STATEMENT BY GOVERNOR J. L. ROBERTSON

OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

BEFORE THE ANTITRUST SUBCOMMITTEE OF THE JUDICIARY COMMITTEE

OF THE HOUSE OF REPRESENTATIVES ON JULY 6, 1955.

The bill, H. R. 5948, now pending before this Committee, would amend section 7 of the Clayton Antitrust Act to make the provisions of that section applicable to acquisitions of assets of banks. At present the law prohibits a corporation from acquiring the stock of one or more corporations engaged in commerce where the effect may be substantially to lessen competition or tend to create a monopoly. In 1950, the law was amended to cover acquisitions of assets as well as stocks, but this amendment was not made applicable to banks. Under the pending bill, the 1950 amendment would be extended to banks so that acquisitions of both bank stocks and bank assets would be subject to the law.

The Board favors the objective of this legislation. It believes, however, that for the purpose of making the law more practical and effective, it would be desirable to make two changes in the proposal.

The first change which the Board would favor relates to the enforcement authority of the Board of Governors. Under the present law, the enforcement of section 7 of the Clayton Act where applicable to banks is vested in the Board. In addition,

the Attorney General is given a concurrent enforcement authority to direct the United States District Attorneys to bring proceedings in the courts to prevent and restrain any violations of the law.

The pending bill would greatly enlarge the scope of the Board's responsibilities under section 7 of the Clayton Act, because it would extend that section to cover acquisitions of bank assets, that is, bank mergers and consolidations, as well as acquisitions of stock. It would be the Board's responsibility to consider the competitive and monopolistic aspects of all bank mergers, even though under other provisions of law most of the mergers would have previously been considered by the other Federal bank supervisory agencies, the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

The principal responsibilities and functions of the Federal Reserve System lie in the fields of monetary and credit regulation and bank supervision. They are of quite a different character from the prosecuting and ajudicatory functions involved in the administration of the Federal anti-trust laws which apply broadly to all types of corporations. Enforcement of the anti-trust laws and the administrative supervision of banks fall into different spheres of governmental operation.

In the circumstances, the Board believes that the enforcement of section 7 of the Clayton Act where applicable to banks, whether with respect to acquisitions of stocks or acquisitions of assets, is a function which should not be vested in the Board. It would recommend that the law be changed so that exclusive jurisdiction for the enforcement of the Clayton Act as to banks would be in the Attorney General through proceedings instituted by his direction.

In the second place, the Board believes that the objectives of the pending bill would be more effectively accomplished by the addition of a requirement for the advance approval by a Government agency in the case of all bank mergers and consolidations. Under section 18(c) of the Federal Deposit Insurance Act, the Federal bank supervisory agencies are now required to pass in advance upon mergers and consolidations of banks where they result in a diminution of capital or surplus, that is, where the capital or surplus of the resulting institution will be less than the aggregate capital stock or aggregate surplus, respectively, of the merging banks. The Comptroller of the Currency has additional authority as to approval of mergers involving national banks. However, because of the limited nature of the authority in section 18(c) many bank mergers do not have to be approved in advance by any Federal agency. The Board believes it would

be desirable to extend this authority so as to require advance approval for bank mergers and consolidations, irrespective of diminution of capital, to be given by the Comptroller of the Currency where the resulting institution will be a national bank, by the Board where the resulting institution will be a State member bank of the Federal Reserve System, and by the FDIC where the resulting institution will be a nonmember insured bank.

In considering any such merger or consolidation the bank supervisory agency would of course take into account such consideration as the adequacy of the bank's capital, the competency of the management, the needs of the community, and other similar factors. In addition, however, the Board believes that in any case in which the appropriate agency should feel that there is a substantial question as to whether a proposed merger or consolidation would result in an undue lessening of competition or tendency to monopoly, the agency should be authorized in its discretion to request the views of the Attorney General on this point and that, if the Attorney General's views should be unfavorable, the bank supervisory agency should be precluded from giving its approval to the transaction. However, in any case in which the Attorney General has not been previously consulted by the bank supervisory agency and has not indicated an absence of objection,

he would continue to have the right to bring proceedings under the Clayton Act with respect to any situation resulting from the particular bank merger or consolidation.

If amended in these two respects which have been mentioned, the bill, H.R. 5948, would, in the Board's opinion, provide a workable and effective means of accomplishing the objectives of the anti-trust laws insofar as they relate to banks. At the same time the hands of the Federal bank supervisory agencies would be strengthened in carrying out the functions which they now normally exercise in a supervisory capacity in respect to bank mergers and consolidations.

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