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STATEMENT BY CHAIRMAN MARTIN OF THE

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

BEFORE THE SUBCOMMITTEE ON ANTITRUST AND MONOPOLY OF THE

COMMITTEE ON THE JUDICIARY OF THE SENATE ON JUNE 24, 1955

Mr. Chairman and Members of the Committee:

We are pleased to come before you at the invitation of your Chairman to give you our views and such information as we may have with regard to the matter of bank mergers and consolidations.

Bank mergers and consolidations are not, of course, evil per se. They are authorized by Federal and State statutes and are carried out under the supervision of Federal or State banking authorities. In passing upon bank mergers and consolidations many factors have to be considered by the supervisory authorities as having a bearing on the public interest, and, since competition is an important element in the maintenance of sound banking, it is one of the significant factors which must be taken into account.

According to our information, a total of 100 bank mergers, consolidations, and absorptions took place in 1952, the largest yearly number since 1939. The number grew to 116 in 1953 and 207 in 1954. For the first four months of 1955, the figure was 81, indicating that, if growth continues at the same rate, this year's total may reach around 240. Since 1933, the merger movement has been the major factor in the gradual decline in the total number of banks. This is in contrast with the 10-year period just prior to 1933 when bank suspensions were more numerous than mergers and were the major factor in reducing the number of commercial banks by about one-half.

In general, consolidations have taken place between relatively small banks or through the absorption of small banks by much larger banks. In the 5-year period from 1950 to 1954, both inclusive, there was a decrease of 598 banks as the result of mergers, consolidations, and absorptions. Of this number 274 were absorbed by large banks having total assets of $100 million or more; and of the banks so absorbed 153 had total assets of less than $10 million, 88 had assets of from $10 million to $50 million, and 33 had assets of more than $50 million.

The reasons for which banks in recent years have decided to merge or consolidate have varied widely. However, we understand that frequently the reasons have been the favorable prices at which the smaller banks may be purchased, the desire by large city banks for banking outlets in suburban areas, and the need for stronger successor management in the case of many relatively small banks.

Whatever the cause, the current trend in bank mergers and consolidations is a matter which deserves careful consideration and one to which the Board of Governors has given a great deal of thought in recent months. Before indicating the views of the Board regarding this problem, it may be helpful to describe briefly the nature of the Board's responsibilities and experience in this general field under existing provisions of law.

Present responsibilities of the Federal Reserve

At present the Board is vested with authority to enforce the provisions of the Clayton Antitrust Act where applicable to banks. Section 7 of that Act prohibits any corporation from acquiring the stock of other corporations engaged in commerce where, in any line of commerce in any section of the country, the effect may be substantially to lessen competition or tend to create a monopoly. However, as far as banks are concerned, this section applies only to acquisitions of stock. It does not apply to acquisitions of bank assets and does not cover bank mergers and consolidations.

National banks and State banks which are members of the Federal Reserve System are prohibited from purchasing corporate stocks and many States similarly prohibit stock purchases by State banks. Consequently, this provision of the Clayton Act as presently in force is of little significance as applied to banks. As a practical matter, it applies only where a nonbanking corporation - a bank holding company - acquires the stock of banks.

In only one case has the Board instituted proceedings under the Clayton Act. This proceeding was brought because of the acquisition over the years of numerous banks by Transamerica Corporation in the States of California, Oregon, Washington, Arizona and Nevada. After extensive hearings, in which it was shown that Transamerica banks had 40 per cent of all bank offices in the five-State area and held 40 per cent of all deposits in that area, the Board entered an order requiring Transamerica to dispose of its stock holdings in all but one of these banks. Upon review of this matter, the United States Court of Appeals for the Third Circuit set aside the Board's order, holding that there had not been a determination of the five-State area as the effective area of competition and that there was insufficient evidence of competition or lessening of competition between the banks which had been acquired by Transamerica. Petition for certiorari was denied by the United States Supreme Court.

Apart from the Clayton Act, the Board has other functions under present law which involve consideration of the competitive aspects of banking and possible tendencies toward monopoly in the banking field, although such considerations are not specifically mentioned in the law itself.

In the first place, under legislation enacted in 1933, the Board exercises some, although not extensive, functions with respect to bank holding companies. If a bank holding company controls a bank which is a member of the Federal Reserve System and wishes to vote its stock in that bank, it must first obtain from the Board a voting permit and comply with certain requirements and conditions. However, this law does not prevent or limit the acquisition of bank stocks by holding companies and does not effectively restrict the ability of such companies to expand the number of banks controlled by them. Bills to provide more effective regulation of bank holding companies have been under consideration for some years and the latest such bill has recently been passed by the House of Representatives and is now pending before the

Senate Banking and Currency Committee. Under that bill, a bank holding company would be required to obtain the prior consent of the Board of Governors before acquiring additional bank stocks and, in determining whether to give its consent, the Board would be required to consider certain factors including the effect of the proposed acquisition upon the preservation of competition in the field of banking.

Other provisions of existing law which vest limited authority in this general field in the bank supervisory agencies are those of section 18(c) of the Federal Deposit Insurance Act. Under that section, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, in their respective areas of authority, are required to pass in advance upon mergers and consolidations of banks, but only in cases in which the capital stock or surplus of the resulting bank will be less than the aggregate capital stock or aggregate surplus, respectively, of the banks involved. Of course, there are other statutes which require the Comptroller of the Currency to act in the case of national banks. It should be emphasized that, in view of the limited nature of the authority under section 18(c), many mergers and consolidations do not have to be passed upon in advance by any Federal bank supervisory agency. A notable recent example was the merger of The Chase National Bank and the Bank of the Manhattan Company of New York City where the capital and surplus of the resulting bank were such that prior approval of the merger was not required under section 18(c).

Still other provisions of existing law require the advance approval of the establishment of branches by national banks, State member banks, and nonmember insured banks by the Comptroller of the Currency, the Board of Governors, and the FDIC, respectively. Although many mergers and consolidations do not as such require prior approval, it is frequently the case that a merger or consolidation involves the acquisition of one or more branches by the resulting bank; and in cases where the resulting bank is a State member bank, the acquisition of such branches must be approved by the Board. The Chase-Manhattan merger was a situation of this kind. While the merger itself was not required to be approved by the Board, it was necessary for the Board to pass upon the establishment as branches of the resulting institution of the offices previously operated as branches of The Chase National Bank.

Having in mind the policy of Congress as evidenced in the antitrust laws, the Board of Governors, in passing on the types of transactions above mentioned, considers the possible existence of any undue lessening of competition among banks. In transmitting to the Board applications for branches of State member banks, the Federal Reserve Banks are expected to consider whether the establishment of a particular branch will tend to create a monopoly or an undesirable competitive advantage in relation to other banks in the area involved. The Federal Reserve Banks likewise consider the competitive factors in transmitting to the Board applications for approval of mergers and consolidations and for voting permits of bank holding companies.

At the same time, as previously indicated, lessening of competition and tendency toward monopoly are not the only factors which must be considered in connection with various banking transactions including mergers and consolidations. There are other factors which also have an important bearing upon the public interest and which must be taken into account in such cases, such as the adequacy of a bank's capital structure, the competency of its management, its future earnings prospects, and the needs of the community. The Board must, of course, give proper weight to these factors in discharging its functions under the law; and it is understood that similar factors are considered by the Comptroller of the Currency and the FDIC in performing their respective statutory responsibilities. There have been in the past and there can well be in the future instances in which the over-all public interest would clearly be served by a merger or consolidation even though it may incidentally tend to lessen competition.

It should also be borne in mind that, in the light of existing provisions of Federal law relating to bank mergers and consolidations, Congress has apparently contemplated that not all such mergers and consolidations are objectionable but, on the contrary, that there may be many such transactions which, subject to supervisory approval, are justified and desirable in the public interest.

<u>Pending proposals</u>

Various proposals have recently been made in Congress for the purpose of providing such measures of restraint as may be necessary to prevent monopolistic tendencies as the result of bank mergers and consolidations.

One of these proposals in the form of a bill recently introduced in the Senate would amend section 7 of the Clayton Act to cover acquisitions of bank assets as well as bank stocks, but would further provide that, if any of the banks involved have capital, surplus, and undivided profits aggregating more than $1 million, the transaction could not be consummated until 90 days after advance notice to the Attorney General and the Federal Trade Commission. Under this proposal the failure of the Attorney General or the Trade Commission to interpose objection to the proposed transaction within the 90-day period would not constitute a bar to the subsequent initiation of any proceedings with respect to the transaction under any provisions of law. Another proposal, which has been under consideration in the House, would amend section 7 of the Clayton Act to make it applicable to acquisitions of bank assets, but would not contain any provision for advance referral to the Attorney General or the Federal Trade Commission.

Other proposals on this subject would follow the approach of amending section 18(c) of the Federal Deposit Insurance Act so as to make the prior consent of the bank supervisory agencies necessary in all cases of bank mergers and consolidations, whether or not the capital or surplus of the resulting bank is less than the capital or surplus, respectively, of the banks involved. One of these proposals would require the banking agencies to consider, among other factors, whether the proposed transaction would unduly lessen competition or tend unduly to create a monopoly. Another such proposal would make it mandatory upon the appropriate bank supervisory agency to refuse its consent to any proposed bank merger or consolidation if its effect would be substantially to lessen competition or tend to create a monopoly.

Enforcement authority under the Clayton Act

The Board feels that section 7 of the Clayton Antitrust Act in its present form is not an appropriate and practical means of controlling or restricting monopolistic tendencies in the banking field. This view is based not only on the result of the Transamerica proceeding but more particularly on the fact that the present law applies only to acquisitions of bank stocks and not to mergers and consolidations and upon the fact that more effective control in this matter, the Board believes, can be obtained through a requirement of advance approval by some Government agency of all mergers and consolidations of banks.

The Board favors the general objective of recent proposals to amend section 7 of the Clayton Act to make it applicable to acquisitions of bank assets. However, these proposals would leave unchanged those provisions of the Clayton Act which now vest in the Board of Governors authority to enforce the provisions of section 7 where applicable to banks, banking associations, and trust companies. As previously indicated, that authority is now limited by reason of the law's applicability only to acquisitions of stock. Under the present proposals to amend the Clayton Act, the Board's responsibilities would extend to all types of bank mergers and consolidations, whether carried out under Federal or State statutes or effectuated through purchases of assets or assumption of liabilities. This would result in a substantial enlargement of the Board's responsibilities in the antitrust field; and the Board would be called upon to consider the competitive or monopolistic aspects of all such transactions, even though they had previously been approved by the other bank supervisory agencies, the Comptroller of the Currency and the FDIC, after consideration by those agencies of other aspects of the particular transactions.

The principal responsibilities and functions of the System lie in the fields of monetary and credit regulation and bank supervision. The prosecuting and adjudicatory functions incident to the enforcement of the antitrust laws are only indirectly related to the Board's principal responsibilities. Such functions are of a character quite different from the administrative functions normally exercised by the Board in passing in advance upon particular transactions in the bank supervisory field. In other words, the enforcement of the antitrust laws and the function of bank supervision represent, we believe, different spheres of governmental operation.

In the circumstances, the Board recommends that the enforcement of the provisions of section 7 of the Clayton Act relating to the acquisition either of the stocks or assets of banks should not be vested in the Board. At present the Attorney General, under section 15 of the Clayton Act, has a concurrent jurisdiction with the Board in the enforcement of the provisions of that Act insofar as they relate to banks. He is vested with authority to direct the various United States District Attorneys to institute proceedings in the courts to prevent and restrain any violations of that Act. It would be the Board's proposal to vest in the Attorney General exclusive authority to enforce all aspects of section 7 of the Clayton Act relating to banks by means of such proceedings.

Advance consideration of mergers and consolidations

At the same time, the Board believes that the possible competitive and monopolistic effects of bank mergers and consolidations should not be left solely for after-the-fact consideration, but that there should be an opportunity to consider this matter in advance in each particular case.

As previously indicated, the three Federal bank supervisory agencies under section 18(c) of the Federal Deposit Insurance Act are now required to pass in advance upon mergers and consolidations of banks where the capital or surplus of the resulting bank will be less than the aggregate capital or surplus of the merging banks. It is the Board's opinion that the objectives of legislation on this subject would be more effectively accomplished if this requirement were extended to apply to all bank mergers and consolidations, whether or not they result in a diminution of capital or surplus. This might be done either by amending the provisions of the Federal Deposit Insurance Act or by an appropriate amendment to the Clayton Act, which would require the prior approval of any bank merger or consolidation by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, depending upon whether the resulting bank will be a national bank, a State member bank, or a nonmember insured bank.

In addition, however, the Board would recommend a further provision in order to require due consideration of the possible monopolistic effects of bank mergers and consolidations. Each of the bank supervisory agencies should be authorized in its discretion to request the views of the Attorney General in any particular case coming before it, if the banking agency feels that there is a substantial question as to whether the proposed merger or consolidation would bring about an undue lessening of competition or tendency to monopoly. If the Attorney General should then indicate his view that the proposed transaction would have such a monopolistic effect, the Bank supervisory agency would be precluded from giving its consent to the merger or consolidation in question. However, it should be clearly provided that, if the Attorney General has <u>not</u> been previously consulted by the appropriate bank supervisory agency and has not indicated an absence of objection on his part, he would continue to have full authority to institute proceedings under the Clayton Act, if he should deem it desirable, with respect to any situation resulting from the particular merger or consolidation.

There is one other point we would like to mention. Existing law as well as some of the proposals under consideration use the phrase "substantially to lessen competition or to tend to create a monopoly". The Board would suggest that in any bill relating to bank mergers or consolidations the test should be whether the transaction would "unduly" lessen competition or "unduly" tend to create a monopoly. If there were a town in which there were only three or four banks and there were a merger between two of them, it seems possible or likely that there should be a substantial lessening of bank competition, but it might well be that the merger was desirable or necessary in the public interest because of other reasons. The use of the word "unduly" instead of "substantially" would permit such a desirable merger to take place.

It is the Board's belief that legislation along the lines here suggested - vesting exclusive jurisdiction in the Attorney General to enforce section 7 of the Clayton Act with respect to banks and providing for prior approval by the banking agencies of all bank mergers and consolidations as outlined above - would provide effective safeguards against the development of undue monopolistic tendencies in the banking field and, at the same time, continue in the bank supervisory agencies, in accordance with the pattern of present law, responsibility for consideration of all the ordinary banking aspects of mergers and consolidations.