Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-82
September 1997

DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF ZIONS FIRST NATIONAL BANK, SALT LAKE CITY, UTAH, TO PURCHASE CERTAIN ASSETS AND ASSUME CERTAIN LIABILITIES OF THE LOGAN, NORTH LOGAN, CEDAR CITY AND ST. GEORGE BRANCH OFFICES, LOCATED IN THE STATE OF UTAH, OF WELLS FARGO BANK, NATIONAL ASSOCIATION, SAN FRANCISCO, CALIFORNIA

SEPTEMBER 3, 1997

I. INTRODUCTION

On May 23, 1997, application was made to the Office of the Comptroller of the Currency (OCC) for prior authorization for Zions First National Bank, Salt Lake City, Utah (Zions) to purchase certain assets and assume certain liabilities of the Logan, North Logan, Cedar City and St. George, Utah, Branch Offices of Wells Fargo Bank, National Association, San Francisco, California (Wells Fargo). This application was based on an agreement entered into between the proponents on March 5, 1997.

As of March 31, 1997, Zions had total assets of $5.6 billion and total deposits of $3.2 billion and operated 105 branch offices throughout the states of Utah and Idaho. As of the same date, the Logan, North Logan, Cedar City and St. George branch offices of Wells Fargo subject to the purchase and assumption agreement had aggregate total deposits of approximately $72 million. Zions is 100% owned and controlled by Zions Bancorporation, a multi-bank holding company, which operates banking offices through its various affiliates in the states of Nevada, Colorado, Arizona, Utah, Idaho, and New Mexico.

II. STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for any merger or purchase and assumption transaction between insured banks where the resulting institution will be a national bank. Under the Act, the OCC may not approve an application if it finds that the proposed transaction will 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, will substantially lessen competition in any section of the country, tend to create a monopoly, or will be in restraint of trade. In addition, the Act also requires the OCC to take into consideration 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. For the reasons stated below, we find that the purchase and assumption transaction described above may be approved under 12 U.S.C. § 1828(c).

1. Competitive Analysis

Wells Fargo's sale to Zions of branches in markets in which both institutions presently compete will result in the loss of some competition. Wells Fargo, however, is retaining all loans, as well as deposit accounts that are related to business relationships. Even though Wells Fargo will continue to provide these products and services, it will not provide the cluster of products and services from the branch locations it is selling. Accordingly, 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 Zions is acquiring.[1] There are three relevant geographic markets 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 that the effects of the proposed transaction 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 section of the country, or tend to create a monopoly, and will not be in restraint of trade.[2] In making this determination, the OCC carefully considered the report of

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[1] Because Wells Fargo will retain a significant amount of its business in the markets where it is selling the branches, it is possible to conclude that there is no competitive impact for customers of the products and services Wells Fargo will keep. Analyzing competition for the products and services Zions is actually acquiring also results in little concern of an impact on competition given the broad array of substitutes for the individual products and services traditionally offered by depository institutions that have developed in the 34 years since the Supreme Court first enunciated a separate product market for commercial banks in *U.S. v. Philadelphia National Bank*, 374 U.S. 321 (1963). Separately analyzing the products and services banks offer, without considering the impact on competition for the cluster of products and services, however, was explicitly rejected by the Supreme Court, in *U.S. v. Phillipsburg National Bank*, 399 U.S. 350, 360-361 (1970). In that case, the Court stated that "submarkets are not a basis for the disregard of a broader line of commerce that has economic significance." *Id*. at 360. Thus, even though "submarket" analysis would show little impact on competition as a result of the proposed transaction because of Wells Fargo's retention of assets and the presence of non-bank suppliers of traditional bank products and services, the analysis in this decision will focus on the impact of the proposed transaction on competition for the cluster of products and services traditionally offered by banks.

[2] In defining the geographic markets, the OCC considered the Federal Reserve Bank of San Francisco's market delineations, as well as evidence of the areas from which the involved banks derive the bulk of their deposits.

the Department of Justice, which similarly found that the proposed transaction would not have a significant adverse effect on competition.[3]

Cedar City Banking Market. This market includes Cedar City and Parowan in Iron County, and is the area where the Cedar City branch to be acquired derives the bulk of its deposits, and is where competition between Zions and the Wells Fargo branch is direct and immediate. Within this market, Zions competes with three other banks for approximately $200 million in deposits. Zions is the third largest depository institution with approximately seventeen percent of the market's total deposits. The Wells Fargo branch is the smallest competitor in the market with approximately six percent of the deposits. Upon consummation of this transaction, Zions would remain the third largest depository institution with approximately twenty-three percent of the market's deposits. While the proposed transaction would eliminate some direct competition in the relevant geographic market, any adverse competitive effects would be mitigated by the presence of two other banking alternatives, both of which will continue to have a larger market share than Zions, and including one of the largest regional banks in the nation. In addition, Wells Fargo's retention of loans and business-related deposit accounts in the market, and the presence of several active credit unions in the market, will blunt the competitive impact of the proposed transaction.

St. George Banking Market. This market includes the cities of Hildale, Hurricane, Springdale, Washington, and St. George in Washington County, and is the area where the St. George branch to be acquired derives the bulk of its deposits, and is where competition between Zions and the Wells Fargo branch is direct and immediate. Within this market, Zions competes with seven other commercial banks and two thrifts for approximately $550 million in deposits. Zions is the largest depository institution with approximately thirty-four percent of the market's total deposits. The Wells Fargo branch to be acquired ranks fifth with approximately six percent of the deposits. Upon consummating the proposed transaction, Zions would remain the largest depository institution with approximately forty percent of the market's deposits. While the proposed transaction would eliminate some direct competition in the relevant geographic market, any adverse competitive effects would be mitigated by the presence of a number of other banking alternatives, including one of the largest regional banks in the nation. Additionally, extraordinary population growth in Washington County, mirrored by growth in deposits at depository institutions, makes the market attractive for entry by other financial institutions. Indeed, recent entry, both *de novo* and by acquisition, including entry

[3] In reaching this conclusion, the Department relied on commitments by Zions that, for at least two years following consummation of this transaction, Zions would not impose any conditions on properties in Logan and North Logan that Zions closes and thereafter sells or leases as a result of this transaction that would preclude the future use of these properties by a commercial banking institution. In addition, Zions committed to suspend the operation of any existing non-compete agreements and not to enter into any new non-compete agreements with any current Zions branch manager, or certain Zions loan officers, employed in any of Zions commercial bank offices in Logan or North Logan.

by banks, thrifts and credit unions, indicates that any impact on competition from the proposed transaction likely will be minimal.

Logan Banking Market. This market includes the Logan Ranally-Metropolitan Area (RMA), and the cities of Lewiston and Richmond in Utah, and Preston, Idaho. This is the area where the Logan and North Logan branches to be acquired are located and derive the bulk of their deposits, and is where competition between Zions and the Wells Fargo branches is direct and immediate. Within this market, Zions competes with eight other commercial banks and three thrifts for approximately $575 million in deposits. Zions is the second largest depository institution with approximately twenty-eight percent of the market's total deposits. The Wells branches to be acquired rank sixth with approximately six percent of the market's deposits. Upon consummating the proposed transaction, Zions would become the largest depository institution with approximately thirty-four percent of the market's deposits. While the proposed transaction would eliminate some direct competition in the relevant geographic market, any adverse competitive effects would be mitigated by the presence of a number of other banking alternatives, including two of the largest regional banks in the nation. Wells Fargo's retention of assets and certain deposits in this market also will mitigate any impact on competition from the proposed transaction, especially since Wells Fargo is maintaining a branch office in Brigham City in Box Elder County, which borders the Logan market and is connected to the Logan market by a newly-constructed four-lane highway. In fact, Brigham City is closer to Logan than is Preston, Idaho, and the ability of financial institutions in Brigham City to compete in the Logan market will likely be shown as population and business growth occurs as a result of the new highway. Further, like the St. George market, the Logan market recently has experienced significant population and economic growth, which makes the market attractive for entry by other financial institutions. Recent entry by large regional thrifts and credit unions underscores the attractiveness of this market. Favorable conditions for growth, including the proximity of a state university and access to a regional medical center, support the conclusion that economic growth will continue in this market.

The OCC received comments on the competitive effects of the proposed transaction from a competing bank in the Logan market. The commenter asked the OCC to deny the application because competition would be impaired if Zions were allowed to acquire the Wells Fargo branches. The primary evidence cited by the commenter is the fact that the merger would fail the Department of Justice and Federal Trade Commission's Horizontal Merger Guidelines' Herfindahl-Hirschman Index ("HHI") test for the markets defined above. However, as the above analysis indicates, there are sufficient mitigating factors present in the subject banking markets to conclude that the HHI screening tests overstate the competitive effects of the proposed transaction.

As noted in the Bank Merger Competitive Analysis Screen, introduced in Advisory Letter 95-4, the HHI screen is most effective in identifying "proposed mergers that clearly do not have significant adverse competitive effects." For proposed mergers that exceed the guidelines in the Merger Screen, the Department of Justice and OCC analyze the markets using more than the structural evidence typified by the HHI test. The Logan market is a good example of how structural analysis can be unreliable as an indicator of mergers that present adverse competitive effects. The pre-merger HHI for this market is 2014, which would make this a highly concentrated market under the Horizontal Merger Guidelines.[4] The HHI constructed for bank mergers, however, is based on deposit market share, which is a proxy for the market share of providers of traditional banking products and services. This proxy may understate or overstate the competitive significance of the competitors in any particular market or for various components of the traditional cluster of products and services offered by banks, and may not adequately assess the effect of non-bank providers of individual components of the traditional cluster and their impact on competition between providers of the traditional cluster.[5] In addition, market shares are based on static market share figures when in reality market shares can understate or overstate the competitive significance of participants gaining or losing market share. For example, Wells Fargo's Logan branches have been losing market share at a significant pace since Wells Fargo acquired the branches in its merger with First Interstate Bank of Utah, N.A. one year ago. Using an institution's market share at a fixed point in time as indicative of its competitive significance overstates that competitive significance when the institution has lost market share since that time.

Further, the change in the HHI in this market is 362, or 330 when thrifts are included at 100%. The change in HHI, since it is based on deposit market share, fails to account for the possible continued significance of Wells Fargo as a competitor in the market by virtue of its retaining loans and certain deposits from the Logan branches, and that Wells Fargo will provide services to Logan-area businesses and individuals from its other Utah branches, including the nearby Brigham City branch. The OCC, therefore, uses the HHI as a guideline.[6]

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[4] The Merger Screen directs applicants to include 50% of thrift deposits in the calculation of market concentration. Given the substantial commercial lending activities of thrifts in the Utah markets, using 100% of thrift deposits provides a more realistic indication of concentration in the Logan market. With thrifts weighted at 100%, the HHI is 1887.

[5] According to Zions, if credit unions' deposits were considered, the HHI would be below the threshold levels of 1800/200 in the Merger Screen. The argument for including credit unions in analyzing the Logan market has merit since there is evidence that the Logan-area credit unions are actively competing with commercial banks and thrifts for commercial as well as retail customers. The open membership rules of many Logan-area credit unions also adds to the argument.

[6] The commenter also claims that Preston, Idaho should not be included in the Logan market. The OCC includes Preston, however, because the Federal Reserve Bank of San Francisco's delineated market includes Preston, and Zions and Wells Fargo receive a significant portion of their deposits in the Logan area from Preston-area customers, which is indicative of Preston's relevance within the geographic market. Inclusion or exclusion of Preston, however, does not change the analysis of the market other than adding two small competitors and adding deposits to one of the already-existing competitors in the market. The net result of including Preston, Idaho is therefore fairly insignificant in the HHI analysis, and practically irrelevant when considering the mitigating factors on which the OCC relies

The OCC relies more fully on its close examination of the dynamic characteristics of the markets at issue. The factors discussed above tend to mitigate the impact on competition represented by the HHI analysis and are examples of the characteristics in the Utah markets the OCC considers to be at least as significant as the HHI. Therefore, the OCC concludes that the application presents no significant anti-competitive effects.[7]

2. Financial and Managerial Resources

The Bank Merger Act requires the OCC to consider "… the financial and managerial resources and future prospects of the existing and proposed institutions . . . ." We find that the financial and managerial resources of both banks do not raise significant concerns that would cause the application to be disapproved. The future prospects of the proponents, individually, are considered favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Purchase and Assumption Application.

3. Convenience and Needs

The resulting bank will help meet the convenience and needs of the communities to be served. Zions will continue to serve the same areas in Utah. Zions currently offers a full line of banking services, and there will be no reduction in products or services offered to the communities as a result of this purchase and assumption. In addition, Wells Fargo is retaining all loans, as well as deposit accounts that are related to business relationships. Accordingly, the acquisition by Zions will not result in any significant adverse impact on the convenience and needs for the residents and businesses of the communities where the branch offices are located. While no branches will be closed, branch consolidations are contemplated as a result of this purchase and assumption. The branches to be consolidated are within approximately one mile of branches that will remain open. Accordingly, we believe the impact of the purchase and assumption on the convenience and needs of the communities to be served is consistent with the approval of the Purchase and Assumption Application.

B. 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 their entire communities, including

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in its above analysis.

[7] The Federal Reserve Bank of San Francisco, 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 report by noting that it had not examined all of the economic factors that may be relevant to the competitive effects of the proposal. As noted above, the OCC has found significant factors that show the proposed merger will not have an substantially adverse effect on competition.

low-and moderate-income neighborhoods, when evaluating certain applications. *See* 12 U.S.C. § 2903. Both Zions and Wells Fargo have "outstanding" ratings with respect to CRA performance. No public comments addressing CRA performance were received by the OCC on this application, and the OCC has no other basis to question the bank's performance in complying with the CRA.

The purchase and assumption is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same communities. We find that approval of the proposed purchase and assumption is consistent with the CRA.

III. Conclusion

For the reasons set forth above, including the representations and commitments made by the applicant, we find the purchase and assumption is legally authorized pursuant to the Bank Merger Act. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

/s/ 09-03-97

Steven J. Weiss Date
Deputy Comptroller
Bank Organization and Structure

Application Control Number: 97-WE-02-0023