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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 28 1990

WALTER A.Y.H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FIRST HAWAIIAN, INC., and )  
FIRST INTERSTATE OF HAWAII, )  
INC. )  
 )  
Defendants. )

CIVIL NO. 90-00904  
COMPLAINT; SUMMONS

DAE

COMPLAINT

The United States of America, by its undersigned attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Each of the defendants maintains offices, transacts business and is found within the District of Hawaii.

3. Venue is proper in the District of Hawaii under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

II. DEFENDANTS

4. First Hawaiian, Inc. ("First Hawaiian") is made a defendant herein. First Hawaiian is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Honolulu, Hawaii. As measured by total deposits and assets, First Hawaiian is the second largest commercial bank organization headquartered in the State of Hawaii. It operates one commercial bank subsidiary and one FDIC-insured financial services loan company. First Hawaiian operates 58 offices located throughout the state. As of June 30, 1990, First Hawaiian had total assets of \$5.5 billion, total deposits of \$5.0 billion, and total commercial and industrial loans outstanding of \$783.6 million.

5. First Interstate of Hawaii, Inc. ("First Interstate") is made a defendant herein. First Interstate is a

corporation organized and existing under the laws of the State of Hawaii, with its principal place of business in Honolulu, Hawaii. As measured by total deposits and assets, First Interstate is the fourth largest commercial banking organization in the state. It operates 20 banking offices located throughout the state. As of June 30, 1990, First Interstate had total assets of \$858.2 million, total deposits of \$770.9 million, and total commercial and industrial loans outstanding of \$150.5 million.

6. Defendants, directly or through subsidiaries, are each engaged in commercial banking and provide a wide range of products and services to business customers.

### III. DEFINITIONS

7. "Bank deposits" means the total deposits of all depository institutions providing business banking services.

8. "Business banking services" means banking services offered to business customers, including at least:

(a) "transaction account deposits," i.e., money deposited with a depository institution either at an agreed upon interest rate or at no interest, withdrawable in practice upon demand, and upon which third-party drafts may be drawn by the depositor, including checking accounts and NOW accounts; and

(b) "commercial loans," i.e., secured or unsecured loans to businesses, excluding commercial mortgages.

Business banking services may also include other services, such as cash and coin, lockbox, cash management, and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

9. "Commercial mortgages" means loans secured by real estate as evidenced by mortgages or other liens on business and industrial properties.

10. "Depository institution" means a commercial bank, savings bank, savings and loan association, or credit union that is authorized, among other things, both to accept demand, time, savings, or other deposits, all or in part insured by a governmental agency, and to make loans.

11. "Relevant geographic market" means any or all of the following geographic areas:

- (a) the "Honolulu market" means the City and County of Honolulu, Hawaii, which is co-extensive with the island of Oahu;
- (b) the "East Hawaii market" means the northeastern half of the island of Hawaii, as that market is defined by the Federal Reserve Board, including Hilo and nearby communities;
- (c) the "West Hawaii market" means the southwestern half of the island of Hawaii, as that market is defined by the Federal Reserve Board, including Kailua-Kona and nearby communities;
- (d) the "Kauai market" is the island of Kauai;

(e) the "Maui market" is the island of Maui.

12. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ( $30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$ ). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increase.

13. "Total deposits" means all deposits, regardless of type of depository institution or account.

#### IV. INTERSTATE COMMERCE

14. Customers of First Hawaiian and First Interstate regularly utilize interstate communications, including the mails, telephone, and telegraph, to obtain services from and carry on business with each defendant. First Hawaiian and First Interstate are federally insured and regulated. First Hawaiian and First Interstate utilize interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with other financial institutions. First Hawaiian and First Interstate are engaged in and affect interstate commerce.

V. TRADE AND COMMERCE

15. Although there are some differences in emphasis, depository institutions, such as commercial banks and thrift institutions, are engaged in the business of providing a wide variety of financial products and services to business and individual consumers. These products and services include the acceptance of various types of deposits, including transaction, time, and savings deposits, and the granting of various types of credit, including loans.

16. While both commercial banks and thrift institutions may provide similar services to individual consumers, there are significant limitations upon the services which business firms may obtain from depository institutions other than commercial banks. Savings and loan associations are limited by law in the extent to which they may make commercial loans, and are further limited in offering services to businesses by capital requirements and their own capital positions. Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, NEW, MORE STRINGENT capital requirements and other restrictions were imposed upon the lending activities of thrifts. Financial services loan companies are not permitted to offer transaction accounts, and the characteristics of their loans are generally different than those made by banks. Credit unions offer services to individual consumers but are not permitted to offer business banking services to the full set of business customers served by commercial banks, and do not offer the

full range of business banking services provided by commercial banks.

17. Numerous small and medium-sized businesses operate in the State of Hawaii. Such businesses generally must obtain business banking services from banks which have offices in Hawaii, and some such businesses are limited to using the banks located in the geographic market where the business is situated.

18. The relevant markets in which this acquisition will affect competition include, either individually or collectively, transaction accounts, commercial loans, or other business banking services offered to small and medium-sized businesses in the relevant geographic markets. The firms that are capable of offering these services are those firms that provide business banking services.

19. There is a relationship between the ability to accept deposits and the granting of credit and the provision of other business banking services by depository institutions. The deposits accepted by a depository institution are the primary source of the loans made by it and a principal source of funds to support other services. Bank deposits are an appropriate indicator of a depository institution's capacity to provide business banking services.

20. First Hawaiian and First Interstate offer a variety of business banking services to commercial customers. A significant number of business customers purchase both transaction accounts and commercial loans as well as other business banking

services from First Hawaiian and First Interstate. First Hawaiian and First Interstate are direct competitors in the provision of business banking services to business customers. Each has offices on each major island in Hawaii.

21. In addition to First Hawaiian and First Interstate, the State of Hawaii has nine other suppliers of business banking services. Together these 11 suppliers operate 244 offices in Hawaii. On June 30, 1989, these offices had bank deposits of approximately \$12.3 billion.

22. As of June 30, 1989, First Hawaiian ranked second with approximately 29.26 percent of bank deposits and First Interstate ranked fifth with approximately 5.47 percent of bank deposits. If First Hawaiian acquires First Interstate, the resulting institution would rank second with approximately 34.7 percent of bank deposits held by suppliers of business banking services in the State of Hawaii.

23. There are substantial barriers to entry into business banking services in the State of Hawaii. Under current statute, out-of-state banks are prohibited from branching into the state.

24. Business banking services are highly concentrated in the Honolulu market. As of June 30, 1989, First Hawaiian ranked second with approximately 29.2 percent of bank deposits and First Interstate ranked fifth with approximately 5.6 percent of bank deposits. Based on bank deposits, the HHI is approximately 2759.



25. If First Hawaiian acquires First Interstate, the resulting institution would rank second in the Honolulu market with approximately 34.8 percent of bank deposits held in the Honolulu market. The HHI would increase by 327 to 3086.

26. Business banking services are highly concentrated in the East Hawaii market. As of June 30, 1989, First Hawaiian ranked second with approximately 28.1 percent of bank deposits and First Interstate ranked fifth with approximately 4.9 percent of bank deposits. Based on bank deposits, the HHI is approximately 3012.

27. If First Hawaiian acquires First Interstate, the resulting institution would rank second in the East Hawaii market with approximately 33.0 percent of bank deposits held in the East Hawaii market. The HHI would increase by 275 to 3287.

28. Business banking services are highly concentrated in the West Hawaii market. As of June 30, 1989, First Hawaiian ranked first with approximately 43.2 percent of bank deposits and First Interstate ranked fourth with approximately 7.6 percent of bank deposits. Based on bank deposits, the HHI is approximately 3400.

29. If First Hawaiian acquires First Interstate, the resulting institution would rank first in the West Hawaii market with approximately 50.8 percent of bank deposits held in the West Hawaii market. The HHI would increase by 657 to 4057.

30. Business banking services are highly concentrated in the Kauai market. As of June 30, 1989, First Hawaiian ranked

first with approximately 39.1 percent of bank deposits and First Interstate ranked fourth with approximately 5.7 percent of bank deposits. Based on bank deposits, the HHI is approximately 3080.

31. If First Hawaiian acquires First Interstate, the resulting institution would rank first in the Kauai market with approximately 44.9 percent of bank deposits held in the Kauai market. The HHI would increase by 449 to 3529.

32. Business banking services are highly concentrated in the Maui market. As of June 30, 1989, First Hawaiian ranked second with approximately 31.8 percent of bank deposits and First Interstate ranked fourth with approximately 5.5 percent of bank deposits. Based on deposits, the HHI is approximately 2880.

33. If First Hawaiian acquires First Interstate, the resulting institution would rank second in the Maui market with approximately 37.3 percent of bank deposits held in commercial banking offers in the Maui market. The HHI would increase by 353 to 3233.

#### VI. VIOLATION ALLEGED

34. On or about May 11, 1990, the defendants entered into an agreement which, if consummated, will result in the acquisition of First Interstate by First Hawaiian. The Federal Reserve Board approved the proposed acquisition on November 30, 1990. The Federal Reserve Board's ruling requires the defendants to divest the Lihue, Kauai; Kailua-Kona, Hawaii, and Wailuku and Lahaina, Maui branches of First Interstate and the Hilo, Hawaii branch of First Hawaiian Credit Corporation.

35. The effect of the aforesaid acquisition of First Interstate by First Hawaiian, taking into account an evaluation of the proposed divestitures, may be substantially to lessen competition in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) existing competition and the potential for increased competition between First Hawaiian and First Interstate in business banking services in the Honolulu market, the East Hawaii market, the West Hawaii market, the Kauai market, and the Maui market will be permanently eliminated;
- (b) concentration in the relevant product markets for business banking services in the Honolulu market, the East Hawaii market, the West Hawaii market, the Kauai market, and the Maui market will be significantly increased; and
- (c) competition generally in the relevant product markets for business banking services in the Honolulu market, the East Hawaii market, the West Hawaii market, the Kauai market, and the Maui market will be substantially lessened.

VII. PRAYER

WHEREFORE, plaintiff prays:

1. That First Hawaii's acquisition of First Interstate be adjudged to be in violation of Section 7 of the Clayton Act;
2. That defendants and all other persons acting for or on their behalf be enjoined from carrying out the aforesaid acquisition agreement or any similar plan or agreement the effect of which would be to merge, consolidate or in any other way to combine the businesses of the defendants;
3. That the United States have such other and further relief as the Court may deem just and proper; and
4. That the United States recover the costs of this action.

DATED: Honolulu, Hawaii, December 28, 1990.

DANIEL BENT  
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