GROUP NO. 2

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April 15, 1947.

Honorable A. L. M. Wiggins,
Under Secretary of the Treasury,
Washington, D. C.

Dear Lee:

I have today written to John Snyder concerning certain phases of the Transamerica problem, enclosing a copy of a letter which I recently wrote to Tom Clark on the subject. Knowing of your interest in this general situation, I am sending you herewith copies of these letters.

Sincerely yours,

M. S. Eccles,
Chairman.

Enclosures

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April 15, 1947.

Honorable John W. Snyder,
Secretary of the Treasury,
Washington, D. C.

Dear John:

For almost two years the Board has been closely following an investigation by the Department of Justice into the Transamerica situation. The Antitrust Division has made use of certain of the Board's files in connection with this investigation, and I have had one or two talks with Tom Clark about the matter. At one of those talks and in a letter which he sent me in October 1945 he pointed out that, while the statistical picture respecting Transamerica might justify a proceeding under the antitrust laws, nevertheless he felt there was not sufficient evidence available to demonstrate an abuse of power by Transamerica either in attaining its dominant position or in perpetuating it. Hence, he felt at that time that ultimate success in a legal proceeding against Transamerica was very doubtful.

On February 26th last I wrote Tom asking whether his Department had considered the recent decision of the Supreme Court in the American Tobacco case in relation to the Transamerica matter, in particular inquiring whether the effect of that decision might not eliminate the need for the type of proof to which he had referred in our earlier discussions. I talked with him again about a week ago and he told me that he had asked you to consider the entire matter and to give him the benefit of your views.

While I know how extremely busy you are, I nevertheless hope that you will be able to give this subject your early consideration. The Board is very anxious to obtain a decision from Justice on this subject just as soon as possible so that it may determine its own future course of action in dealing with this vexing problem. I do not know whether Tom sent you a copy of my letter of February 26th. A copy is enclosed herewith. If there is any other information touching this matter which we can supply you, please let me know.

Sincerely yours,

M. S. Eccles,
Chairman.

Enclosure

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THE ATTORNEY GENERAL
WASHINGTON

March 4, 1947

Dear Mr. Chairman:

This will acknowledge your letter of February 26, relative to proposed legislation to tighten controls over bank holding companies generally, with particular reference to the Transamerica Corporation.

I will be glad to give this situation further careful consideration and get in touch with you sometime soon.

With kind regards,

Sincerely,

(signed) Tom C. Clark

Attorney General

Mr. M. S. Eccles, Chairman
Board of Governors
Federal Reserve System
Washington, D. C.

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February 26, 1947.

Confidential

Honorable Tom C. Clark,
Attorney General,
Washington, D. C.

Dear Mr. Attorney General:

It has been well over a year since the luncheon meetings in your office of representatives of the Treasury Department, Federal Deposit Insurance Corporation, the Board of Governors and your Antitrust Division respecting Transamerica Corporation. Since that time various proposals for legislation to tighten existing controls over bank holding companies generally have been considered and discussed by the Board and on April 30, 1946, a bill dealing with this subject was introduced by then Chairman Spence of the House Banking and Currency Committee. However, the pressure of war and reconversion matters prevented consideration of this legislation by the 79th Congress. It is expected that a similar bill will be introduced in the present Congress and we hope that it will receive early and favorable consideration.

Meanwhile, however, the problem of how to deal effectively with the Transamerica situation has continued to trouble and concern the Board. Legislation alone will not solve the problem, unless it be of the "death sentence" variety; and the Board is convinced that the passage of such a bill is neither desirable nor possible. The most that may be expected of legislation is to curb the future expansion of a bank holding company which, like Transamerica, has followed a consistant policy of monopolistic growth.

In your letter to me of October 31, 1945, you reviewed the factual situation respecting Transamerica as disclosed by the investigation of your Antitrust Division. Your letter points out that at that time Transamerica

> "controls 35 banks in the States of California, Nevada, Arizona, Oregon and Washington, the largest of which is the Bank of America; that many of these 35 banks have numerous branches; that these banks control approximately 40% of the banking offices and

approximately 36% of the commercial banking deposits in the five-state area; that the Transamerica-controlled banks control approximately 80% of deposits in the State of Nevada and 61% of the commercial banking offices; in California, 42% of the deposits and 49% of the commercial banking offices; in Oregon, 39% of the deposits and 13% of the commercial banking offices; and in Washington, 5% of the deposits and 4% of the commercial banking offices. In many counties within this five-state area the percentage control of deposits and commercial banking offices is much greater. In California, for example, there are thirteen counties in which the Transamerica Corporation controls 100% of the commercial banking facilities. This expansion program has been effected over a period of approximately twenty years. In many instances the holding company financed the acquisitions by borrowing funds from its banking subsidiaries, using the assets of the purchased bank as security for the loan."

Since your letter was written, Transamerica has further increased its dominating position in the five-state area mentioned above by the acquisition of other banks and by the growth of those already owned by it. In addition, its portfolio of nonbanking interests has increased.

Both in your letter and in our contemporary meetings you expressed the opinion that, while the statistical data referred to above might be sufficient to justify the Department in commencing some kind of antitrust proceeding against Transamerica and its affiliated organizations, nevertheless the lack of proof of any sustained policy of abuse of power, either in attaining its dominant position or in perpetuating it, made the outcome of such a suit decidedly dubious.

Counsel for the Board have recently called to the Board's attention the decision of the Supreme Court in American Tobacco Company v. United States, decided on June 10, 1946. The effect of that decision seems to eliminate the need in certain cases for the kind or extent of proof which had previously been thought necessary in antitrust proceedings. I am wondering, therefore, if your Department has considered whether the decision in the Tobacco case might not lessen to a considerable extent the doubt which heretofore it has entertained as to the ultimate success of an antitrust proceeding against Transamerica.

I would appreciate receiving your present opinion in the matter, for the Board is again considering the Transamerica situation in the light of the Board's over-all responsibility in the banking field generally and in particular its responsibility under section 7 of the Clayton Act.

Sincerely yours,

(signed) Marriner S. Eccles

M. S. Eccles,
Chairman.

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OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

October 31, 1945

Honorable Marriner S. Eccles
Chairman, Board of Governors
of the Federal Reserve System
Washington, D. C.

My dear Mr. Chairman:

I desire to set out briefly the status of the Government's investigation of the Transamerica Corporation, for the purpose of affording background for our conference on the matter. The date of such conference will be set at a time mutually satisfactory to the interested government agencies.

The Department's investigation to date discloses that the Transamerica Corporation, a holding company, controls 35 banks in the States of California, Nevada, Arizona, Oregon and Washington, the largest of which is the Bank of America; that many of these 35 banks have numerous branches; that these banks control approximately 40% of the banking offices and approximately 36% of the commercial banking deposits in the five-state area; that the Transamerica-controlled banks control approximately 80% of deposits in the State of Nevada and 61% of the commercial banking offices; in California, 42% of the deposits and 49% of the commercial banking offices; in Oregon, 39% of the deposits and 13% of the commercial banking offices; and in Washington, 5% of the deposits and 4% of the commercial banking offices. In many counties within this five-state area the percentage control of deposits and commercial banking offices is much greater. In California, for example, there are thirteen counties in which the Transamerica Corporation controls 100% of the commercial banking facilities. This expansion program has been effected over a period of approximately twenty years. In many instances the holding company financed the acquisitions by borrowing funds from its banking subsidiaries, using the assets of the purchased bank as security for the loan.

Apparently there has been a desire on the part of Transamerica Corporation to build good will among the banks in the five-state area by offering very liberal terms in its purchases. In many cases the price paid exceeded the book value of a bank's assets. Frequently the personnel of acquired banks was put on the pay roll of Transamerica and the ranking officials were either retained or liberally pensioned.

In addition, the investigation discloses that the Transamerica Corporation controls two investment banking companies, several insurance companies, several metal fabrication companies, and a large real estate company of particular significance in the State of California.

An antitrust suit might be based upon a charge of conspiracy between the holding company and its banking subsidiaries to monopolize a substantial part of the commercial banking and credit facilities in the five-state area. The difficulty with the case at this time lies in the fact that we have not been able to develop substantial evidence either that the Transamerica Corporation achieved its present dominating position in the commercial banking field through illegal trade practices as those terms are defined in court decisions interpreting the Sherman Act, or that it abused its dominant position once it was achieved. In the absence of complete monopoly, evidence of one or both of these types of abuse is essential to make a case under the Sherman Act. We have a few illustrations indicating the use of coercive tactics by Transamerica in the acquisition of independent banks, such as creating a run on a bank through collection by agents of Transamerica of passbooks which were presented for payment over the counter in a single day, thus causing large withdrawals; threats to establish a branch in an area already adequately served by independent banking interests, one of which the Transamerica Corporation desired to buy; promotion of internal dissension in the management of the desired bank, coupled with the purchase of a sufficient amount of stock to place the purchaser in a strong bargaining position with the stockholders owning substantial interests. There are many rumors that such practices were followed regularly in acquiring independent banks. It has been impossible, however, to pin down a sufficient number of them to make a prima facie case on the theory suggested. It is possible that such testimony could be secured through grand jury proceedings. In view of the experience of the agents of the Federal Bureau of Investigation, however, this appears somewhat doubtful.

If sufficient evidence could be secured to support either abuses in achieving its present position or abuse of the position once achieved, there apparently would be no difficulty in proving restraints on commercial competition. Certainly the commerce of acquired banks and of independent banks which might and probably would have been organized except for fear of being assimilated by the Transamerica group, would be restrained. In addition, borrowers conducting interstate commercial enterprises are deprived of competitive sources of banking facilities. The commerce of enterprises competing with commercial businesses owned by the Transamerica Corporation in situations where the former must secure their financial requirements from Transamerica banks, is restrained, since such independent enterprises must reveal their confidential operations in securing credit from the Transamerica banks.

If a case of attempt to monopolise commercial banking facilities could be developed, it is suggested that relief might take the form of requiring the holding company to dispose of all interest in and control over subsidiary banks owned by it, including the stock of its largest subsidiary, the Bank of America. Since the Bank of America, through its branches, comprises approximately 90% of the commercial banking interests of the Transamerica Corporation, it would appear that effective competition in the commercial banking field in the five-state area would require some type of reorganization of the Bank of America which would provide for the creation of several distinct and competing units to be carved out of the existing Bank of America organization. Whether divestiture should be sought of some of the non-banking enterprises owned by the Bank of America, such as insurance companies, real estate companies, etc., would depend upon the development of the data which is at the present time inconclusive and fragmentary.

I trust this brief description of the status of our investigation will afford a basis for discussion at the coming conference.

Sincerely yours,

(signed) Tom C. Clark

Attorney General