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Chain Banking, Competition, and the Change in Bank Control Act of 1978

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I. INTRODUCTION

Chain banking is an organizational arrangement whereby two or more banks are controlled by one or more individuals via common stock ownership or through interlocking directors and officers.[1] Chain banking groups may have an adverse effect on competition in selected markets if a chain organization controls more than one bank and a significant percentage of deposits in the local banking market.[2] Recent evidence suggests that chain banking may significantly increase both deposit concentration in local markets and the potential for anticompetitive behavior.[3]

Prior to the recent passage of the Change in Bank Control Act,[4] chain organizations or individuals could acquire control of addi-

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1. This definition specifically excludes multiple bank ownership by the same corporation or partnership, an arrangement more commonly referred to as a multibank holding company.
2. Chain banking relationships represent only one of the organizational arrangements which may result in concentration of banking resources. Branch banking and multibank holding companies are the two more common arrangements in which banking resources may be concentrated under centralized control. Concentration of bank deposits is higher under these three organizational arrangements than if all banks were owned separately and operated independently.
3. Keating, *Chain Banking in the District*, ECON. PERSPECTIVES (Chicago: Federal Reserve Bank) Sept./Oct., 1977 at 15-20 (copy on file with the Nebraska Law Review); Rutz, The Impact of Chain Banking on State and Local Market Concentration: A Case Study (unpublished research study, Washington D.C.: Board of Governors of the Federal Reserve System 1979) (copy on file with the Nebraska Law Review).
4. Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, § 602, 92 Stat. 3683 (1978) (Title VI, to be codified at 12 U.S.C. § 1817(j)).

tional banks without regulatory approval, even though such acquisitions might have significantly anticompetitive effects.[5] This new Act requires an individual to submit prior written notice and obtain subsequent approval by the appropriate federal banking agency before acquiring control of a bank or bank holding company if the transaction is not subject to the provisions of the Bank Holding Company or Bank Merger Acts.[6] The Change in Bank Control Act provides federal banking agencies power to deny acquisitons of bank control if the competitive effects arising from the change of control are substantially adverse, that is, if the competitive effects of the change of control, in their judgment, constitute a violation of section 7 of the Clayton Act.[7] Therefore, the Change in Bank Control Act initially appears to severely limit the possibility that expansion-minded chain organizations will lessen competition by acquiring control of additional banks in a market in which they own another bank. However, prior policy decisions by the Board of Governors of the Federal Reserve System had already made these limitations effective for chain relationships involving a one-bank holding company.[8] Consequently, the implications of the Change in Bank Control Act for chain banking relationships may not be as significant as one might initially presume because of previous Board policy decisions. Nevertheless, this new Act is important because it imposes competitive standards on acquisition of control of both banks and bank holding companies by chain banking organizations or individuals which are almost identical to the competitive standards imposed on bank mergers and acquisitions under the Bank Merger and Bank Holding Company Acts.[9]

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5. Chain banking acquisitions are subject to the Sherman Act, 15 U.S.C. §§ 1-7 (1976), but enforcement proceedings by the Department of Justice have not been applied frequently.
6. Pub. L. No. 95-630, § 602(16), 92 Stat. 3683 (1978).
7. Ch. 323, § 7, 38 Stat. 730 (1914) (current version at 15 U.S.C. § 18 (1976)). Both the Change in Bank Control Act and the Clayton Act employ the phrase "substantially lessen competition, or to tend to create a monopoly." Pub. L. No. 95-630, § 602(7)(b), 92 Stat. 3683 (1978); 15 U.S.C. § 18 (1976).
8. These policy decisions established precedents which have already minimized some of the existing and possible future anticompetitive situations arising from certain bank acquisitions by chain organizations attempting to convert the newly acquired banks to one-bank holding companies. *See* notes 27-32 & accompanying text *infra*.
9. The Change in Bank Control Act also imposes standards regarding financial and managerial considerations for acquisitions of bank control substantially similar to those imposed under the Bank Merger Act, 12 U.S.C. § 1828(c) (1976), and the Bank Holding Company Act, 12 U.S.C. § 1842 (1977 Cum. Supp.).

II. TITLE VI OF *FIRICA*: CHANGE IN BANK CONTROL ACT OF 1978

The Change in Bank Control Act was passed by Congress on November 10, 1978, and became effective on March 10, 1979.[10] The three primary federal banking agencies have issued substantially similar regulations to implement this Act.[11] The Act requires sixty days prior written notice of a change of control of an insured bank or bank holding company by an individual, a group of individuals acting in concert, or a business. Control is defined in the Act as the power to direct management or policies either directly or indirectly, or to vote twenty-five percent or more of any class of voting securities of the bank.[12] All three federal supervisory agencies have established a presumption of control, subject to rebuttal, if the individual or group acting in concert, or the business, has voting control of ten percent or more of any class of the institution's voting stock.[13]

The Act requires that the written notice contain the personal history and business background of the individual or business, certain financial information for the preceding five-year period, the terms, conditions and source of funds used in the acquisition, and the intent of those gaining control of the bank or bank holding company.[14] Any change of control is automatically granted unless the primary federal banking agency disapproves of the acquisition within sixty days. An acquisition of control may be made before the sixty-day period if the agency notifies the individual in writing of its intent not to disapprove of the transaction.[15]

Most importantly, however, the appropriate federal banking

10. Pub. L. No. 95-630, § 602, 95 Stat. 3683 (1978).
11. The primary or appropriate federal banking agency includes the Comptroller of the Currency for national banks, the Board of Governors of the Federal Reserve System for state member banks and bank holding companies, and the Federal Deposit Insurance Corporation (FDIC) for state nonmember insured banks.
12. Pub. L. No. 95-630, § 602(8)(b), 95 Stat. 3683 (1978).
13. *E.g.*, 12 C.F.R. § 225.139 (1979). Most corporations acquiring control of a bank will continue to file under the Bank Holding Company Act, 12 U.S.C. § 1842 (1977 Cum. Supp.), and not the Change in Bank Control Act. There may be some instances, however, in which acquisition of 10% of the stock of a bank by a business will be insufficient to classify that business as a bank holding company. In these instances, the business may be required to file under the new Act. It should be noted that the new Act was directed primarily at changes in bank and bank holding company control by individuals, and not businesses.
14. Pub. L. No. 95-630, § 602(6), 92 Stat. 3683 (1978). However, the Federal Reserve Board's Regulation Y requires only current financial statements for individuals, but reserves the right to request additional information if deemed necessary. *See* 44 Fed. Reg. 7121 (1979) (to be codified at 12 C.F.R. § 225.7(b)).
15. Pub. L. No. 95-630, § 602(1), 92 Stat. 3683 (1978).

agency may disapprove any proposed acquisition of bank control if:

> (A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;
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> (B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;
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> (C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;
>
> (D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank. . . .[16]

The legislative history of Title VI indicates that the Change in Bank Control Act was passed primarily to prevent speculative purchases of small banks by irresponsible individuals with questionable integrity. The major concern was that banks were being bought and sold with little or no equity investment by certain individuals and often with a clear intent to use the bank's resources for personal gain.[17] These practices have resulted in a relatively large percentage of bank failures during the past twenty years.[18] Therefore, the regulatory power provided the federal banking agencies to deny a change of bank control on the basis of the personal factors specified in the Act[19] effectively strengthened the requirements for a notice of change of management control specified in the statute prior to this amendment.[20]

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16. *Id.* § 602(7).
17. *See* 123 CONG. REC. H.8856 (Aug. 5. 1977) (remarks of Rep. St. Germain); HOUSE COMM. ON BANKING, FINANCE AND URBAN AFFAIRS, FINANCIAL INSTITUTIONS REGULATORY ACT OF 1978, H.R. REP. No. 95-1383, 97th Cong., 2d Sess. 9 (1978).
18. Of the 101 banks that failed between 1960 and 1977, 83.2% of the failures were primarily caused by fraudulent or improper insider activity including embezzlement, self-serving loans, and various other insider manipulations and defalcations. *The Safe Banking Act of 1977: Hearings on H.R. 9086 Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 95th Cong., 1st Sess. 2526 (1977) (letter from FDIC Chairman LeMaistre, enclosure "B").
19. Pub. L. No. 95-630, § 602(7)(C) & (D), 92 Stat. 3683 (1978).
20. *See* 12 U.S.C. § 1817(j) (1976).

A. Similarities to Bank Merger and Bank Holding Company Acts

The similarities between the Change in Bank Control Act of 1978 and the Bank Holding Company and Bank Merger Acts are readily apparent. Both the Bank Merger Act of 1960[21] and the Bank Holding Company Act of 1956[22] require the appropriate federal banking agency to evaluate banking, financial and managerial factors, as well as competitive effects resulting from a proposed merger or acquisition before issuing a decision on a particular transaction. If substantially adverse competitive effects emanate from the proposed merger or acquisition,[23] that is, if section 7 of the Clayton Act has been violated, the application is usually denied unless public interest considerations related to the financial and managerial factors and the convenience and needs of the community to be served clearly outweigh any anticompetitive effects.[24]

The primary difference between the Change in Bank Control Act and the Bank Holding Company and Bank Merger Acts is that the new Act extends the same standards to transactions involving individuals. For the first time Congress has mandated a direct evaluation of the competitive effects of chain banking organizations.[25] However, the competitive implications of this new Act may not be as significant as one might initially expect because recent decisions by the Board of Governors have largely minimized the anticompetitive effects associated with the expansion and formation of chains via one-bank holding companies.

III. FEDERAL RESERVE BOARD DECISIONS: FINANCIAL AND MANAGERIAL STANDARDS

Under the Bank Holding Company Act, the Board of Governors

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21. 12 U.S.C. § 1828 (1976).
22. 12 U.S.C. § 1842 (1976).
23. *See* note 5 & accompanying text *supra*.
24. Realistically, one of the few defenses for a *substantially* adverse competitive proposal is that one of the banks is a failing firm. *See* Edwards, *Bank Mergers and the Public Interest: A Legal and Economic Analysis of the 1966 Bank Merger Act*, 85 BANKING L.J. 753 (1968); Golden, *Preparing the Convenience and Needs Defense Under the Bank Merger Act of 1966*, 96 BANKING L.J. 100 (1979); Jessee & Seelig, *An Analysis of the Public Benefits Test of the Bank Holding Company Act*, 56 MONTHLY REVIEW 151 (New York: Federal Reserve Bank, 1974).
25. The competitive standards contained in the Change in Bank Control Act were apparently included to maintain similarity with the Bank Merger Act and the Bank Holding Company Act. During the discussions and hearings on the bill, almost no mention was made of chain banking or its competitive effects. *See* 123 CONG. REC. H.6543 (Oct. 25, 1977); 123 CONG. REC. H.11,714 (Oct. 27, 1977); 124 CONG. REC. H.11,410 (Oct. 3, 1978); 124 CONG. REC. H.11,719 (Oct. 5, 1978); 124 CONG. REC. S.19,144 (Oct. 14, 1978) (remarks of Sen. Proxmire). *See* notes 17-18 & accompanying text *supra*.

is required to take into consideration the financial condition, managerial resources and future prospects of the proposed holding company and the bank to be acquired.[26] However, in this capacity the Board has been somewhat less restrictive with respect to financial considerations in cases involving the establishment of a single one-bank holding company than in cases involving multibank holding companies. This policy has been established to facilitate management succession at many of the smaller, independent banks throughout the country.[27]

The Board has held, however, that this less restrictive policy should not apply to those situations where individuals are involved in establishing a series or chain of one-bank holding companies. In such cases, the Board has analyzed the applications under standards that are normally applied to multibank holding companies. The Board recognized the interdependence of the banks in a chain of one-bank holding companies and the distinct possibility that the financial and managerial resources of one or more of the banks in the chain may be used to support the operations of other members in the chain banking group.[28] Thus, the similarities between a chain of one-bank holding companies and a multibank holding company require the use of similar standards when analyzing financial and managerial considerations of both. This policy was first established in January 1974 and recent decisions by the Board have continued to emphasize its importance.[29]

A. Competitive Standards

The Bank Holding Company Act also requires that the Board of Governors take into consideration the competitive effects of a proposed acquisition of a bank. If substantial anticompetitive effects emanate from the proposed acquisition, the application will usually be denied.[30] However, if less than substantially anticompetitive effects result from the transaction, the application will usually be approved if considerations relating to the convenience and needs of the community to be served and financial and managerial resources of the applicant bank holding company outweigh the an-

26. 12 U.S.C. § 1842(c) (1976).
27. *See* Nebraska Banco, Inc., Ord, Nebraska, 62 FED. RES. BULL. 638 (1976) (order denying application).
28. *Id.* at 639.
29. *See* American Nat'l Sidney Corp., Sidney, Nebraska, 66 FED. RES. BULL. 159 (1980) (order denying application); Eicher Bancorporation, Iowa City, Iowa, 64 FED. RES. BULL. 399 (1978) (order denying application); Commercial Bankshares, Grand Island, Nebraska, 61 FED. RES. BULL. 807 (1975) (order approving application); BHCO, Inc., Hardin, Montana, 60 FED. RES. BULL. 123 (1974) (order denying application).
30. *See* note 24 & accompanying text *supra*.

ticompetitive effects.[31] This analytical process has traditionally been applied by the Board in cases involving acquisitions of banks by multibank holding companies. Recently, however, these same competitive standards have been applied to formations of one-bank holding companies in cases where the applicant's principals are also associated with other banks or one-bank holding companies in a chain banking arrangement.

In May 1977, the Board denied an application to form a one-bank holding company on the basis of adverse competitive effects resulting from affiliation of the applicant's principals with another bank in the same geographic market.[32] This denial established a precedent: the Board refused to sanction the use of one-bank holding companies to aid, further and perpetuate existing anticompetitive arrangements involving chain banking organizations. The Board has stated that although denial of these applications might not immediately alter the anticompetitive relationships which exist between certain banks affiliated with the same chain banking organization, denial would strengthen the prospect that they would become independent and competing organizations in the future.[33] On the other hand, the Board has also noted that approval of applications involving one-bank holding company chain organizations would solidify and strengthen common ownership and eliminate or significantly diminish the likelihood of disaffiliation of the banks and deconcentration of the local markets in the future.[34]

31. It is unclear whether the Bank Holding Company Act requires the weighing process only in *substantially* adverse competitive acquisitions (those involving violations of section 7 of the Clayton Act). However, the FDIC denied a merger case in 1970 under the Bank Merger Act (which employs language identical to the Bank Holding Company Act) *solely* on the basis of less than substantially adverse competitive factors. This decision was reversed by the district court and affirmed by the circuit court. *See* Washington Mut. Sav. Bank and Grays Harbor Sav. & Loan Assn. v. Federal Deposit Ins. Corp., 482 F.2d 459 (9th Cir. 1973).

32. *See* Mahaska Investment Co., Oskaloosa, Iowa, 63 FED. RES. BULL. 579 (1977) (order denying application). Actually, the Board has always considered the competitive effects of affiliation, but this case was the first to be denied on that basis.

33. The primary reason is that purchasing control of banks with debt is considerably less costly through a one-bank holding company because of substantial tax savings. This may make it more difficult for individuals to maintain control of the banks. *See* note 39 *infra*. In addition, of course, the Board of Governors could notify the Department of Justice of its findings and the Department of Justice may decide to take action.

34. *See* Mid-Nebraska Bancshares, Inc., Ord, Nebraska. 64 FED. RES. BULL. 589 (1978) (order denying a one-bank holding company application involving anticompetitive chain banking relationships); Midwest Bancorp, Inc., Gardner, Illinois, 64 FED. RES. BULL. 317 (1978) (same); Citizens Bancorp, Inc., Hartford City, Indiana, 63 FED. RES. BULL. 1083 (1977) (same).

B. *Board of Governors of the Federal Reserve System v. First Lincolnwood Corp.*

In most cases involving chain relationships, the anticompetitive chain banking arrangement is established through the purchase and control of a bank in a market in which the same chain organization already controlled another bank. An application to form a one-bank holding company is then filed with the Board to obtain certain benefits inherent in the one-bank holding company form of organization,[35] and the Board subsequently denies these applications if the competitive effects are substantially adverse. The Board's authority to deny the formation of a one-bank holding company on the basis of pre-existing, unfavorable aspects, even though the formation would neither cause nor enhance existing adverse effects, has recently been upheld by the U.S. Supreme Court.[36] Although the *First Lincolnwood* case involved pre-existing adverse financial factors, the rationale of the Board's authority to deny a one-bank holding company formation appears to be equally applicable to an anticompetitive chain banking arrangement, especially in light of the Bank Holding Company Act's strong emphasis against anticompetitive combinations. In *Mid-Nebraska Bancshares, Inc.*, the Court of Appeals, primarily relying on the *First Lincolnwood* decision, has recently upheld the Board's authority to deny one-bank holding company applications involving anticompetitive chain banking relationships.[37] Thus, the Board has taken the position, upheld by the Supreme Court, that it may deny bank holding company applications on the basis of conditions which predate the proposed bank holding company formation.[38]

IV. PRACTICAL IMPLICATIONS OF THE NEW ACT

The one-bank holding company form of organization offers significant financial benefits in the form of enhanced cash flows

35. Most of the benefits involve tax considerations and the ability of one-bank holding companies to enter into nonbanking business operations permitted under 12 U.S.C. § 1843 (1976) and 12 C.F.R. § 225.4 (1979).

36. Board of Governors of Fed. Reserve Sys. v. First Lincolnwood Corp., 439 U.S. 234 (1978).

37. Mid-Nebraska Bancshares, Inc. v. Board of Governors of Fed. Reserve Sys., No. 78-1658 (D.C. Cir., decided Feb. 15, 1980).

38. *See* notes 36-37 & accompanying text *infra*; Lake Jackson Bancshares, Inc., Lake Jackson, Texas, 66 FED. RES. BULL. — (1980) (order denying application which involved anticompetitive chain banking relationships); Childress Bancshares, Inc., Childress, Texas, 66 FED. RES. BULL. 160 (1980) (same); Caneyville Bancshares, Inc., Caneyville, Kentucky, 65 FED. RES. BULL. 759 (1979) (same); First State Bancorporation, Fredericksburg, Iowa, 65 FED. RES. BULL. 256 (1979) (same).

due to substantial tax savings permitted by federal tax laws. These benefits are particularly attractive if the one-bank holding company utilizes corporate debt to finance the acquisition of a bank and make it much easier for individuals to purchase control of banks through one-bank holding companies than for individuals to gain control of banks with personal debt.[39] The Board's policy of denying formations of one-bank holding companies involved in anticompetitive chain banking arrangements effectively withholds these benefits and serves as an effective restraint on the ability of most anticompetitive chains to continue and prosper. The inherent economic and wealth restrictions and lack of access to the national capital markets provide additional limitations on the ability of individuals to establish and operate anticompetitive non-one-bank holding company chain banking organizations. The Board's policy and the inherent wealth constraints on individuals have served to severely limit widespread anticompetitive chain banking

39. The primary tax benefits arise in two ways. First, if a corporation, *e.g.*, a one-bank holding company, owns 80% or more of the outstanding stock of a subsidiary (such as a bank), the corporation may deduct 100% of the dividends received from that subsidiary for income tax purposes. Individuals may deduct only $100 of corporate dividends. Thus one-bank holding companies may escape "double taxation" of dividends while individuals cannot. Secondly, a one-bank holding company owning 80% or more of the outstanding stock of the bank may file a consolidated tax return with the bank. It is important to note that stock ownership in the one-bank holding company must be precisely structured to prevent the IRS from classifying the arrangement as a personal holding company and subsequently levying taxes at the maximum marginal rate of 70%. Because the taxable income received by the one-bank holding company is usually considerably less than the interest expense on the acquisition debt, the one-bank holding company experiences a loss for income tax purposes. These losses may be consolidated with the income of the bank to reduce taxes paid by the bank. This permits bank ownership by one-bank holding companies to generate greater cash flows than bank ownership by individuals for use in servicing the acquisition debt. In effect, one-bank holding companies are permitted to retire the acquisition debt with before-tax dollars while individuals must retire the principal of the acquisition debt with after-tax dollars, and this makes it considerably more costly to acquire control of bank stock with personal debt. For example, on a $900,000 twelve-year bank stock loan at an interest rate of 9%, it has been estimated that a one-bank holding company formation will generate over $900,000 in additional cash flows during the twelve-year period than similar ownership by an individual. The additional cash flows are the result of the tax savings available through corporate bank ownership. *See* Rutz, Financing Control of Bank Stock With Acquisition Debt: An Analytical Approach to the Tax Benefits of One-Bank Holding Companies (unpublished research study, Washington D.C.: Board of Governors of the Federal Reserve System 1979) (copy on file with the Nebraska Law Review). *See also, Proposition 5: IBAA Seeks to Rescind Fed. In-House Guidelines Weighted Against Small One-Bank Holding Companies*, 28 INDEPENDENT BANKER 9 (Aug. 1978); Ritz, *Bank Holding Company Consolidated Tax Returns*, 90 BANKING L.J. 20 (1973).

arrangements involving one-bank holding companies.[40]

This analysis suggests that the Change in Bank Control Act may have only slightly more restrictive effects than the Federal Reserve Board's policy. The practical effects of the new Act are simply to provide the federal banking agencies with the prior authority to deny an acquisition of control of a bank or bank holding company which would result in an anticompetitive situation.[41] This authority, granted to all three banking agencies, will be more effective than the Board's policy of refusing to sanction permanently existing anticompetitive chain banking arrangements through the formation of one-bank holding companies. The reason is that the Board's policy assumes that withholding the financial benefits of the one-bank holding company form of organization will serve as a forceful inducement for chains to disassociate themselves with banks in markets where the competitive effects are substantially adverse.[42] The new Act, however, gives the federal banking agencies the power to deny anticompetitive changes of bank control before consideration is given to a possible one-bank holding company formation by the Board of Governors.[43]

On April 27, 1979, in the first case to come before any of the federal banking agencies under the Change in Bank Control Act, the Board of Governors denied a notice for change of control on the basis of significantly adverse competitive effects. This case involved the proposed acquisition of control of the New Mexico Bancorporation, Inc., which is the fifth largest banking organization in New Mexico with $173 million of total deposits. New Mexico Bancorporation owns a relatively small bank (deposits of $35 million)

40. In addition, the Board's policy probably also serves as a substantial deterrent to chain organizations attempting to gain control of a bank where the chain already controls a significant percentage of the deposits within the local banking market. This would be especially true in situations where the chain planned to file a one-bank holding company application for the newly acquired bank.
41. Another important effect of the Act is that it provides the federal banking agencies with the power to deny changes of bank control if they have reason to believe that the new ownership may become involved in self-dealing.
42. In fact, in many cases this is the result.
43. A potential conflict exists between the Bank Holding Company Act and the Change in Bank Control Act and any decisions that may be handed down by the three federal bank regulatory agencies. Suppose, for example, that a notice for change of bank control is filed with the Comptroller of the Currency and subsequently approved. The principals of the bank may then decide to file an application to form a bank holding company and the Board of Governors could conceivably deny the application on the basis of adverse financial or competitive factors. A situation could arise where one federal banking agency approves a notice for change of bank control while the Board of Governors could deny essentially the same proposal under the Bank Holding Company Act.

which ranked seventh in the Albuquerque banking market.[44] However, the proposed purchasers already controlled the First National Bank in Albuquerque, which is the third largest banking organization in New Mexico with $370 million of total deposits. This bank was the second largest in the Albuquerque banking market and controlled 23.8% of total market deposits. Assuming the purchase had been consummated, the principals would have controlled both organizations with a combined market share in the Albuquerque banking market of 26.1%. This proposal represented a significantly adverse competitive effect in the local market and violated Department of Justice merger guidelines.[45] Consequently, the Board of Governors denied the notice for change of bank control.[46]

The New Mexico Bancorporation decision tends to suggest that notice for change of bank control will be approved or disapproved in a manner similar to decisions under the Bank Merger and Bank Holding Company Acts. Therefore the Change in Bank Control Act provides the authority for the federal banking agencies to prevent anticompetitive chain banking relationships in the future and the Board's policy will continue to serve as a deterrent to existing anticompetitive chains planning to convert these banks to one-bank holding company form of organization.

V. SUMMARY AND CONCLUSION

The Change in Bank Control Act of 1978 requires individuals to notify the federal banking agencies prior to a change of bank or bank holding company control. The Act provides the banking agencies the authority to deny a notice for change of control on the basis of adverse competitive factors. As a result, Congress has indicated for the first time a direct concern for the potentially significant anticompetitive effects which may result from acquisitions of bank control by chain banking organizations.

Implications of the new Act, however, may not have great sig-

44. The bank had a 2.3% share of the Albuquerque banking market.

45. *See, The Department of Justice Merger Guidelines*, 1 J. REPRINTS ANTITRUST L. & ECON. 180 (1969); Meehan, *Rules vs. Discretion: A Reevaluation of the Merger Guidelines for Horizontal Mergers*, 23 ANTITRUST BULL. 769 (1979).

46. All information was obtained in a letter to Mr. John T. Mitchell, the attorney for the proposed purchasers in the New Mexico Bancorporation case and is available through the Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Contrary to decisions under the Bank Holding Company Act which are publicly disclosed through formal Board Press Releases and cited in the *Federal Reserve Bulletin*, decisions under the Change in Bank Control Act are made public simply by placing the letter to the applicant (or applicant's attorneys) in the Board's public information file.

nificance because of previous policy decisions by the Board of Governors of the Federal Reserve System. In 1977 the Board began to deny applications to form one-bank holding companies in situations involving significantly anticompetitive chain banking relationships. This policy, in conjunction with the inherent financial constraints on individuals who attempt to establish large chain organizations, may have effectively minimized most of the anticompetitive problems associated with certain chain banking groups. Nevertheless, the Change in Bank Control Act has filled the previous void which allowed chain banking organizations to acquire control of additional banks without agency approval even though the competitive effects of such acquisitions may have been substantially adverse and in violation of section 7 of the Clayton Act. In light of the first case to be decided under the Change in Bank Control Act, it appears the new Act will be effective.