~~1-2259~~

STATEMENT ON BANK MERGER BILLS 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
MAY 23, 1956.

Mr. Chairman and Members of the Committee:

Before discussing the bank merger bills now pending before this Committee, it may be helpful to describe briefly the nature of the Board's functions and responsibilities in this general field under existing law.

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.

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. Under the recently enacted Bank Holding Company Act, every bank holding company which proposes to acquire additional banks must first obtain the Board's consent and in determining whether to give such consent the Board is 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.

Effect of Pending Bills

It is understood that three bills relating to bank mergers are now before the Committee - S. 3341 and S. 3424, and H. R. 9424, which was passed by the House last month. The Federal Reserve is directly concerned with these bills only as they apply to banks. In general, as far as banks are concerned, the pending bills would amend section 7 of the Clayton Act so as to bring acquisitions of bank assets under the coverage of that section, in addition to the present coverage of acquisitions of bank stock. The bills would also require prior notice of any proposed bank merger to be given to the Attorney General and to the Board of Governors at least 90 days before the merger is to take effect if the combined capital accounts of the merging banks exceed a certain amount.

As indicated last year in testimony before this Subcommittee and before the Judiciary Committee of the House of Representatives, the Board of Governors favors the principle of subjecting bank mergers and consolidations to Federal supervision and control, with a requirement for consideration of the competitive effects of such mergers. It believes, however, that it would be desirable to make certain changes in the pending legislation on this subject.

Desirability of Advance Approval

It is the Board's opinion that the law should require the advance approval by a Federal bank supervisory agency before any bank merger or consolidation takes place. As previously indicated, under section 18(c) of the Federal Deposit Insurance Act the Federal bank supervisory agencies, i.e., the Board, the Comptroller of the Currency, and the FDIC, are now required to pass in advance upon mergers and consolidations of banks only where there is a resulting diminution of capital and surplus. The Comptroller of the Currency has additional authority as to approval of mergers involving national banks. However, because of the limited nature of the present authority, 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 every bank merger and consolidation, 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.

The pending legislation requires 90-day advance notice of mergers, but does not require advance approval. The Board questions whether, in the case of banks, the advance notice procedure would be as desirable or as effective as provision for advance approval. It would be helpful to the banks involved to have advance consent by the Government, since this would give them in proper cases a measure of assurance that the proposed action is not inconsistent with the law. Also it would eliminate any necessity for an effort on the part of the Government to enjoin a bank merger or to dissolve one after it had once taken place. There are obvious difficulties in attempting to unscramble the assets and liabilities of constituent banks after a merger has occurred, and particularly so after a lapse of several months or more. Furthermore, in some cases, it is not necessary for a Government agency to have as much time as 90 days in which to consider proposed bank mergers and the competitive aspects of such transactions. On the other hand, there may well be cases in which 90 days would not be adequate. Moreover, it does not seem necessary in the Board's opinion to require that notice be given to, or permission obtained from, two different agencies of the Federal Government for the consummation of the same transaction.

Enforcement Authority

The pending bills 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 of that Act where applicable to banks. Under present law, that authority is limited by reason of the statute's applicability only to acquisitions of bank stock, and its practical significance has been lessened by the recent Bank Holding Company Act which requires prior approval of the Board for acquisitions of bank stock by bank holding companies. Under the proposed amendment to section 7, however, the Board's responsibilities would extend to all types of bank mergers, whether carried out under Federal or State statutes. This would result in a substantial enlargement of the Board's responsibilities in the antitrust field. The Board would be called upon to consider the competitive or monopolistic aspects of every such transaction even though it had previously been considered and 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 other words, enforcement of the antitrust laws and the function of bank supervision represent, we believe, different spheres of governmental operation.

Under present law, in addition to the Board's authority to bring proceedings for the enforcement of section 7 of the Clayton Act where applicable to banks, the Attorney General has an injunctive authority; and the Board believes for the reasons indicated that the enforcement of this section, whether with respect to acquisitions of bank stocks or acquisitions of bank assets, is a function which should not appropriately be vested in the Board.

Consideration of Effects on Competition

Under the pending bills, any bank merger which might substantially lessen competition or tend to create a monopoly would be prohibited. This would seem to mean that the effect on competition would be the sole controlling factor in all cases, to the exclusion of consideration of other factors which may well have an important bearing upon the maintenance of sound banking.

Under existing banking laws, the Federal bank supervisory agencies, in passing upon banking transactions within their respective jurisdictions, give consideration to the competitive aspects involved. However, they also take into account such matters as the adequacy of a bank's capital structure, the competency of its management, its future earnings prospects, and the needs of the community involved. Thus, the Board, in acting upon applications for the approval of branches, bank mergers within its jurisdiction under section 18(c) of the Federal Deposit Insurance Act, and voting permits required to be obtained by holding company affiliates, considers the possible effect of the proposed transaction upon competition among banks; but in all such cases the Board also considers the banking factors above mentioned.

The same is true under the recently enacted Bank Holding Company Act. That Act specifically requires the Board, in passing upon applications by bank holding companies for the acquisition of bank stocks or assets, to consider whether the proposed acquisition would be consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking; but the Act also requires the Board to consider the financial history and condition of the holding company and the banks involved, their prospects and the character of their management, and the needs of the community concerned.

There have been in the past and there will doubtless be in the future instances in which the over-all public interest would clearly be served by a bank merger or consolidation even though it might incidentally tend to substantially lessen competition. The Board believes that, at least in the field of banking, the test should be whether or not a merger would result in an "undue" rather than a "substantial" lessening of competition.

For these reasons and in keeping with the practice followed in passing upon other types of banking transactions, the Board believes that it would be desirable that, in addition to providing for the prior approval of every bank merger by the appropriate Federal banking agency, that agency should be specifically required by the law to consider whether the effects of the proposed merger might be to lessen competition unduly or to tend unduly to create a monopoly, but with the added stipulation that the agency should also consider such factors as the financial condition, adequacy of capital and character of management of the bank, together with the needs of the community. Moreover, it would be desirable to authorize any Federal banking agency in its discretion to request the views of the Attorney General as to the competitive effects of the proposed merger. This would enable the 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

To restate its views, the Board is of the opinion that appropriate and effective legislation with respect to bank mergers should embody two requirements: (1) Every bank merger should be made subject to the advance approval of the Comptroller of the Currency, the Board of Governors, or the FDIC, depending upon the nature of the resulting bank, and (2) in passing upon bank mergers the Federal bank supervisory agency concerned should be required by the law to consider, not only the financial condition, adequacy of capital and character of management of the institution resulting from the merger, but also the question whether the proposed transaction would unduly lessen competition and, where the competitive factor is significant, the agency should have authority to request the opinion of the Attorney General on that point.

These features of bank merger legislation could, of course, take the form of an amendment to the Clayton Act, although in that event, as I have previously indicated, the Board feels that enforcement authority should not be vested in the Board. It would be preferable, however, in the Board's opinion, for the legislation to take the form of an amendment to already existing provisions of the banking laws relating to the subject of bank mergers. In this connection, I understand that the Treasury Department sent up to the Congress in the last few days a draft of a bill, which would carry out the views of the Board in this matter. That bill would amend section 18(c) of the Federal Deposit Insurance Act to require the prior approval of one of the three Federal banking agencies for every bank merger irrespective of diminution of bank capital or surplus. Thus, any merger without such approval would be illegal and expose the institution to attack. The bill would also expressly require the banking agency concerned to consider the competitive aspects of each transaction, as well as the banking factors involved; and in the interest of uniform standards would require the banking agency to seek the views of each of the other two banking agencies with respect to the question of competition and in addition authorize the banking agency concerned to request the opinion of the Attorney General with respect to that question.

Legislation of this kind, the Board believes, would effectively accomplish the basic objective of providing means for controlling bank mergers and preventing undue lessening of competition in the banking field through that means.

5/23/56