

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIRST NATIONAL BANCORPORATION, INC.
and THE EXCHANGE NATIONAL BANK OF
COLORADO SPRINGS,

Defendants.

Civil Action No. C-3077

Filed: April 28, 1971

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, 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 Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 38 Stat. 731, as amended (15 U.S.C. § 18).

2. Each of the defendants has its principal place of business, transacts business and is found within the District of Colorado.

II

THE DEFENDANTS

3. First National Bancorporation, Inc. (hereinafter referred to as "Bancorporation") is made a defendant herein. Bancorporation is a registered bank holding company organized under the laws of the State of Colorado and maintains its principal place of business in Denver, Colorado.

4. The Exchange National Bank of Colorado Springs (hereinafter referred to as "Exchange Bank") is made a defendant herein. Exchange Bank is a banking association organized under the laws of the United States and maintains its principal place of business in Colorado Springs, El Paso County, Colorado.

III

TRADE AND COMMERCE

5. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and businesses, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time

deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of cashier's checks and drafts on correspondent banks, the purchase or sale of securities for customers, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

6. Customers of Bancorporation's subsidiary banks and of Exchange Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to carry on their business with, apply for, and obtain the services provided by these banks. Bancorporation's subsidiary banks and Exchange Bank have regularly utilized interstate communications, including the mails, telephone and telegraph, to conduct business with customers and with other banks located in states other than Colorado. Bancorporation and Exchange Bank are engaged in interstate commerce.

7. Bancorporation is the second largest bank holding company and the second largest banking organization in the State of Colorado. As of December 31, 1970, it controlled four subsidiary banks with aggregate deposits of about \$590 million, representing almost 14 percent of the total deposits held by all commercial banks in the State of Colorado. As of June 30, 1970, these four subsidiary banks combined had total assets of about \$668 million and total loans of more than \$374 million.

8. Exchange Bank was organized in 1898. It operates its sole office in Colorado Springs, El Paso County, Colorado. As of December 31, 1970, it had total deposits of about \$62 million. On June 30, 1970, Exchange Bank had total assets of about \$59 million and total loans of about \$29 million.

9. El Paso County lies to the southeast of the Denver Standard Metropolitan Statistical Area (SMSA) and is coterminous with the Colorado Springs SMSA. The Colorado Springs SMSA is situated in a rapidly growing section of the state, and has a diversified economy based on tourism, the United States Air Force Academy and other military establishments, and a growing manufacturing sector. Population in the SMSA has increased over 200 percent since 1950. Its population in 1970 was about 228,000.

10. Commercial banking in the Colorado Springs SMSA is highly concentrated. As of December 31, 1970, the four largest commercial banking organizations held over 70 percent of the total deposits in commercial banks operating in the Colorado Springs SMSA. On that date, the Exchange Bank held approximately 18 percent, or the second largest share, of the total deposits held by such banking organizations.

11. Bancorporation is the second largest bank holding company in Colorado. Bancorporation has the resources and interest to enter the Colorado Springs SMSA by the establishment of a de novo bank or by acquisition of a small bank in El Paso County. Bancorporation is one of the most likely entrants into this market.

12. Since December 31, 1969, Bancorporation has received regulatory approval to acquire the First National Bank of Greeley, Greeley, Colorado, the Security State Bank of Sterling, Sterling, Colorado and Exchange Bank. It also has pending an application to acquire the National State Bank of Boulder, Boulder, Colorado. In addition, the largest banking organization in the state, United Banks of Colorado, Inc., has received approval to acquire the Colorado Springs National Bank, Colorado Springs, Colorado and The Mesa National Bank, Grand Junction, Colorado.

13. Bancorporation's leading subsidiary, The First National Bank of Denver, Denver, Colorado ("FNBD"), is the largest bank in Denver, which is the state capital and financial center in the State of Colorado. FNBD is a leading source of correspondent banking services to other commercial banks in Colorado and the surrounding states. Such services are generally provided by a large metropolitan bank to local banks, and they include clearing of checks and other commercial transactions, participation in loans (usually larger loans) with the local bank, providing various forms of investment and other information and advice, providing data processing services, and providing a variety of other financial services which a particular local bank may require. As partial compensation for such services, the local bank maintains inter-bank deposits with its principal correspondent banks; FNBD holds substantial inter-bank deposits. FNBD has provided correspondent banking services to banks in the Colorado Springs SMSA.

IV

OFFENSE

14. Defendants Bancorporation and Exchange Bank have entered into agreements which will result in the acquisition by Bancorporation of 80 percent or more of the voting shares of Exchange Bank. On April 1, 1971 the Board of Governors of the Federal Reserve System granted approval of the proposed acquisition.

15. The effect of the acquisition described in paragraph 14 above may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) potential competition between Bancorporation and Exchange Bank in commercial banking in the Colorado Springs SMSA will be permanently eliminated;

(b) the present concentrated structure of banking in the Colorado Springs SMSA will be entrenched, thus substantially reducing the potential for effective competition;

(c) Bancorporation will be eliminated as a potential entrant into commercial banking in the Colorado Springs SMSA by chartering a new bank or by acquiring a small existing competitor;

(d) potential competition will be reduced by the elimination of Exchange Bank as a potential member of a new holding company capable of entering commercial banking in other areas in the State of Colorado;

(e) competition for correspondent bank services for the remaining independent banks in the Colorado Springs SMSA may be reduced;

(f) this acquisition may trigger similar acquisitions of leading local banks by the leading banking organizations in the state, thereby causing various further anticompetitive effects of the type alleged herein;

(g) potential competition in commercial banking may be reduced by the continuation of a trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the state, thereby reducing diversity in banking choices and promoting parallel policies among leading banks in local markets;

(h) banking resources in the State of Colorado may be further concentrated in the leading banking organizations in the state, thereby enhancing the power of those organizations in the banking markets in which they operate; and

(i) this acquisition combined with the trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the state will substantially reduce existing competition in providing correspondent banking services in Colorado, increase barriers to new entry into correspondent banking services in Colorado, and effectively foreclose the remaining independent banks in many markets from access to correspondent banking services in Colorado, and the possibility of deconcentration in commercial banking in the Colorado Springs SMSA will be substantially reduced.

PRAYER

WHEREFORE, plaintiff prays:

1. That the agreements described in paragraph 14 of this complaint be adjudged to be unlawful, in violation of Section 7 of the Clayton Act.

2. That defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid acquisition agreements, or any similar plans or agreements, the effect of which would be to merge, consolidate, or in any other way combine the businesses of said defendants.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

JOHN N. MITCHELL
Attorney General

Richard W. McLaren

RICHARD W. McLAREN
Assistant Attorney General

Baddia J. Rashid

BADDIA J. RASHID

CHARLES L. WHITTINGHILL
Attorneys, Department of
Justice

United States Attorney

HERBERT G. SCHOEPKE

EUGENE LIPKOWITZ

KEVIN BRENNAN

ALAN R. MALASKY

HARRY D. MADONNA

Peter C. Carstensen

PETER C. CARSTENSEN

Attorneys, Department of Justice