
Comptroller of the Currency
Administrator of National Banks

Northeastern District
1114 Avenue of the Americas, Suite 3900
New York, New York 10036-7780

Corporate Decision #2000-15 September 2000

DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE BSB BANK & TRUST COMPANY, BINGHAMTON, NEW YORK WITH AND INTO NBT BANK, NATIONAL ASSOCIATION, NORWICH, NEW YORK, UNDER THE CHARTER NUMBER OF THE LATTER AND WITH THE TITLE OF NYSTAR BANK, NATIONAL ASSOCIATION.

2000-NE-02-0021

August 28, 2000

Introduction

On June 30, 2000, an application was filed with the Office of the Comptroller of the Currency (“OCC”) for approval to merge BSB Bank & Trust Company, Binghamton, New York, (“BSB Bank”) with and into NBT Bank, National Association, Norwich, New York (“NBT Bank”) under 12 U.S.C. § 215a. This application was based on an agreement completed between the parties on April 19, 2000.

Participating Financial Institutions

As of March 31, 2000, NBT Bank had assets of approximately \$1.4 billion and deposits of approximately \$1.1 billion. As of that same date, BSB Bank had assets of approximately \$2.2 billion and deposits of approximately \$1.9 billion. NBT Bank is a wholly owned subsidiary of NBT Bancorp, Inc., Norwich, New York,, which also owns LA Bank, National Association, Lake Ariel, Pennsylvania. BSB Bank is a wholly owned subsidiary of BSB Bancorp, Inc., Binghamton, New York. NBT Bank and BSB Bank are members of the Bank Insurance Fund (“BIF”).

The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC’s approval for mergers between insured institutions where the resulting institution will be a national bank. Under the Act, the OCC

generally may not approve a merger that would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial

Page 2

resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For reasons stated below, we find the merger involved may be approved under section 1828(c).

Competitive Analysis

The OCC reviewed the impact of the proposed transaction on competition for the cluster of products and services offered by depository institutions in the areas surrounding the branches NBT Bank is acquiring. There are two relevant geographic markets for this proposal, which are discussed below. The OCC finds that the markets are delineated in such a way as to accurately measure any adverse competitive effects from the proposed transaction and the effects of the proposed transaction, as now structured, will not result in a monopoly or be in furtherance of any combination or conspiracy to monopolize the business of banking in any part of the United States, and will not substantially lessen competition in any part of the country, or tend to create a monopoly, and will not be in restraint of trade.

In making this determination, the OCC carefully considered the report of the Department of Justice, which similarly found the proposed transaction would not have a significant adverse effect on competition.¹

Oneonta Banking Market

This market includes Delaware and Otsego Counties, New York, plus portions of Chenango County, New York (Bainbridge, Columbus, German, Guilford, Linklaen, McDonough, New Berlin, North Norwich, Norwich city and town, Otselic, Oxford, Pharsalia, Pitcher, Plymouth, Preston, Sherburne, and Smyrna). This is where BSB Bank's Norwich branch derives the bulk of its deposits, and where competition between NBT Bank and BSB Bank is direct and immediate. As a result of NBT Bank's proposed divestiture of BSB Bank's Norwich branch, the OCC finds that this transaction will have no or minimal adverse competitive effects in the Oneonta Banking Market.

Binghamton Banking Market

This market includes the City and Town of Binghamton, the towns of Union, Vestal, Dickinson, Kirkwood, Conklin, Windsor, Colesville, Fenton, Chenango, Maine and Nanticoke in Broome County, New York, plus the towns of Owego and Newark Valley in Tioga County, New York, and the

¹ In reaching this conclusion, the Department of Justice relied on commitments by NBT Bank to divest one BSB Bank branch in Norwich, New York. This was stipulated in the divestiture agreement between the Department of Justice, NBT Bank and BSB Bank, dated August 15, 2000. NBT Bank agreed that it would not consummate the merger until a contract with a competitively suitable purchaser as determined by the Department of Justice is signed by NBT Bank and BSB Bank for the sale of the divested branch.

townships of Great Bend, Oakland and Susquehanna in Susquehanna County, Pennsylvania. This is where BSB Bank's Broome County and Tioga County branches derive the

Page 3

bulk of BSB Bank's deposits, and where competition between NBT Bank and BSB Bank is direct and immediate.²

Within this market, eleven banks compete for approximately \$2.8 billion in deposits. NBT Bank is the sixth largest depository institution with approximately two-percent of the market's total deposits. BSB Bank is the largest depository institution with approximately fifty-one percent of the market's deposits. The proposed merger would create the largest depository institution in the market with approximately fifty-four percent of the market's deposits. The second largest bank holding company is M&T Bank Corp. with approximately twenty-five percent of the markets deposits.

While the proposed transaction would eliminate some direct competition in the relevant geographic market, any adverse effects would be mitigated by the presence of numerous other banking alternatives. Therefore, consummation of this proposal would not have a significantly adverse effect on competition in the Binghamton Banking Market.

In addition, there are six credit unions operating in the Binghamton market. Collectively, credit unions account for roughly twenty-five percent of combined bank-credit union deposits. The largest of these, Visions Federal Credit Union ("Visions") has approximately \$855 million in deposits in the Binghamton RMA. Visions is open to all people and businesses in Broome and Tioga counties. Visions offers an extensive array of financial products and services and is in the process of expanding its business lending operations. Visions is implementing a program to offer mortgage loans for commercial real estate and commercial term installment loans, as well as SBA guaranteed loans. Recent legislative changes indicate an increased potential for credit unions to act as competitors with banks and thrifts. On August 7, 1998, the President signed into law the Credit Union Membership Access Act ("CUMAA")³ The CUMAA expanded the field of membership requirements so that credit unions could accommodate new members, and promoted the creation of "multiple common-bond" credit unions.⁴ While quantitative data on the long run effects are not yet available, legislative and regulatory changes may result in an increased competitive presence from credit unions. Based on an analysis of these competitive factors, the merger application may be approved under section 1828(c).⁵

² LA Bank, National Association, Lake Ariel, Pennsylvania ("LA Bank"), wholly owned by NBT Bancorp. Inc. filed an application with the OCC to acquire two Sovereign Bank branches in the Binghamton, NY banking market. The OCC reviewed the competitive effects of LA Bank's proposed acquisition of Sovereign Bank's branches in conjunction with the proposed merger of NBT Bank and BSB Bank.

³ 12 U.S.C. §§ 1751-1795.

⁴ Id. at 1759(b).

⁵ The Federal Reserve Bank of New York, acting on behalf of the Board of Governors of the Federal Reserve System, reported that the merger could have a substantially adverse effect on competition, although it qualified its

Banking Factors

The Bank Merger Act requires the OCC to consider “...the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.” We find that the financial and managerial resources of NBT Bank and BSB Bank do not raise significant concerns that would cause the application to be disapproved. The future prospects of the proponents, individually and combined, are thus considered favorable and the resulting bank is expected to meet the convenience and needs of the community to be served.

Convenience and Needs.

The merger will not have an adverse impact on the convenience and needs of the communities to be served. The resulting bank will continue to serve the same areas that it now serves. There will not be a reduction of products or services as a result of the merger. The resulting bank is expected to meet the convenience and needs of the community to be served. While the resulting bank will consolidate one overlapping branch as a result of the transaction, current NBT Bank and BSB Bank customers, as customers of the resulting bank, will have a greater number of branches at which to bank. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the application.

The Community Reinvestment Act.

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicants’ record of helping to meet the credit needs of the community, including low-and moderate-income neighborhoods, when evaluating certain applications. 12 U.S.C. §§ 2903; 12 C.F.R. 25.29(a). The OCC considers the CRA performance evaluation of each institution involved in the transaction. Under the CRA regulations, the OCC evaluates performance of most large banks using the lending investment, and service criteria. In these evaluations, the OCC considers the institution’s capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

A review of the record of this application and other information available to the OCC as a result of the its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet the credit needs of their communities, including low-and moderate-income neighborhoods is less than satisfactory. We further note that NBT Bank received a “Satisfactory” CRA rating as of December 7, 1998. BSB Bank received a “Satisfactory” CRA rating as of April 13, 1998. We received no public comments on this application.

report by noting that it had not examined all the economic factors that may be relevant to the competitive effects of the proposal.

The transaction is not expected to have an adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities the NBT Bank and BSB Bank currently serves. The resulting bank will continue its current CRA programs and policies. We find that approval of the proposed transaction is consistent with the Community Reinvestment Act.

Conclusion

The legal, policy and procedural requirements for the proposal are satisfied. The banks are in satisfactory condition and their performance under the Community Reinvestment Act is rated at least satisfactory. We have analyzed this proposal pursuant to 12 USC §§215 a, the Bank Merger Act 12 USC 1828(c) and 12 CFR 5.33. Accordingly, the application is approved subject to the following condition:

The resulting bank must comply with the divestiture agreement between the Department of Justice, NBT Bank, and BSB Bank dated August 15, 2000.

This condition of approval is a condition "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC § 1818. As such the condition is enforceable under 12 USC § 1818.

-signed-

Stephen Lybarger
Acting Licensing Manager

Dated: **08-28-00**

