STATEMENT OF VICE CHAIRMAN BALDERSTON

OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

ON S. 3911

BEFORE THE SUBCOMMITTEE ON BANKING OF THE

SENATE COMMITTEE ON BANKING AND CURRENCY

June 12, 1956

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

The Board believes that S. 3911 represents a constructive and desirable approach to the problems presented by bank mergers. I should therefore like to direct my comments to the Board's reasons for favoring this bill.

Various legislative proposals have been designed recently to provide greater control over bank mergers in order to prevent undue lessening of competition. Certain pending bills seek to accomplish this objective through amendments to the Clayton Antitrust Act. However, the bill S. 3911, which is presently before this Committee, is different. It seeks to accomplish this objective through an amendment to an existing banking law relating to bank mergers. The law in question is the Federal Deposit Insurance Act.

Under its section 18(c), a bank merger or consolidation must have the prior written consent of the appropriate Federal bank supervisory agencies, but <u>only</u> if the capital stock or surplus of the resulting bank will be less than the aggregate capital stock or aggregate surplus of the merging or consolidating institutions. These agencies are the Comptroller of the Currency, the Board of Governors of the

Federal Reserve System, and the Federal Deposit Insurance Corporation, depending upon whether the resulting bank will be a national bank or a State member bank of the Federal Reserve System or a nonmember insured bank, respectively. Because of the limited scope of this statute, many mergers involving State banks do not currently have to be approved in advance by any Federal agency.

In contrast, S. 3911 would require the prior consent of the appropriate Federal bank supervisory authority in the case of every bank merger or consolidation in which the resulting bank will be a national bank, a State member bank, or a nonmember insured bank. This would be true whether or not the proposed consolidation would result in a diminution of capital funds. Consequently, the only banks not included would be the banks which are neither Federal Reserve members nor covered by the FDIC.

In each case, the bill would require the appropriate supervisory agency to consider, not only the financial condition of the bank, the adequacy of its capital, the character of its management and the needs of the community, but also specifically whether the proposed merger might tend unduly to lessen competition or create a monopoly. The appropriate agency would be required by the bill to seek the views of the other two Federal banking agencies as to the impact of the merger upon competition or monopoly. Moreover, in each case, the appropriate agency would be authorized to request, on this point, the opinion of the Attorney General.

Prior approval of bank mergers

The Board believes that it would be desirable, as contemplated by the pending bill, to require advance approval for every bank merger and consolidation, irrespective of diminution of capital. Such approval would be given by the Comptroller of the Currency where the resulting institution would be a national bank, by the Board where it would be a State member bank, and by the FDIC where it would be a nonmember insured bank. The authority for such approvals would be provided by an extension of section 18(c) of the Federal Deposit Insurance Act.

In contrast, other bills on this subject now pending in Congress, such as H. R. 9424, contain provisions amending the Clayton Act. In addition to bringing bank mergers under the provisions of section 7 of that Act, they would have the effect of requiring advance notice to be given to the Board of Governors and the Attorney General at least 90 days prior to any contemplated bank merger or consolidation. Advance notice, however, would not, in the Board's opinion, be as desirable or as effective as advance approval. Advance approval would not only provide the requisite protection of the public interest but afford banks contemplating a merger assurance that it would not be inconsistent with the law. There are obvious difficulties in attempting to unscramble the assets and liabilities of constituent banks after a merger has occurred. This is particularly true after considerable time has elapsed. Such difficulties might develop under the advance notice provisions of the other bills to which I have referred; they would not exist under S. 3911 since the proposed merger would have to be passed upon in advance.

Consideration of effects on competition

The present provisions of section 18(c) of the Federal Deposit Insurance Act do not specifically require the Federal banking agencies, when passing upon mergers and consolidations now subject to approval under that section, to consider any particular factors. The bill S. 3911, however, would require each of these agencies to consider, in each case before it, the factors enumerated in section 6 of the Federal Deposit Insurance Act. These include the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management and the convenience and needs of the community. In addition, the bill would expressly require the appropriate banking agency to consider whether the effect of the proposed merger would be to tend unduly to lessen competition or create a monopoly.

As a matter of practice, the Federal bank supervisory agencies now give consideration to such matters in passing upon various types of banking transactions within their respective jurisdictions. They weigh the competitive aspects of the transaction involved, as well as the condition of the bank, the competency of its management, the needs of the community, and similar banking factors. For example, the Board, in acting upon applications for the approval of branches and of voting permits required to be obtained by holding company affiliates, considers not only the foregoing banking factors but the possible effect of the transaction upon bank competition. Under the recently enacted Bank Holding Company Act, the Board is specifically required to consider whether the acquisition of an additional bank by a bank holding company would be consistent with adequate and sound banking, the public interest and the preservation of competition. At the same time, the Act requires the Board to consider the financial history and condition of the bank holding company and the banks involved, their prospects and the character of their management, and the needs of the community concerned.

In keeping with these provisions of present law, S. 3911 would enable the Federal bank supervisory agencies, in passing upon bank mergers, to base their decisions upon all aspects of the public interest including not only the usual banking considerations, but the effect of the merger upon competition.

Banking, more than other types of business, directly affects credit conditions and the basic economy of the country. If a nonbanking business becomes insolvent, its stockholders and creditors suffer. If a bank fails, however, the effect is felt not only by its stockholders and creditors but also by its depositors, and by businesses and individuals in the community that must have banking facilities in order to carry on their activities. For these reasons, banks are governed by special statutes and are carefully regulated, examined, and supervised by the banking authorities.

While the effect of any lessening of competition in the banking field must, of course, be considered, it is also essential in the public interest that, in the case of bank mergers, the soundness of the particular banks involved or the adequacy of banking facilities in a particular community be considered. In cases where lessening of competition is not outweighed by other factors, the public interest requires that the transaction not be approved or carried out. Each case, of course, must be considered in the light of its own particular facts, with public interest the basic criterion.

For these reasons the Board believes that in the field of banking the test should be whether or not a merger would result in an "undue" lessening of competition that outweighs the banking factors. This concept is in contrast to that of "substantial" lessening of competition that would be made the test under other pending bills, such as H. R. 9424.

S. 3911 would require the appropriate Federal bank supervisory agency, in each proposed bank merger, to seek the views of each of the other two banking agencies with respect to its competitive effects. This requirement would tend to promote a substantially uniform approach by the three agencies to problems of competition.

The additional provision of the bill authorizing the appropriate banking agency to request the views of the Attorney General regarding the competitive or monopolistic aspects of any transaction would likewise further the objective of uniformity of standards.

It should be noted that other bills such as H. R. 9424 now pending before the Congress would make the Board of Governors responsible for passing upon <u>all</u> bank mergers as to violations of the Clayton Act. Under the present provisions of the Clayton Act, the Board has authority to enforce its provisions where applicable to banks. That authority, however, is limited by reason of the statute's present applicability only to acquisitions of bank stocks and its practical significance has recently been reduced by the Bank Holding Company Act which requires the Board's prior approval for acquisitions of bank stock by bank holding companies. Under the pending bills to amend the Clayton Act, the Board's responsibilities would be extended to all types of bank mergers whether carried out under Federal or State statutes. This would mean that, if those bills were enacted, the Board would be called upon to consider the competitive or monopolistic aspects of every bank merger, even though it had previously been approved by one of the other Federal bank supervisory agencies or by the appropriate State authority.

The principal functions of the Federal Reserve System lie in the field of monetary and credit policy and bank supervision. The prosecuting and adjudicatory functions involved in the enforcement of the antitrust laws are only indirectly related to the Board's principal responsibilities. They are of a character quite different from the functions normally exercised by the Board in passing upon particular transactions in the bank supervisory field. In short, enforcement of the antitrust laws and the function of bank supervision represent different spheres of governmental operation.

For these reasons, the Board believes that enforcement of the Clayton Act in the case of bank mergers is a function which should not be vested in the Board. It would be preferable, as contemplated by S. 3911, if bank mergers were required to have the advance approval of the appropriate Federal bank supervisory agency, with authority in that agency to request the views of the Attorney General as to the competitive effects of the proposed merger. This would enable a Federal banking agency, whenever it was in doubt, to ascertain the attitude of the Department of Justice regarding the competitive or monopolistic aspects of the transaction before determining whether to grant its consent.

Conclusion

For the reasons that have been set forth, the Board favors the enactment of S. 3911.