment, on the basis of all of the factors involved.

Several witnesses before Subcommittee No. 2 objected to this language, on the ground that it is too ambiguous. They argued that the Clayton Act test should be applied because it has acquired more definite meaning through a long series of court interpretations. Your committee notes, however, that there have been relatively few cases

interpreting the Clayton Act since it was substantially changed in 1950, and that in one of these few cases it was interpreted as banning mergers having a given effect on competition, regardless of the benefits flowing from the merger. To meet this objection, the suggestion was made to apply the Clayton Act test generally, but write in specific exemptions to allow approval of mergers in the cases referred to above, involving probable failures, management problems, inadequate capital or unsound assets, or overbanked communities. This course seems unnecessarily hazardous, however, in view of the wide variety of situations in which a merger may be proposed in all good faith as a means of providing better banking service. Your committee concluded that it would be unwise to attempt to anticipate all possible situations where a merger would benefit the public, and incorporate them in a rigid, specific list of exemptions.

Your committee is convinced the Senate's approach is basically sound. Where demonstrable benefits would flow from a proposed merger, these should be weighed against any adverse effect on competition. Your committee feels, however, that the language of the Senate bill can be improved, to insure that the intent indicated in the legislative history of the bill in the Senate will be properly carried out. Your committee concurs with the Senate committee report's repeatedly expressed intent to allow approval of bank mergers that would be in the public interest, and with the following description of the process by which this question should be decided:

The decision in most cases can be expected to be clear.

In many cases the proposed merger will not reduce competition at all and there will be sound and convincing banking reasons for authorizing the merger. In other cases the proposed merger will clearly increase and strengthen competition, and there will be no banking factors which might lead to rejection of the merger. In still other cases, there will be serious danger of very considerable reduction in competition, and few or no sound banking reasons to approve the merger. In any of these cases, there need be little hesitation in approving or denying the application.

The committee recognizes that in a relatively small number of cases, the balancing of the various factors will be difficult—some banking factors may be favorable, some may be unfavorable; some competitive factors may be favorable, others unfavorable.

In such cases, the decision will not be simple. Full consideration will have to be given to the basic purposes of the statute; to promote a sound banking system, in the interest of the Government, borrowers, depositors, and the public; and to promote competition as an indispensable element in a sound banking system.

We are concerned, however, with some indications that under the Senate bill a merger could be approved even though it "unduly" lessened competition. While this result presumably was not intended, there are conflicting statements on this question in the legislative history of the bill in the Senate, and in the record of our hearings. Doubts on this score should obviously be removed. We are convinced, also, that approval of a merger should depend on a positive

showing of some benefit to be derived from it. As previously indicated, your committee is not prepared to say that the cases enumerated in the hearings are the only instances in which a merger is in the public interest, nor are we prepared to devise a specific and exclusive list of situations in which a merger should be approved. We do, however, reject the philosophy that doubts are to be resolved in favor of bank mergers. At the risk of saying the same thing another way, we feel the burden should be on the proponents of a merger to show that it is in the public interest, if it is to be approved. After all the factors have been weighed, the transaction should be approved only if the supervisory agency is satisfied that, on balance, its effect will be beneficial. For these reasons, we recommend adoption of the committee substitute.

REPORTS FROM THE OTHER BANKING AGENCIES

The bill divides responsibility over bank mergers among three separate agencies. This arrangement is a sound one, because as a general rule it will mean that the decision will be made by the Federal agency most thoroughly familiar with the banks involved. At the same time, it poses a practical problem, which was forcibly brought out during the hearings by the National Association of Supervisors of State Banks. In the words of Hon. Robert Myers, secretary of banking of the Commonwealth of Pennsylvania:

Unless there is uniformity of application of the standards relating to merger approval to be applied by the Federal agencies to bank mergers, the equality of competitive position between the two banking systems so necessary for the continued existence of the dual system, which Congress has always carefully tried to preserve, will be impaired.

Your committee agrees that every effort must be made to avoid a situation where one Federal agency is "tough" about mergers and another one is "easy," where there might be an inducement to arrange mergers so as to result in the kind of bank where approval could be easily obtained. To help guard against this kind of development, the bill provides that the agency having jurisdiction over a proposed merger shall request a report from the other two banking agencies on the competitive factors involved, unless it must act immediately to prevent a bank failure. The committee substitute differs from the Senate bill as to the mechanics of this consultation. Following a suggestion made by Chairman Martin of the Federal Reserve Board, the procedure for obtaining the views of the other two banking agencies is made to conform with the procedure for obtaining a report from the Attorney General. That is, under the committee substitute (but not under the Senate bill) the supervisory agency having jurisdiction over the transaction can act to save a failing bank without seeking the views of the other banking agencies; and the other banking agencies are required to submit their views within 30 days (or within 10 days if an emergency exists requiring expeditious action). The committee substitute also provides that the report shall be requested on the competitive factors, rather than on all factors to be considered.

The problem of obtaining uniformity is particularly acute in regard to the competitive factors, and it is expected that this uniformity can be obtained without asking the other two banking agencies for reports on the banking factors, which could result in an unnecessary Federal encroachment on supervision of State banks. It is expected, however, that the other banking agencies will be furnished with any available information needed to render a competent opinion on the competitive factors involved.

The State bank supervisors expressed considerable concern whether the system of consultation called for by S. 1062 would achieve the necessary uniform standards, and therefore recommended that ultimate approval of all mergers involving insured banks be placed in the hands of one agency, the Federal Deposit Insurance Corporation. Under this recommendation, all mergers where a national bank survives would be approved by the Comptroller and the Federal Deposit Insurance Corporation, and a merger with a State insured bank surviving would be approved by the State bank supervisor and the FDIC. The committee recognizes considerable merit in the State bank supervisors' recommendation but believes that the consultation provided for by S. 1062 will achieve their purposes.

The State bank supervisors also recommended that the Comptroller of the Currency should not be consulted as to a merger involving just State insured banks, on the grounds that such consultation is inconsistent with the principles of the dual banking system. Your committee, however, believes the development of uniform standards in the administration of S. 1062 is of fundamental importance in preserving the dual banking system, and that such consultation is essential to the development of such uniform standards.

REPORTS FROM THE ATTORNEY GENERAL

The committee substitute retains a feature of the Senate bill which should prove most helpful in providing effective control of bank mergers. That is, it would require the appropriate bank supervisory agency to seek the views of the Attorney General as to the competitive factors involved in a proposed merger before acting on it. As in the case of the report from the other banking agencies, the report need not be sought where immediate action is needed to save a failing bank. Normally, the report must be filed within 30 days, but provision is made for filing within 10 days in an emergency. It should be emphasized that the report from the Attorney General is purely advisory, just as the reports from the other banking agencies are. The banking agency has the power and responsibility to approve or disapprove. At the same time, the Justice Department's long years of experience in the antitrust field have qualified them to render valuable advice to the bank supervisory agencies in regulating bank mergers. Your committee is happy to note that Chairman Martin of the Federal Reserve Board indicated he would give careful weight to the Attorney General's report. The cooperation between the Federal Reserve Board and the Attorney General in the administration of the Bank Holding Company Act of 1956 has been most commendable.

REPORTS TO THE CONGRESS

The bill provides that each of the three bank supervisory agencies shall include in its annual report to the Congress a description of the mergers it has approved during the period covered by the report. The report is to include the following information: The name and total resources of each bank involved; whether a report has been submitted by the Attorney General and, if so, a summary of its substance prepared by him; and a statement by the banking agency involved of the basis for approval. While the bill does not attempt to specify the particular factual situations in which mergers may be approved, this reporting requirement will provide the Congress with the opportunity to review how the standards specified in the bill are being applied, on a case-by-case basis.

The committee substitute differs from the Senate bill in two respects as to these reports. First, the Senate bill requires a special report on mergers, to be submitted semiannually. The committee substitute provides, instead, for including this information in the agency's annual report. Your committee recommends this change because it does not appear that special reports every 6 months are necessary to apprise Congress adequately of developments in this field. The second change makes it clear that the summary of the Attorney General's report on a merger shall be prepared by the Attorney General. Your committee feels it is not advisable to have the views of one agency on such involved matters summarized by a different agency.

PUBLICATION OF NOTICE OF PROPOSED MERGERS

Your committee included in the bill as reported a provision requiring that notice of a proposed merger be published in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located. This requirement is geared to the time limits specified for reports from the other banking agencies and the Attorney General, so as not to occasion any unnecessary delay. That is, in the normal case, notice must be published at appropriate intervals for at least 30 days before the banking agency finally approves or disapproves the merger; in an emergency, this may be shortened to 10 days. The bill does not require any such notice where a merger is needed to save a failing bank. This makes no substantial change in existing law for most mergers resulting in national banks, inasmuch as such notice is already required to run for at least 4 weeks under the act of November 7, 1918, as revised by section 20 of Public Law 86-230 (12 U.S.C. 215), which applies to all such mergers except those in the form of an acquisition of assets and assumption of liabilities. Thus, for most national bank mergers, the only change the bill makes is to add 2 days to the notice period in some cases.

Notice is also required now for mergers resulting in State banks, under the laws of many States.

This requirement will not, therefore, occasion any delay, or impose any unnecessary burden on the persons seeking to arrange a bank merger. It will, however, provide a means by which the people of the community served by the banks involved may be given an opportunity to consider the effects of a proposed merger and express their views concerning it in cases where they are sufficiently interested.

COMPLIANCE WITH STATE LAW

In the case of every merger where the resulting bank will be a State bank, approval by the appropriate State supervisor or other banking authority will, of course, have to be obtained, in accordance with the applicable State law,⁴ before the Federal Reserve Board or the FDIC will have an opportunity to review an application under this bill.

If the State supervisor refuses his approval of the merger, no application to the Federal Reserve Board or to the FDIC would even be considered. There is, therefore, no possibility that the Board or the FDIC would approve a merger which the appropriate State authorities had finally rejected.

The only possibility of conflict is that the Board or the FDIC might deny an application for a merger which the State supervisor had approved. This kind of conflict is not new under the dual system of banking, however regrettable any specific instance may be. Under the Board's or the FDIC's standards, the Board may always deny membership, and the FDIC may always deny insurance, to a State bank chartered by the appropriate State authority. The bank may still proceed to operate as a State-chartered bank, without membership or without FDIC insurance, so long as the State supervisor authorizes it to do so.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as passed by the Senate, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SUBSECTION (c) OF SECTION 18 OF THE FEDERAL DEPOSIT
INSURANCE ACT

(c) Without prior written consent by the Corporation, no insured bank shall (1) merge or consolidate with any noninsured bank or institution or convert into a noninsured bank or institution or (2) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution or (3) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank. No insured bank shall convert into an insured State bank if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholders' meeting approving such conversion, without prior written consent by the Comptroller of the Currency if the resulting bank is to be a District bank, or by the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank), or by the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank). [No insured bank shall (i) merge or consolidate with an insured State bank under the charter of a State bank or (ii) assume liability to pay any deposits made in another insured bank, if the capital stock or surplus of the resulting or assuming bank will be less than the aggregate capital stock or aggregate surplus, respectively, of all the merging or consolidating banks or of all the parties to the assumption of liabilities, at the time of the

⁴ This is specifically required by statute in virtually all States.

shareholders' meeting which authorized the merger or consolidation or at the time of the assumption of liabilities, unless the Comptroller of the Currency shall give prior written consent if the assuming bank is to be a national bank or the assuming or resulting bank is to be a District bank; or unless the Board of Governors of the Federal Reserve System gives prior written consent if the assuming or resulting bank is to be a State member bank (except a District bank); or unless the Corporation gives prior written consent if the assuming or resulting bank is to be a nonmember insured bank (except a District bank).] *No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank without the prior written consent (i) of the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a district bank, or (ii) of the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a district bank), or (iii) of the Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a district bank). In granting or withholding consent under this subsection, the Comptroller, the Board, or the Corporation, as the case may be, shall consider the factors enumerated in section 6 of this Act. In the case of a merger, consolidation, acquisition of assets or assumption of liabilities, the appropriate agency shall also take into consideration whether the effect thereof may be to lessen competition unduly or to tend unduly to create a monopoly, and, in the interests of uniform standards, it shall not take action as to any such transaction without first seeking the views of each of the other two banking agencies referred to herein with respect to such question. In the case of a merger, consolidation, acquisition of assets, or assumption of liabilities, the appropriate agency shall request a report from the Attorney General on the competitive factors involved in the merger. The Attorney General shall furnish such report to such agency within thirty calendar days of the request: Provided, however, That in case the agency finds an emergency exists the agency may advise the Attorney General thereof and may there upon shorten the period for the Attorney General to report to ten calendar days: Provided further, That where the agency finds that an emergency makes necessary immediate action in order to prevent the probable failure of one of the merging banks, the appropriate agency may act without obtaining such report from the Attorney General: And provided further, That the Comptroller, the Board, and the Corporation shall each submit to the Congress a semiannual report with respect to each merger, consolidation, acquisition of assets, or assumption of liabilities approved by the Comptroller, the Board, or the Corporation, as the case may be, which shall include the following information: the name of the receiving bank; the name of the absorbed bank; the total resources of the receiving bank; the total resources of the absorbed bank; whether a report has been submitted by the Attorney General hereunder; and if approval has been given, a summary of the substance of the report made by the Attorney General, and a statement by the Comptroller, the Board, or the Corporation, as the case may be, in justification of its findings. No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.*

