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**THE LEBANESE BANKING SYSTEM  
AND ANTI-TRUST LAWS**

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**A RESEARCH TOPIC  
PRESENTED TO BUSINESS SCHOOL  
BEIRUT UNIVERSITY COLLEGE**

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**IN PARTIAL FULFILLMENT  
OF THE REQUIREMENTS FOR THE DEGREE  
MASTER OF SCIENCE  
IN BUSINESS MANAGEMENT**

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**BY  
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FEBRUARY, 1994  
BEIRUT-LEBANON**

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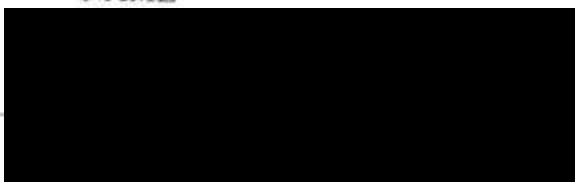
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To the memory of my father Halim...

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To Bank of Beirut & The Arab Countries' Management and Employees.

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I dedicate this research.

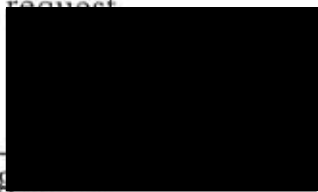
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## CHAPTER ONE

### **Introduction**

#### **A. An Overview**

The world is constantly changing. The last decade has seen businesses tending towards concentration, and particularly so in the banking sectors. Revising regulations and studying the economic and social effects of concentration on industry have accordingly become a necessity. Some problems have arisen because changes in regulations have not run parallel to changes in technology or to changes in the market. Banks have to focus on what their clients need. They are lenders of money, but if they provide it more efficiently through a more flexible avenue they could be more successful. Dennis Weatherstone, Chairman and, Chief Executive Officer of JP Morgan says that: "the client does not want our money, he wants money... We have been more successful because we have kept the focus on the fact that the client comes first... Others think that their client likes them because they produce transactions at Low price. That is a different strategy. It works for some; it does not work for others..." (Weatherstone, D. p25F).

In Lebanon, the banking sector is one of the most important sectors due mainly to the economic freedom and possibly to the Bank Secrecy Law; freedom that has encouraged many national and foreign banks to establish this business in Beirut.

However, the Lebanese banking system has been constrained by many factors that influence free entry and limit a broader participation in this sector. To start with banks in Lebanon are joint - stock companies whose shares are nominal, and are only transferrable through the Central Bank of Lebanon. Participation of foreigners is allowed up to a proportion of two - thirds of the shares. Participation in ownership is limited to

family or individual ownership. This rigid structure restrained free entry to the banking market, limited public proprietorship of bank shares and bounded banks by an undeclared informal oligopoly, and concentrated the sources of funds in the hands of few users (Andary, S. 1993, p27).

The civil war, that lasted 16 years, created many problems since 1989 which led to the failure of nine Lebanese banks in 1991.

At the end of 1990, the Lebanese authorities resorted to administrative and legal proceedings in order to solve some of these problems. Bank Reform Law no.110/91 was issued on November 7,1991, and was then followed by laws facilitating the merger of banks and their auto-liquidation. Bank merging laws were subject to extensive debate. The authorities considered bank mergers to be conducive to a stronger, leaner and more efficient banking sector that would drive weak banks out of the market and help remaining ones to expand until they achieve economies of scale. Merging is either voluntary for banks in trouble, or mandatory by monetary authorities if there is a necessity to preserve public interest and national economy.

Some economics and banking experts considered the family nature of the majority of Lebanese banks to constitute an impediment to merging operations difficult to be executed. (See Andary, S.1993, p27; Chamhour, T.1991, p27 and Abla, M.1992, p156). Moreover, the lack of legislation prohibiting monopolies and protecting competition in the Lebanese banking system, as in most European and American Laws is another reason not to consider the proposed merger as the ideal way that will surely protect the banking sector, and solve the problems that have caused failures.

In addition to the prevailing conditions that made the merger law a necessity, the need for other means to solve these problems started to surface. If Lebanon wants to recuperate its former status as a financial center, the barriers blocking the free entry to the market have to be eliminated by means of an appropriate legislation and reforms that could stimulate competition, prohibit monopoly and increase the banks' shareholders and credit beneficiaries.

The choice of the theme of this research is based on the above

considerations, in addition to the fact that it is one of the main topics currently discussed in the banking sector in Lebanon.

Before we proceed to discuss the issues relating to anti - trust in Lebanon, a short review of the various market structure modalities is presented.

In terms of market organization, industries fall along a spectrum ranging between perfect competition and pure monopoly. The market power, or the degree of monopoly signifies the degree of control that a single firm or a small number of firms have over the price and production decisions in an industry (Samuelson, P. and Nordhaus, W. p574). The behavior of business enterprises is governed by the rules of monopoly. The main purpose of these rules is to create and maintain market conditions that render the best market performance and secure freedom of trade and prevent unreasonable profits as a result of market power. According to J. Fejo, market conditions are determined by market structure, its performance, and the players' conduct. Market structure refers to the organizational main characteristics of a market, or the degree of concentration of enterprises measured by the seller's number and relative size of distribution on the market; the product differentiation in the market; and the entry barriers to the market. Market conduct is the patterns of behavior demonstrated by enterprises in a market. They include pricing and quantity decisions for their products, decisions on product policies, and sales - promoting activities. Market performance refers to the consequences of the behavior on a given market, and is thus the result of the interaction between prices, supply, demand, production and selling costs, product design, marketing efforts and the mutual adjustment of enterprises. (Fejo, J. p39-45).

Two extreme market structures exist in the market under perfect competition and absolute monopoly. These structures do not exist in practical life. E. Douglas defines perfect competition when many enterprises, standard products, free entry to and exit from the market, exist. (Douglas, E. p 340). Absolute monopoly, is when only one single enterprise supplies the market with the product in question. McGulgan and Moyer see that, since the firm is the industry, the demand curve of the

individual monopoly firm is identical with the industry demand curve. (McGulgan, J. and Moyer, C. p 162). A simple comparison between the two solutions conducted by E. Chamberlin let him consider that perfect competition will place products on the market under more advantageous conditions from the point of view of the consumer and society than will be the case under absolute monopoly. (Chamberlin, E.H. p 271).

Under imperfect competition the extent of product differentiation emerges, we speak of homogeneous and heterogeneous markets, where relations with competitors play an important role. The forms of competition can be grouped as shown in the figure below. This survey presupposes a large number of buyers.

**FIGURE 1**

Selling enterprises Degree of product differentiation	Many	Few	One big and many small	One
Standard products (homogeneous market)	Perfect competition	Pure oligopoly	Partial monopoly	Monopoly
Differentiated products (heterogeneous market)	Monopolistic competition	Differentiated oligopoly	Differentiated partial monopoly	

Source: Fejo, J. p 60

The market is homogeneous with a partial monopoly if there are one big and a number of small sellers. A homogeneous market with oligopoly means that total supply is shared among few big suppliers. An oligopoly in a homogeneous market is called a 'pure oligopoly'. Under partial monopoly the price will be lower than under absolute monopoly, but higher than under perfect competition. In heterogeneous market, the buyers prefer certain sellers' products because the products are either differentiated in quality or service. Monopolistic competition exists when many sellers are in the market. A partial monopoly exists if there are in a heterogeneous market, one big seller and a large number of small sellers. A market situation with oligopoly may also appear in the heterogeneous

market, it is called 'differentiated oligopoly'. If the differentiation is not very pronounced, the individual seller cannot effect downward price changes without the competitors reacting to such price reduction as well. (Fejo, J. p 60). In the real world the great majority of market situations are oligopolies. Oligopolists, therefore, should be expected to react to the action of their rivals, rather than ignore them as in the two extreme cases. (Douglas, E. p 350). Coordination of market conduct between oligopolistics could be either, a cooperation between these enterprises, or price leadership. In the absence of obstructive monopoly legislation, the natural conduct of the enterprises may be price agreement. With a joint price policy, they will be able to fix prices even if a monopolist is present in the market and thus, maximize the group's total profits and consequently, enterprises with lower costs can benefit from market demand and achieve increased sales and profits, and enterprises with high costs are only able to supply a relatively small share. As for price leadership it is established under oligopoly, when the market adjusts to the behavior of a single enterprise. The leader's price will be the one of the biggest enterprise, and forms the basis of the other prices in the market. (Fejo, J. p69-72).

Against the fact that perfect competition rarely or never appeared in actual life, the target of monopoly legislation is no longer the wish to aspire to perfect competition, but instead a 'workable competition', connected with the name of John Maurice Clark, in a famous article in 1940 was implemented. Clark did not reject the mere application of perfect competition as an ideal, but he maintained that sometimes the concept led to undesirable market performance because of the factors that might result in the greatest possible practical approach to this ideal under existing conditions. Instead he attempted to formulate models for the most desirable forms of competition which were possible in practice. In other words, if, for example, there is no free entry to a market, it might be advantageous that the market is not an atomistic industry with standard products, but the market is characterized by concentration of enterprises with a supply of differentiated products. On this basis Clark presented the thesis that imperfect competition could be both too strong and too weak, and that a situation of workable competition should be aimed at

avoiding both these extremes.

### **B. The Need for the Study**

This study considers that the regulations governing enterprises and established by the authorities within a society where a market economy prevails should seek to achieve favourable market conditions free of constraints, and impediments to entry. Efforts have to be made to lay down clear rules of antitrust laws to secure competition and ensure wider participation in the banking sector in Lebanon, similar to the American and European Antitrust Laws. In fact such a law is also necessary for all aspects of the economy; but this paper is concerned only with the application of Antitrust law to the banking sector.

### **C. General Statement of the Study**

The central issue of this paper is the presentation of rules governing restrictive business practices. Illustrations of the basic principal laws are based on the American Antitrust Law and the European Economic Community (EEC) directives. The failure of a number of banks in Lebanon between 1988 and 1991, which were followed by the enactment of a merger law, have exposed the monopolistic conditions existing in the banking sector. These consist of a few families which possess exclusive ownership of banks, the limits to share ownership, and the concentration of credit with a few beneficiaries.

Prior to proposing the Antitrust law in Lebanon, the background and particularities of the Lebanese banking system and the problems that face Lebanese banks are first discussed.

### **D. Purpose of the Study**

The purpose of this study is three fold. The first is to expose the need for implementing laws to eliminate barriers that limit the free entry to the banking market, and widen the banks' ownership base and credit beneficiaries. The second is to suggest a draft "Antitrust Law" that is relevant to commercial entities in general and to financial institutions specifically. Third is to indicate guidelines that should be followed by the authorities in implementing Antitrust policies.

## **E. Structure and Methodology of the Study**

The study is divided into chapters. Chapter one introduces the study and analyses the market conditions determined by market structure, performance and conduct. Chapter two describes the monopolistic tendencies caused by several factors that characterize the Lebanese banking system. The Bank Merger Law passed in 1991, its issues and limitation are also discussed in this chapter as it could have possibly led to the intensification of market concentration. A description of the market structure of the Lebanese banking system is made in order to point out the economic conditions under which the market forces act. Chapter three gives an outline of the main points of the American and European Antitrust legislations and their main aims. Chapter four seeks to establish the need for Antitrust law and its possible implementation in Lebanon to prohibit monopolies and protect competition.

The methodology by which information was gathered depends mainly on published studies, official publications in addition to Seminars held by the Union of Arab banks. Relevant literature pertaining to Lebanon and numerical data were gathered from Central Bank reports and contracts, financial publications i.e. Bilanbanques and Code of Money and Credit (CMC), and from the Lebanese legislation. Data were also available in studies published by experts and specialists in publications or in Economic and Business magazines. Information about American and European laws were used from articles and publications mainly concerned with the Banking Industry, the Capital and Securities Markets, and their legislations, as well as publications from the American Bankers Association (ABA) and Euromoney publications.

## **F. Research Questions**

This study attempts to answer the following research questions:

Do the particularities that characterize the Lebanese banking system (i.e. individualism and family nature) limit the free entry to the market? What would these limits be? Would they lead to monopolization in the banking sector.

Do mergers provide the necessary and sufficient solution to the problems facing banks in Lebanon? Would they strengthen the banking



system and ensure its future operations?

What are the legislations and the other ways to solve bank's problems, eliminate the barriers blocking the free entry to the market, prohibit monopoly, and encourage competition by increasing banks' shareholders and credit beneficiaries?

Will it be possible to draw an Antitrust Law in Lebanon? What are the needs that make such laws a necessity?

## CHAPTER TWO

### **Monopolistic Tendencies in the Lebanese Banking Market**

A brief review of the history of the Lebanese banking market shows that during the period 1943-1963 the banking sector flourished with the establishment of 27 banks. This was mainly due to the repeal of the Exchange Control in 1947, and the introduction of Bank Secrecy Law in 1956. During this period, the banking sector was subject to the Lebanese Commercial Laws and to a limited control by the Ministry of Finance and the "Centrale de Risques" created in 1953.

Al-Mashrek Bank for Commerce was the first banking institution in Lebanon to confront in 1958 a solvency problem. This crisis brought to light the need for government control.

The period between 1963 and the beginning of the civil war in 1975 witnessed the promulgation of laws that aimed to stabilize the banking sector by submitting it to a central authority. The Central Bank was created by a law entitled the "Code of Money and Credit" (decree No. 13513 dated August 1st, 1963) which defined its functions, organization and role as a monetary authority.

Despite the growing number of banks, the declaration of Bank Intra's bankruptcy caused a bank crisis in 1966. The government promulgated laws such as law No. 28/67 relating to the cessation of payment, and laws organizing the establishment of new banks or branches, and bank mergers and self-liquidation. An institution called the NDIC (National Deposit Insurance Company) responsible for bank deposit insurance was also created during this period.

Since 1975, the political circumstances have severely affected the economic sector. The banking system continued to operate well, served by the control of the Monetary Authorities until the first crisis in 1984,

that of the failure of The First Phoenician Bank. (Makdisi, S.p 40). The scale of the financial burden caused by this crisis, which extended over period 1984-1991, is summarized in a recent article (Andary S. 1992, P116-121).

The losses to the Lebanese economy of bank failures are estimated for a sample of only three failed banks of a total of nine and are distributed as follows:

Losses born by depositors in 1989	: US \$ 343 Million
Losses born by the Central Bank and the NDIC in 1989	: <u>US \$ 124.5 Million</u>
Total losses	: US \$ 467.5 Million

Over a long period of time, perhaps starting in the first years of this century, the Banking System in Lebanon has been characterized by important features, the most important of which are the "laissez-faire" economy dominated by free competition, the Bank Secrecy Law, and its openness to the outside world. (Khalaf, M. 1993). There are several factors that influence the free entry and limit a broader participation in the banking sector. Banks tend to be bound together by an undeclared, informal oligopoly. These factors are: firstly, the type of shares, transfer and foreign ownership; secondly, the limits to share ownership, the listing and filing requirements; thirdly the collusion in price-setting; fourthly the concentration of deposits; fifthly, the restriction of credit; sixthly the bank employees contracts; seventhly, the acquisition and bank mergers; and finally, the market structure of the Lebanese banking system.

## **A. Type of Shares, Transfer, and Foreign Ownership**

### **1. The bank as an Anonymous Company**

Article 126 of the code of Money and Credit (CMC, Article 126) stipulates that each bank in Lebanon has to be either an anonymous or a shareholding company.

Article 128 of the same law stipulates that to establish a Lebanese bank or to open a branch of a foreign bank one has to obtain a licence from the Central Bank's Central Council.

In Lebanon, Malek Abla notes that the invitation to subscribe is not sent out to the public but is limited to a small number of persons who distribute the shares among themselves so as to forbid entrance to outsiders to the company. This is why the banks in Lebanon are regarded as individual or family based institutions. In general, in many foreign countries members become shareholders in a stock-company regardless of their personal competence, but rather due to their willingness to take part in joint capital. (Abla, M. p 40).

To differentiate between the banks and the anonymous companies, because of the importance of the former's capital and their private funds, Article 134 of the Code of Money and Credit obliges the shareholders, to reconstitute capital, if lost, in a period not exceeding a year.

## **2. Circulation, transfer of nominal shares, and foreign ownership**

On September 16, 1983 decree law No. 87 was issued. This decree organized the method of share circulation in banks. Its most important stipulations were:

a. Article 1: The reciprocity principle with the foreign underwriters and shareholders.

b. Article 2: All the shares of the Lebanese banks are to be nominal, whether previously issued or resulting from capital increase.

c. Article 3: The prohibition of transfer of shares to non-Lebanese above 49%.

On February 11, 1991, law No. 32 was promulgated cancelling articles 1 and 3, and modifying the decree to organize the procedures of circulation of bank shares and to improve its capital in the following manner:

a. As in Article 2 of the former law, Article 1 stipulates that all the shares of the Lebanese banks are to be nominal.

b. As stipulated in Article 2, the participation of foreigners was increased to a proportion of two-thirds of the bank's share. The purpose of the new law is to encourage the return of foreign funds to Lebanon. At the same time, however, national sovereignty is preserved as the remain-

ing one-third of Lebanese held shares are only transferable to Lebanese. This means that the reciprocity principle with foreign investors has been dropped.

c. As in the former law, Article 3 stipulates that any transfer of shares in a Lebanese bank is subject to a prior authorization by the Central Council of the Central Bank of Lebanon.

d. Finally, Article 5 dictates that the moral and financial qualifications of founders and shareholders and their competence should be taken into consideration before accepting any demand of establishing a bank or transferring a share.

The right of ownership is a function of the degree of freedom of entry. Entry to the Lebanese banking sector is constrained by the regulation which requires shares to "nominal", and the transfer of these shares to be subject to prior authorization by the Central Bank. One reason for this restriction is given by T. Chambour that bank shares offer the holders the right of ownership and give them the authority to take part in the financial operations and activities accepted by law. (Chambour, T. 1991, p 26).

In the U.S.A., the major Federal statutes dealing with securities and securities markets are the Securities Act of 1933, and the Securities Exchange Act of 1934. They are concerned principally with the issuance of securities. They provide for full disclosure of all information about a proposed issue and provide registration statements and penalties for violations of the Act. The objective of the Securities Act of 1933 is to protect the investing public and honest business. The basic policy is to inform the investor of the facts concerning securities to be offered for sale in interstate and foreign commerce and to provide protection against fraud and misrepresentation. Securities Exchange Act of 1934 provide regulations affecting trading in securities after issuance. A public offering is defined as a distribution of securities to the general public. (Atkins, W. et al, p 57-66). These requirements do not exist in the Lebanese regulation of securities.

## B. Limits to Share Ownership, Listing and Filing Requirements

### 1. Individual and family powers

In view of the distribution of the shares among a small number of persons and the limited participation of the public in ownership, the national and joint-stock banks are characterized by the family or individual ownership. As shown in tables 1 and 2, covering 24 banks for which information regarding distribution of ownership is available. The statistical limitations impair the extension of this analysis to cover the whole sector, but it conveys a fair reflection of ownership structure of Lebanese banks in particular.

**Table 1: Degree of Concentration of Individual/ Family Ownership of Banks in Lebanon in 1991:**

Bank	% of Lebanese Shareholders	% of Foreign Shareholders	% of Single Family Ownership	Number of Shareholders of the Same Family
<b>Lebanese Banks:</b>				
Federal Bank of Lebanon	100%	—	100%	one family
Banque de l'Essor Economique	100%	—	98%	1
Al Mougtaieb Bank	98%	2%	92%	1
Unibank	100%	—	90%	1
Allied Business Bank	89.8%	10.2%	71.67%	2
Banque Saradar	100%	—	54.98%	1
Transorient Bank	100%	—	52%	1
Wedge Bank	51.76%	48.24%	51.60%	1
Bank Al Madina	51.28%	48.72%	51.28%	2
<b>Lebanese Banks With Foreign Arab Control:</b>				
Banque Misr-Liban	11%	89%	NA	NA
North Africa Commercial Bank	—	100%	NA	NA
Bank of Lebanon and Kuwait	—	100%	NA	NA
<b>Lebanese Banks With Foreign Non Arab Control:</b>				
Societe Generale Libano-Europeene de Banque	50%	50%	50%	one family
Banque Libano-Francaise	49%	51%	NA	NA

source: Bilanbanques 1992.

**Table 2:** Majority of Family Shareholders in Banks in Lebanon in 1991.

Bank	Total Number of Shareholders	Number of Shareholders of the Same Family
<b>Lebanese Banks:</b>		
Banque de la Bakaa	6	5
Banque de l'Industrie et du Travail	5	3
Lebanese Canadian Bank	5	3
Société Nouvelle de la Banque de Syrie et du Liban	5	3
Credit Bancaire	4	2
Saudi Lebanese Bank	4	3
Fransabank	3	2
Banque du Credit Populaire	2	1
Banque Libanaise pour le Commerce	one family	one family
<b>Lebanese Banks with Foreign non Arab Control:</b>		
Litex Bank	5	3

**Source:** Bilanbanques 1992.

In table 1, the degree of concentration of individual or family ownership in 14 Lebanese banks is expressed in percentage of single family ownership and by the number of shareholders of the same family. Since no information covering the distribution of ownership was available for ten other banks, table 2 presents the number of shareholders of the same family and compares it with the total number of shareholders for these ten banks.

The results may be summarized as follows:

a. In table 1, nine of the 14 banks are Lebanese controlled banks. Of these, four are owned by a majority of 90% to 100% of the same family, two banks are owned by a majority of 70-89%, and three are owned by a majority of 50-69%. In table 2, nine of the 10 banks are Lebanese controlled banks. They are owned by a majority of persons of the same family.

b. Lebanese banks with foreign Arab control have many shareholders as shown in table 1. All three banks in this category are 89-100% owned by foreign shareholders.

c. Of the Lebanese banks with foreign non-Arab control, one bank has a 50% share of one family ownership; the second bank is 51% foreign

owned; the third is owned by five shareholders, three of which are Lebanese of the same family. In all three banks the number of foreign shareholders cannot possibly be determined especially when owners are institutional with their number of shareholders possibly running into thousands.

These results concur with M. Abla's observation that the banks in Lebanon, and especially the national ones became property of individuals or families. Their aim is to "safeguard the name". This goal has a personal importance to owners. In spite of the difficulties some banks encountered and the closing of some others, the owners refused to sell to new shareholders ready to buy the bank with its liabilities, assets and debts. (Abla, M. p 156).

## **2. Listing and filing requirements**

To establish a Lebanese bank or to open a branch of a foreign bank, a licence should be secured from the Central Bank's Central Council. (CMC, Article 126). Transfer of shares in a Lebanese bank are also subject to prior authorization by the same Council. A new bank is listed in the "List of banks" in the Central Bank, by the time the licence is obtained.

Companies in the USA are subject to the section entitled "The Filing Requirements" for acquisitions in excess of five percent of equity securities of an "Exchange Act Reporting Company". In comparison, therefore, filing requirements in Lebanon are universal and are used to screen individual potential shareholders, with the obvious possibility of abuse of the system.

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The Filing Requirements in the United States are Summarized as follows:

"Any person, other than the issuer, who acquires directly or indirectly beneficial ownership of more than five percent of a class of equity security registered pursuant to section 12 must file appropriate disclosures with the SEC (Security Exchange Commission) pursuant to section 13(d). An issuer's purchases of its own shares, directly or through an affiliate, are subject to similar disclosure requirements by virtue of section 13(e).



Any person acquiring five percent of a class of equity securities must, within ten days after reaching the five percent threshold, file with the Commission six copies of a statement reflecting the information required by section 13(d) (1).

There is no limitation on the amount of securities that may be purchased prior to filing schedule 13D.

Any material changes or development requires the filing of a long-form schedule 13D". (Hazen, T.p 693 F).

### **C. Collusion in Price-Setting**

Andary states that the structure of the banking sector is controlled by a linked-oligopoly power which is often followed by a collusion among a group of its members leading to the use of deposits to be concentrated in the hands of few loans beneficiaries (Andary, S. 1993, p 27).

This statement finds support in the pricing of the debit interest of foreign currency loans far in excess of world rates at time exceeding twice the international rates, and in a manner incompatible with the real cost. Such pricing aborts free competition in the uses of bank funds.

### **D. Concentration of Deposits**

A large portion of bank deposits in Lebanon is concentrated in a small number of banks, which reveals their power. Table 3 presents the concentration of deposits in the first ten banks, on December 31, 1991, and table 4 shows the market share of the first five, ten and fifteen banks (measured to total assets) on December 31, 1991. The first 15 banks hold 72% of total deposits, with the remaining 56 banks holding the remaining 28%. These figures remain approximately the same in the year 1992 according to statistics available in Bilanbanques 1993.

**Table 3:** Deposits in Lebanese Pounds and USD Equivalent in the First Ten Banks in Lebanon, on December 31, 1991.

Banks	LL Million	Counter Value in USD Million	Market Share %	Rank
1 - Banque du Liban et D'outre-Mer	443,088.319	504.082	8.1	1
2 - Arab Bank Ltd	419,873.138	477.671	7.6	2
3 - Banque Libano-Francaise	396,466.388	451.043	7.2	3
4 - Banque Nationale de Paris "Intc'l"	363,046.654	413.022	6.6	4
5 - Banque Audi	293,060.354	333.402	5.3	5
6 - Société Generale Libano- Europeenne de Banque	257,942.810	293.450	4.7	6
7 - Banque de la Mediterranée	254,014.439	288.981	4.6	7
8 - Fransabank	253,912.765	288.865	4.6	8
9 - Bank of Beirut and the Arab Coun- tries	232,105.520	264.056	4.2	9
10 - Byblos Bank	227,137.244	258.404	4.1	10
Total	3140,645.9	3572.976	57	

Source: Bilanbanques 1992, p 627.

**Table 4:** Market Share of the First Fifteen Banks Measured by Total Assets, on December 31, 1991.

Categories	Market Share
1 <sup>st</sup> 5 Banks	34.8%
1 <sup>st</sup> 10 Banks	57%
1 <sup>st</sup> 15 Banks	72%

Source: Bilanbanques 1992, p 627.

Furthermore a portion of the Lebanese savings were deposited in foreign banks and thus were employed out of Lebanon; as a result, the specialized banks, established in 1967, could not maintain their original economic role. Hence, the authorities suspended the opening of foreign branches in Lebanon for ten years (Law no.28/67 dated May 9, 1967). With the return of peace and stability, attention must be paid to the economic needs to attract national savings and domesticate them.

### **E. Restriction of Credit**

A very small number of clients benefit from bank loans, compared to the large number of depositors. Of the 22521, total number of benefi-

ciaries of bank credit of the end of 1992, 1022 beneficiaries received 70.4% of total credit amounting to U.S 3083 million. To further demonstrate the high degree of concentration, it is worth noting that only 65 beneficiaries received about 25 percent of total credit. (BDL Quarterly Bulletin p.56). In addition, no provision in the Lebanese law aimed to protect borrowers and their right to borrow.

Table 5 shows the first fifteen banks ranked by loans and discounts and their market share. Table 6 presents the market share of the first five, ten, fifteen Lebanese banks of the total loans and discounts on December 31, 1991.

**Table 5: Market Share in Total Loans and Discounts of the First Fifteen Banks in Lebanon, on December 31, 1991.**

Banks	LL Million	Countervalue in USD Million	Market Share %	Rank
Banque Libano-Francaise	129,794.262	147.661	8.2	1
Banque de la Mediterranée	104,439.157	118.816	6.6	2
Byblos Bank	101,802.771	115.817	6.4	3
Société Generale Libano-Européenne de Banque	89,220.173	101.502	5.6	4
Banque Nationale de Paris "Intc'l"	85,607.915	97.392	5.4	5
Banque Audi	74,649.756	84.926	4.7	6
Fransabank	66,615.933	75.786	4.2	7
Beirut Riyad Bank	66,556.525	75.718	4.2	8
Banque Libanaise pour le Commerce	59,166.276	67.311	3.7	9
Saudi Lebanese Bank	53,766.644	61.168	3.4	10
Bank of Beirut and the Arab countries,	53,730.977	61.127	3.4	11
Banque du Liban et D'Outre-Mer	52,626.329	59.871	3.3	12
Credit Libanais	44,322.481	50.424	2.8	13
Universal Bank	38,145.257	43.396	2.4	14
Lebanon and Gulf Bank	34,341.221	39.069	2.2	15
TOTAL	1054.785.677	119.984	66.50	15

Source: Bilanbanques 1992, p 616.

**Table 6:** Market Share of the First Five, Ten and Fifteen Banks in Total Loans and Discounts.

Categories	Market Share %
1 <sup>st</sup> 5 Banks	32.2%
1 <sup>st</sup> 10 Banks	52.4%
1 <sup>st</sup> 15 Banks	66.5%

**Source:** Bilanbanques 1992, p 616.

In the U.S. some federal statutes dealt with consumer lending, starting with loan applications, disclosure of loan terms, and finally ending with retention of records. These statutes as summarized by Conboy are:

The “Truth in Lending Act” of 1968 was the first significant piece of federal legislation to address consumer credit protection. Interest rate ceilings were the original credit protection statutes. In 1974, the “Fair Credit Billing Act”, which amended the Truth in Lending Act, covered billing errors resulting from consumer open-end credit transactions. (Conboy, J. p. 305).

The “Equal Credit Opportunity Act” (ECOA) is essentially a civil rights act passed to provide access to credit without discrimination based on sex, marital status, race, color, religion, national origin, receipt of income from public assistance, and post exercise of a right under the Federal Consumer Protection Act. The ECOA applies to all types of credit, including consumer and business credit. (Conboy, J. p 305-329).

All these acts testify to the seriousness with which the American legislature views equal opportunities of fairness of access of citizens of all walks of life without prejudice or discrimination. Such laws are not available in Lebanon and the result is the tremendous level of credit concentration in few hands which provides sufficient evidence of discriminatory behavior on the part of commercial banks and supports the argument for need for Anti-trust laws.

## **F. The Bank Employees Contracts**

Under this contract, known as “La Convention Collective”, labour

prices (wages and salaries) are set by owners after agreement is reached with the Union of Bank Employees. This contract represents a conflict of interest between both side, and leads to the elimination of free negotiation of wages and salaries in this sector. This may represent another instance of discriminatory behaviour in the banking system.

## **G. Acquisition and Bank Mergers**

The bank merger act was passed in Lebanon in 1991 as one solution to the problems facing many banks, and to the failure of some others. Mergers, together with the factors that limit the participation in the banking industry, which are indicative of monopolistic tendencies, may further intensify the market concentration and power.

In addition, the Law decree No. 73/83 relating to combating monopoly, joined monopolies, and the dominance of the market, "can not be trusted to offer a legal and efficient field to face any arising monopoly, since it applies to articles, commodities and services and not to banks. Moreover, the banks chosen to merge are owned by close friends and not by a large portion of shareholders". (Chambour T. 1993, p17).

Merger laws and their possible consequences are discussed in the following part.

### **1. Merger Law in Lebanon**

Several banks in Lebanon encountered financial problems despite the Central Bank's attempts to circumvent them. In 1966, the Intra Bank crisis took place, followed in 1988 by Al Mashreq Bank, Mebco Bank, Lebanese Prosperity Bank, Euromed, Lebanese Arab Bank, United Bank of Lebanon and Pakistan, Bank of Credit and Commerce International; and finally in 1991 Foreign Trade Bank. Mebco, Lebanese Prosperity Bank and the Lebanese Arab Bank were considered as having "ceased to pay" according to the configuration of law no 2/67 of January 16,1967. Furthermore, Al - Mashreq Bank was struck - off the list of banks on September 7,1982.

Bank failures in Lebanon were exclusively due to mismanagement

and embezzlements. These practices may be summarized as follows:

a. The disposal of important real estate without referring to the general assembly.

b. The violation by the bank's administration of some articles and laws issued by the monetary authorities, i.e. giving guarantees without being registered in the bank's books, or providing credits in foreign currencies to organizations owned by the directors of these banks, without any guarantee or assurance. This led to a lack of liquidity in the bank.

c. The sources of liquidity were used in foreign exchange operations for speculation purposes, instead of investing them in boosting the productive sectors.

d. The absence of an effective internal control in the banks, as well as in the Bank's Control Commission (BCC).

Afterwards, liquidity and solvency problems started to surface as a consequence of the inadequacy of guarantees and because of misappropriation of funds and irregularities. A study conducted by H. Bsar showed that the solvency ratio has decreased to below the assumed minimum in the major fifteen banks in Lebanon. It dropped from 3.3% in 1982 to 0.8% in 1988. (Bsar, H. p273F). Moreover, the solvency ratio of commercial banks dropped from 4.59% in 1982 to 0.55% in June 1988, which proved the incompatibility between the Lebanese banks and the international agreements. However, in 1990 solvency ratio was 9.84% and the liquidity ratio 9.84% (Al Massaref Al Arabiya, November 1991, p15).

In order to treat these crises, the Central Bank of Lebanon has applied the policies according to the authority it holds in the Code of Money and Credit. Law no. 2/67 was issued on January 16, 1967 to regulate the banks that ceased payment, and the law decree no. 10/77 approved the measures to safeguard the banking sector. Although these laws offered the depositors some important guarantees, yet they could not prevent the recent failure of nine Lebanese banks. The authorities set forth other projects and laws such as:

a. The development and activation of the NDIC (National Deposit

Insurance Company) that guarantees all the deposits in the Lebanese pound, on July 13, 1990.

b. Decree No. 624 dated October 9, 1990 designed to reform the banking sector.

c. The new Bank Reform Act No. 110/91 dated November 7, 1991, designed to strengthen the banking sector. The law speeds the process of liquidation for banks that are not able to continue operations due to their weakened financial position. It established two special courts: the first for banks in crisis, the second, for the banks that cease payment.

d. Laws facilitating the merger of banks and their liquidation. Due to the repercussions of Intra Bank, law no. 28/67 was passed allowing the Government to provide facilities and tax exemptions to encourage bank mergers and self - liquidation. On September 28, 1967 decree no. 8284 was passed and amended in 1968. It established the rules and guidelines of bank mergers and self - liquidation and aimed at reducing the number of banks.

On December 22, 1992, the Parliament passed decree no. 2444 designed to facilitate bank mergers. The new law facilitates the merging of a bank that is not able to continue operation, with another bank such that assets and liabilities of both banks are combined. This law and the decree no. 8284/67 aimed at reducing the number of banks remain subject of discussion and have posed many questions whether merger is the adequate solution to problems facing the banks in Lebanon. Or, it might intensify the market concentration and power on the basis of the current market conditions. The issues and the limits of this law are discussed in the following section.

## **2. Criticism of the New Merger Law**

On the positive side the law was essentially needed to rectify a specific condition the banking sector was going through in the late 1980s. Merging of banks was seen as a solution necessary for activating the banking sector and purifying it from the irregular practices of some bankers. The negative criticism centers around the fear that mergers might

intensify the market concentration and power. The limitations of the law are the following:

**a. Conflict between the content of the law and its real aim:**

If the aim was to decrease the number of banks, what then would the limits be? Would it lead to an oligopolistic banking market by establishing large banks particularly in the absence of any law that forbids monopoly? If the aim was to reduce the number of banks by driving weak banks out of the market, what law guarantees the right for a new bank to enter the market and safeguards competition? A look at free economic systems confirms that numbers have never been a cause for chaos: on the contrary, some laws were created to prevent monopoly power and to guarantee free competition. In the U.S. more than 1810 banks had to leave the market, 1100 went bankrupt, 710 merged with others, but 2700 new banks entered the market, thus the number of banks in the USA increased by a net of 890 banks during the last decade (Andary, S. 1993, p26).

This argument also applies to Lebanon; it is wrong to consider the concept of large number as a legal cause for chaos. The chaos that spread all over the banking sector in Lebanon was not due to the large number but rather to violations and misappropriations committed by some newcomers in the sector since 1977, and because the application of the immunity concept of the banking sector between 1977 and 1988. Violation of some procedures by the monetary authorities and the inefficient control following the vacancy of the President of the Bank's Control Committee between 1987 and 1989, are other causes. (Andary, S.1993, p26).

Another view is that the market size might be the appropriate determinant of the bank concentration degree, and the maximum number of banks which is measured in proportion with the deposits. (Chambour, T. 1993, p15).

**b. Possible intensification of market concentration:**

Recent studies on bank merger laws in Lebanon seemed to recognize that decreasing the number of banks could 'paralyse' the existing free competition. (Le Commerce, p26), and that mergers lead to an oli-



gopoly which is probable if the merger processes increase in such a limited market. (Naboulsi, M. p28).

Salah Dabbagh (1990) elaborates these fears in a recent article that the mandatory type of merger would allow a number of banks to take hold of wider scopes and fields, thus intensifying the danger instead of decreasing it. Moreover, the criterion of the capital adequacy is a better standard for deciding on merger because banking authorities give banks an opportunity to increase their capital and to maintain the required percentage of solvency during several phases of time. Whenever this is not possible, then mergers or dissolution are put into practice. (Dabbagh, S. 1990, p17).

Although Toufic Chambour (1991) sees that the legal protection afforded anonymous companies have facilitated illegal operations, yet he concurs with the above views and concludes that the bank merger is not able to purify the banking sector alone and that the establishment of huge bank units could hardly crumble. The crumbling of the Intra Bank and the loss the Lebanese society has encountered despite its enormous size is an example. (Chambour, T. 1993, p18).

**c. Disregard of the role of the NDIC in merging decisions:**

Articles 3 and 5 of the law gave the Central Council of the Central Bank full authority in accepting or refusing mergers. In the American law, merger decisions are the responsibility of the Federal Deposits Insurance Corporation (FDIC). The role of the National Deposits Insurance Company (NDIC) in Lebanon should be activated since it guarantees all the deposits in the Lebanese currency, and must be given full authority in supervision and in merger decisions.

**d. Impossibility of revoking the Merger Law:**

Unlike international legislations, article 2b of the law does not accept any revision of its decisions from a judicial or official authority concerning the merger.

Article 2 of the American Antitrust law "The Sherman Act" allows judicial authorities to cancel the merger operation if it proved it were leading to monopoly, and article 7 of the American "Clayton Act" per-

mits any customer of the merged banks to nullify the merger if he proves that it led to a decrease in competition or to monopoly.

Accordingly, it can be concluded that the competent authorities must define the real goals of this law, clarify the contradictions existing between the content and the aim of the law, activate the banking operations, allow the competent banks to continue, increase competition in this sector by accepting new shareholders and establishing new banks, pass bills and legislations to prevent unfavourable conditions. Hence, a number of scales including the bank's attitude in the professional field, its type of management, its future forecasting, the managerial systems and the professional skills are to be adopted.

By comparing with mergers in the U.S. Banking industry, it can be noticed that mergers have other purposes than mergers in Lebanon. The economic aim of merging is to expand and increase the size of the bank, in order to reach the optimum size. With this optimum, average costs of wages decrease, and profits increase. This concurs with T. Chambour's view that the world is actually tending towards unification and merging in order to save the expenses and to make profits. One of the causes leading to this is competition that is not limited only to banks and financial institutions, but spreads to all institutions practicing some banking operations and to governments offering their shares to public... In Lebanon bank mergers were proposed to achieve a different and special aim which is the purification of the banking sector following the negative effects of the recession on a number of Lebanese banks. (Chambour, T. 1993, p15).

In spite of these purposes, there is some concern in the U.S. that interstate mergers and acquisitions may lessen competition and lead to an increase in concentration of banking resources, since mergers reduce the number of banks and give rise to large banking organizations.(Hawawini, G. and Swary, I. p1 - 12). The two major federal regulations that prohibit mergers and acquisitions are the Bank Merger Act of 1960 (BM) and the Bank Holding Company Act of 1956 (BHC). Antitrust laws, on the other hand are primarily concerned with horizontal mergers which reduce competition in local banking markets. The 1966 amendments of the Bank Merger Act and the Bank Holding Act specified provisions for

bank mergers in relation to Antitrust Laws.

The discussion of the Antitrust Laws dealing with the banking industry in the American legislations as well as the European legislations is left to Chapter three.

## **H. The Market Structure of the Lebanese Banking System**

This section describes the market structure of the Lebanese banking system in order to point out the economic conditions under which the market forces act, and which should constitute a basis for any legislation.

There are three basic types of banks in Lebanon. The Central Bank stands at the top of the banking system's pyramid. The base consists of commercial banks in addition to a very small number of specialized banks which are concerned with housing, and industrial development, and are mainly owned by the public sector. These specialized banks are currently dormant or inoperative. The remaining banks in Lebanon are privately owned commercial banks. Their profits are mainly generated by the margin between the debit and credit interest rates.

There are 48 Lebanese banks, and 24 foreign and joint - stock banks operating in Lebanon; the number of branches is 586 in 1992, spread across the country (Bilanbanques 1993, p51). According to A. AL Hindi, Lebanon ranks first in the number of banks in the Arab world. This number represents 22% of the global number of banks in the Arab world (Al Hindi, A. p34). Table 7 shows the major groups of banks in Lebanon as they appear in 1991 and 1992.

**Table 7:** Major Groups of Banks in Lebanon in 1991 and 1992

Groups of Banks	Banks		Branches	
	1991	1992	1991	1992
Lebanese Banks (SAL).	44	44	445	456
Lebanese Banks (SAL) With Foreign Arab Control.	8	8	45	46
Lebanese Banks (SAL) With Foreign Non Arab Control.	4	4	37	37
Foreign Arab Banks	5	5	18	18
Foreign Non Arab Banks.	7	7	20	21
Medium and Long Terms Credit Banks (SAL)	3	4	8	8
Total Sector	71	72	573	586

**Source:** Bilanbanques 1993, p51 - 87.

It can be concluded that the structure of the Lebanese banking market which is influenced by the special features mentioned in the preceding sections may be described as a heterogeneous market with a differentiated oligopoly.

In general, cooperation between several enterprises is considered to improve their total market performance. In the absence of Antitrust legislation, the natural conduct of enterprises may be horizontal price agreements, or market sharing agreements. The difficulty is that enterprises with high costs are able to supply a relatively small share, hence, enterprises with lower costs can achieve increased sales and profits.

The antitrust authorities in the U.S. have reacted severely to agreements between competitors about prices and market - sharing. The American Supreme Court considers both to be illegal per se, without need to present evidence that these activities unreasonably restrain trade. (Hoerber, R. et al, p1042). The European Economic Community (EEC) views competition rules as important means of establishing and maintaining a large Common Market. This is further discussed in Chapter three.

A compromise of the two views, namely free competition, and absolute monopoly, is advanced by Clark in his concept of "workable competition", as mentioned in chapter one, section A. This model of workable competition would later influence the thought of monopoly law as

well. Both in the U.S.A. and in the European Common Market it is often maintained that when monopoly legislation and case law reflect the desirable objective of free enterprise, it should be interpreted as 'workable competition' or - the synonym - 'effective competition'. (Fejo, J. p75 F).

## CHAPTER THREE

### **The Main Features of Antitrust Laws**

Since the world is tending towards concentration, the economic trusts which dominate the market are becoming a burden to free enterprise. Some countries have passed Antitrust Laws to safeguard competition and prevent monopoly. When the banks started to merge, and fearing that the large banks might reach an agreement among themselves in order to control the financial sector in a country, it created a disagreement between bankers and legal experts. This disagreement mainly revolved around the Antitrust Law.

Some Countries resorted to passing legislation to control bank merging operations so as to forbid banks to unite and create a sector governed by a minority. In the USA, after the Bank Merger Act was passed in 1960 and modified in 1966, the court prohibited the merging of two banks, Philadelphia National Bank and Gerard Bank as it considered such a merger to impede competition, and is thus against the law. (Abla, M. p118).

The last three decades of enforcement of U.S. antimerger laws are based on the market concentration doctrine, which holds that the level of industry concentration is an index of the industry's market power. Eckbo sees that the empirical implication is that a relatively high level of industry concentration, which in the presence of entry barriers is believed to facilitate intraindustry collusion or dominant - firm pricing, should be associated with relatively large industry wide monopoly rents. The market concentration doctrine predicts that a horizontal merger is more likely to have collusive, anticompetitive effects the greater the merger - induced change in industry concentration. (Eckbo, E. p325).

Collusion of firms can take many forms, of which the most comprehensive is outright merger. Mergers are often inappropriate, however,

because of diseconomies of scale, and at certain times and places it may be forbidden by law. (Stigler, J. p44).

### **A. Development of Antitrust Laws**

The term "Antitrust Law" in the US. refers to a system of federal and state laws that seeks to promote business competition and to prohibit monopoly. Monopoly defines a market structure in which the output of an industry is controlled by a single seller or a group of sellers making joint decisions. Monopoly power can then be defined as the power of a "single large seller" or group of sellers making joint decisions possessing means to exclude competitors from a market or to fix prices at arbitrary high levels. Underlying the antitrust law is a fundamental conduct of capitalism: scarce resources can be allocated efficiently to satisfy consumer wants at the lowest price through a competitive free enterprise system. Such a system is incompatible with monopoly power and the high prices that result from the abuse of such power. Eventually, every nation - wide industry has been involved with antitrust suits. (Hoerber, R. et al. p1031).

The antimonopoly sentiment first appeared in the English Common Law, and was later developed in the United States. The rise of monopolistic trusts after the civil war led to enactment of the Sherman Act in 1890, and later the Clayton Act, Robinson - Patman Act, and Federal Trade Commission Act. These four statutes have their impact on business today. In 1415, an English Court refused to enforce agreements between sellers and buyers that created restriction of trade and competition. In 1623, Parliament enacted the Statute of Monopolies which declared that all "monopolies are against the law, and shall be void. Injured parties could under this statute recover treble damages. (ibid, p1032).

In the 18th century, the U.S. Supreme Court applied what was called the Rule of Reason, as the standard for determining whether a particular restraint on competition is lawful or unlawful under the Antitrust Law. The court held that if a partial restraint is reasonable it is lawful: "reasonable" in terms of its purpose and probable effect on competition. In contrast, a general restraint primarily for the purpose of restricting

competition is invalid. With the per se rule, if the conduct of enterprises is illegal per se, no further evaluation will be made. (ibid, p.1041 F).

The rapid industrial expansion and growth of national markets after the Civil War in the U.S. encouraged large corporations to form industrial combines or trusts to fix prices, control production, divide markets, and freeze out competitors. The anticompetitive policies and practices of the trust could then be uniformly imposed upon all of the member corporations in the combine. During the last quarter of the 19<sup>th</sup> century, Antitrust Laws were enacted to restrict the monopolies. The Sherman Antitrust Act in 1890 was passed to promote competition, and retard concentration in industry. Later, Congress enacted the Clayton Act in 1914, and at the same time the Federal Trade Commission Act was passed, then the Robinson - Patman Act was enacted to amend the Clayton Act. The approach recognizes the monopoly as socially undesirable. (ibid, p1033 F).

In 1973, the Fair Trading Act in the U.K. gave the Secretary of State for Trade and Industry the power to control certain mergers on grounds of public interest by referring them to the Monopolies and Mergers Commission (MMC) for investigation. (Bird, A. et al p366).

## **B. The Goals of Antitrust Rules**

The major goals of the Antitrust rule as defined by Fejo are “to create free economic conditions and well - operating markets through reaction to the restrictive practices of undertakings. A competition policy operating with this goal will aim at the maximization of the consumers’ welfare through efficient utilization and allocation of scarce resources. It will aim at progress through the development of new technology and new products which will ensure a higher degree of utilization of existing resources. The goals comprise the spreading of wealth and the limiting of the size of undertakings. Another goal may be to make it possible for people to act on their own initiative, or it may be to replace the economic powers of private persons or groups with impersonal market forces”. (Fejo, J. p28 - 33).

It is worth noting that although competition operates well, it is not able to solve all economic and social problems. Basically, competition



seeks to produce the best possible results by being a constant threat of uncertainty and financial ruin.

### **C. The Rule of Reason and The “Per Se” Rule in American Antitrust Law**

The American economy is mainly based on private ownership, the freedom of contract, and economic freedom.

The Federal Antitrust Laws as they are applied to mergers and acquisitions are an important consideration in banking in the U.S. The three principal Federal Laws affecting mergers and acquisitions are: Sections 1, 2 and 3 of the Sherman Act, Section 7 of the Clayton Act, and Section 5 (a) of the Federal Trade Commission Act (FTC). The most important of these is Section 7 of the Clayton Act. (Marren, J. p513).

This part provides an overview of these Federal Antitrust Laws and their application to mergers and acquisitions in the banking industry.

#### **1. Judicial practice before 1890 (the Sherman Act)**

The U.S Supreme Court stated the significance of the Sherman Act as follows: “Antitrust laws in general, and the Sherman Act in particular, are as important to the preservation of economic freedom and our free - enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete - to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster”. (Hoerber, R. et al, p1034).

##### **a. Purpose and scope of the Act:**

Since the Sherman Act was passed as an exercise of congressional power to regulate interstate commerce, the broad congressional purpose was to promote competition by slowing down the trend toward concentration in industry. The three basic provisions of the Sherman Act are:

“Section 1: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal...

Section 2: Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to

monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony...”.

Section 3: basically the same as Section 1, except that it applies to territories and the District of Columbia. (Hoerber, R. et al, p1034).

**b. Enforcement of the Act:**

The provisions of the Sherman Act are enforced by private or governmental civil suits. Special statutes authorize private enforcement by empowering any person “injured in his business or property by reason of anything forbidden in the Antitrust laws” to bring a private action to recover treble damages plus reasonable attorney’s fees. The Sherman Act makes available to the federal government a wide variety of powerful enforcement tools. The most important is that: “Violators of the Act are punishable by a fine of up to \$ 1 million against a corporation, or \$ 100,000 against an individual or 3 years imprisonment, or both”. The Justice Department’s current policy is to proceed criminally if a company engages in “hard core” violations such as price fixing, bid rigging, market and territorial allocation schemes, and various predatory practices. Another enforcement is that: “Courts have used their power to restrain violations in a variety of ways, including divestiture, dissolution of a corporation or cessation by a company from conducting operations that would restrain trade”. (ibid, p1035 F).

**c. The Rule of Reason and the per se violations:**

The court intent was to prohibit only the contracts that unreasonably restrained trade. Certain agreements or practices which create a potential power may be considered in themselves per se unreasonable or unlawful restraints. If an activity is illegal per se, proof of that activity is sufficient to establish its anticompetitive nature, and it is not necessary to present evidence that the activity unreasonably restrained trade. Such agreements include horizontal and vertical price fixing, restricting production, horizontal division of customers or geographical markets, concerted refusals to deal (group boycotts), promoting reciprocal dealing arrangements, tying contracts. Generally, all kinds of anticompetitive restraints that are not per se violations are judged under the “Rule of

Reason” to determine if the particular restraint is unreasonable and therefore unlawful. (ibid, p1041 - 1043).

**d. Proving monopolization under Section 2:**

A violation of Section 2 can result from a single firm’s outright acquisition of a monopoly position, that is, the power to control prices or exclude competitors in a relevant market, or from a general intent to monopolize.

Monopoly power in a relevant market: Courts consider many factors in determining whether a firm has the monopoly power to control prices or exclude competitors in a relevant market; accordingly, for each product or service of each firm, a market must be defined. These factors are:

i - the size of the market share. Eighty percent or more of the market is generally considered to constitute market power;

ii - whether the size of the firms was achieved through natural growth or by acquiring competitors;

iii - the number of competitors and their financial strength;

and, iv - whether the defendant engaged in unlawful practices to prevent entry into the market by potential competitors.

General intent to monopolize: Intent to monopolize is proved if it can be shown that the single firm engaged in predatory activities such as “injuring actual competitors, excluding potential competitors, erecting barriers to enter into the market (limit pricing), and refraining from maximizing profits until competitors are driven out of the market (predatory pricing)”. Setting prices below marginal cost may well form the basis for an Antitrust violation. Proof of an attempt to monopolize is sufficient when it is shown that the defendant employed methods, means and practices which would, if successful, accomplish monopolization. (ibid, p1055 F).

**e. Conduct that is not considered monopolization:**

Monopoly power may be lawfully obtained if its dominance did not come about as the result of any wrongful conduct under Section 2. “Concentration in American industry often arose because of historic acci-

dent, ownership of a valuable patent, or natural growth up to the point where a few firms found themselves participating in what is sometimes called a 'shared monopoly'. The mere size of a firm that grew in this manner is not, of itself, a violation of Section 2. However, if one or more firms in an oligopoly jointly participate in predatory activity that presents a probability of creating monopoly power, Section 2 is considered violated". (Hoerber, R. et al, p1056 F).

## **2. The Clayton Act:**

### **a. Purpose of the Act:**

The Clayton Act was enacted in 1914 to prohibit four types of anti-competitive business practices involving interstate commerce: price discrimination (Section 2), exclusive dealing and tying contracts (Section 3), anticompetitive corporate mergers (Section 7). The Clayton Act dealt with probabilities, not certainties. Thus, the conduct is declared unlawful if it tended to substantially lessen competition". (ibid, p1067).

### **b. Basic provisions of the Act:**

Section 2 prohibits "discrimination in prices charged different purchasers of commodities - if such discrimination tends to substantially lessen competition or to create monopoly - unless the price differential is justified by a difference in grade, quality, or quantity of the commodity sold". Section 2 was meant to put a stop to the practice of using territorial or local price discrimination as a means of eliminating competitors.

Section 3 of The Clayton Act which dealt with the exclusive dealing and tying contracts, compared to Sherman's Section 1, in that it applies to an agreement between a seller and a buyer that "forecloses competitors from a substantial share of the market", with the only difference being that the Sherman Act deals with a broader range of activities and acts, including services.

Section 7 deals with Corporate Mergers or antimerger sections as amended by the Celler - Kefauver Act of 1950, prohibits "the acquisition by one corporation of the stock of another corporation, and the acquisition by a corporation subject of the jurisdiction of the Federal

Trade Commission (FTC) of the assets of another corporation, if such acquisitions would substantially lessen competition or tend to create a monopoly". However, a corporation may purchase stock of another corporation for investment, provided there is no attempt or motive to lessen competition. The entire issue of the probable anticompetitive effect of a merger often depends upon the relevant 'product' and 'geographic' market concepts which are equally basic to any analysis of a merger under Sherman's Section 2. In defining the relevant geographic market the Court outlined two further steps that must be taken. The first is to define the 'outer boundary market', and the second is to define geographic submarkets within those outer boundaries such as "the industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors". Then the effects of a merger in each submarket is examined in order to determine if there is a reasonable probability that the merger will substantially lessen competition or create a monopoly. Since market concentration is generally measured by the percentages of market share of the merging firms before and after the merger, which depends on whether the merger is horizontal, vertical, or conglomerate, each type of merger must be evaluated separately. (ibid, p1067 F).

Horizontal mergers arising from the combination of two firms at the same level are considered unlawful, and are challenged by the Department of Justice (DOJ) which published in 1968 Merger Guidelines for the information of firms contemplating merger, revised them in 1982 and 1984. These guidelines defined horizontal mergers (as between firms in the same product and geographic market), and nonhorizontal mergers (as between firms that do not operate in the same market). They focus on market structure and market share. (ibid, p1071 F).

In April 1992, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) jointly issued the Horizontal Merger Guidelines that state the enforcement policy of the Agencies concerning horizontal mergers and acquisitions subject to the Clayton Act, Section 1 of the Sherman Act, or Section 5 of the FTC Act. They describe the analytical frame work and specific standards generally used to analyze transac-

tions. The theme of the Guidelines is that mergers should not be permitted to create or enhance 'market power' or to facilitate its exercise. Market power is defined as the ability to profitably maintain prices above competitive levels for a significant period of time. In an effort to answer the ultimate question whether the horizontal merger is likely to create or enhance market power or to facilitate its exercise, the Guidelines indicate that the Agencies need to assess whether a merger leads to increasing concentration and to have adverse competitive effect. They also need to assess whether entry would be likely to counteract competitive effects; and to assess whether, but for the merger, either party to the transaction would be likely to fail. (Marren, J. P515 F).

In the case of a nonhorizontal merger, the Agencies will review the transaction to see whether it has any anticompetitive effects: if it removes a significant potential entrant from the market place, or creates significant barriers to entry in a market or facilitates collusion. (ibid, p516).

Antitrust policy is also concerned that market dominance may result from merger with a powerful conglomerate because its strength may enable it to sell below cost in a product or geographic market and drive out weaker competitors; economies of scale may enable it to eliminate smaller competitors by underpricing them even without selling below cost; barriers to entry are potentially increased; and it has the potential for accelerating the trend toward concentration in industry with all of the social ills associated with such concentration. (Hoeber, R. et al, p1074).

Section 8 entitled "interlocking directorates" attacked the potential anticompetitive effects of interlocking directorates by providing that "no person at the same time shall be a director in any two or more corporations, if any one of them has capital, surplus, and undivided profits aggregating more than \$ 1 million" and if it would constitute a violation of the Antitrust laws should competition between the corporations be eliminated. (ibid, p1076).

### **3. The Robinson - Patman Act**

The primary aim of the Robinson - Patman Act was "to limit the buying power of large chain stores as well as discourage sellers from offering discriminatory discounts". The Robinson - Patman Act

amended Section 2 (a) of Clayton Act to provide remedial legislation of certain defects that appeared in the Clayton Act concerning commodities as distinguished from services. (ibid, p1078).

#### **4. The Federal Trade Commission Act of 1914**

This Act created the Federal Trade Commission (FTC) to provide day - to - day enforcement of the Antitrust laws, especially of sections 2, 3, 7 and 8 of Clayton Act. Section 5 (a) of the FTC Act authorizes the FTC to proceed against unfair methods of competition in commerce and unfair or deceptive acts or practices. The Act prohibits unfair method of competition such as buyer inducement and receipt of discriminatory promotional benefits. (ibid, p1092).

#### **5. The Act of HSR**

More recently, the Hart - Scott - Rodino Antitrust Improvements Act was passed in 1976, designed to provide the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) an opportunity to evaluate, before concluding deals, the impact of certain Acquisitions on competition. The Act makes unlawful the conclusion of certain acquisitions until a 'Report Form' is filed with both the FTC and the DOJ and a 'waiting period' elapses or is terminated. The HSR provides some requirements and exemptions from the regulations, and assigns a penalty against the violation of the Act. (Lee, W. et al p49).

#### **6. The extraterritoriality of the Antitrust Law**

Agreements by American firms to divide world markets, as well as foreign activities by American or foreign firms that have anticompetitive effect within the U.S.A., or assign export quotas or fix prices overseas are subject to the Antitrust laws. In the 1940s, the Department of Justice sought to break up large international cartels of American and foreign companies dominating markets for some commodities, that have a serious anticompetitive effect within the United States. Attention is given now by the Department to the extraterritorial (outside of the United States) anticompetitive activities of multinational corporations. (Hoerber, R. et al p1098).

## **D. The “per se” Rule and the Rule of Reason in European laws**

### **1. The Common Market’s Antitrust Rules**

The European Economic Community (EEC) published in 1978 its directive concerning the merging of companies, consequently its members adopted these legal rules. Competition rules are embodied in articles 85 and 86 of the EEC Treaty of Rome. Article 85 which is the counter part of Section 1 of The Sherman Act, “covers agreements in restraint of trade within the EEC which may influence commerce between the member States. Such agreements are illegal and void pursuant to Article 85 (1) and (2) respectively”. A deviation from the prohibition of Article 85 (1) are permitted if specific conditions are fulfilled. Article 86, which is identical to Section 2 of the Sherman Act, prohibits abuse of dominant position, with the difference being that in Section 2 the dominant market position acquired is not illegal in itself, whereas, Article 86 is about abuse of dominant position. The promulgation of the Council’s Regulation 17/62 Article 1 removed the uncertainty about the provisions of the Treaty whether Articles 85 (1) and Article 86 are prohibitory rules or a rule of abuse, by adoption of The Principle of Prohibition. Contrary to the American law, the Treaty did not adopted a per se rule. Neither Article 85 (1) nor Article 86 assumes certain types of conduct such as price agreements as illegal per se. In addition, the Secondary Community Legislation does not presume that a per se rule prohibiting certain forms of conduct has been adopted by the Common Market. The prohibition in Article 85 is subject to the Rule of Reason because of the possibility of exemption pursuant to Article 85 (3). (Fejo J. p105 - 112).

### **2. Antitrust Laws in several European countries:**

In France, generally large companies take the form of a ‘Société Anonyme’, a structure with characteristics equivalent to those of a U.S. Corporation, or a ‘Limited Liability Company’ (Société a Responsabilité Limitée SARL), which is a closely held company. (Sokolow, N. et al, p128 F).

The French Banking Law passed bill no. 46/84 to organize the banking operations and to strengthen control over the banks. Article no. 40 gave the Control Committee the right to ask for any explanation and to



consult the files of the banks it is controlling. Article 49 from the Act passed in December 1986 forbids the transfer of an institution's ownership if results caused important events to one or more institution. Article 52 gave the Governor of the Bank of France the authority to help banks in crisis. The Governor interferes to the benefit of the depositors and creditors and to protect the reputation of the banking sector in France; he can require shareholders to bear the losses of this bank. As far as the bank merger is concerned, the French legislator organized the merging of the various types of companies within the general law of the companies called The French Company Law of 1966, and its modifications, the last being in 1988. It allowed the bondholders and the debtors to object at the merger before it takes place. (Abla, M. p134).

Furthermore, concentration, under the French Law, is subject to control by the authorization regime if competition is restricted, in particular, by creating or strengthening a dominant position. The authorization regime consists of the French Exchange Control Authorities and the Treasury Department (Direction du Tresor), of the Ministry of Economy, Finance and Budget (15 January 1990 decree). (Sokolow, N. et al, p146 - 148).

In Switzerland, Article 25 of the Federal Law issued on November 8, 1934 gave the bank in deficit the opportunity to ask for the delay of the due date of some or all of the liabilities.

In Finland, the Act of Restrictive Trading Practices came into force on October 1<sup>st</sup>, 1988. Section 11 of the Act contains certain disclosure obligations relating to acquisitions protects the minority of shareholders in a Merger or Acquisition (Peltola, L. et al p119).

In Germany, certain mergers, acquisitions or other combinations of enterprises are subject to merger control under the Act Against Restraints of Competition, "practically speaking the only area of serious regulatory government interference in Germany in the area of mergers and acquisitions". The Federal Cartel Office (FCO) is an independent Federal high authority located in Berlin which is subject to a certain control by the Federal Minister of Economics. The FCO is required to prohibit a merger if it considers that it creates or strengthens a market dominating

position, unless it is anticipated to result in an improvement of competitive conditions which outweigh the disadvantages of market concentration. (Beyer, G. et al p 175 F).

In Italy, the absence of any Antitrust Legislation has favoured larger groups and the concentration of almost entire industries under the control of few. The new Antitrust bill pending before Parliament, meant to implement European Corporate draft regulations, requires any merger, consolidation or acquisition in any form including joint ventures, to be subject to approval by a new authority (still to be formed). The authority will have the power to make investigations or to stop the transaction, if a dominant market position is gained such as to affect competition. (Elia, G. p260).

In Austria, the Austrian Law does not restrict mergers and acquisitions. A notification to the Cartel court is only required by Section 42 of the Austrian Cartel Act for information purposes, within three months after mergers and acquisitions. (Kriylszyn R, et al. p65).

In Portugal, since the late 1988, the Minister of Commerce possessed power to prohibit mergers and acquisitions on Antitrust grounds under the Law on Concentrations of Companies if they result in a concentration which substantially changes the competitive structure of a particular market, without bringing any benefit to the market or consumers. (Brito, C. et al p320)..

## CHAPTER FOUR

### **Antitrust Laws and Bank Reforms in Lebanon**

The implementation of an Antitrust policy necessarily implies that a minimum level of competition should exist and that this level would not be maintained without such an active policy. In this study, a broad Antitrust policy, which obviously ought to be implemented, is not considered; its concern is rather with a specific policy that can be applied to the banking sector in Lebanon.

Merger laws in the U.S. were passed in order to fortify the banking sector; and Antitrust Laws were also enforced so as to safeguard competition. In Lebanon, whereas the Law of Bank Mergers was introduced, and was devised with safety valves against some monopolistic influences, but Antitrust Laws were never contemplated. There are a number of factors that should be explored by the legislator as they may constitute possibility of monopoly formations. These factors and the reforms needed are discussed in this chapter.

#### **A. The Need for Antitrust Law**

A legislation that prohibits monopolies and protects competition, as is the case in most European and American Laws, is proposed for implementation to the Lebanese banking system to achieve the following purposes: Widening of the ownership base; Safeguarding the rights of borrowers to have access to bank credit; Control bank merging operations, and provide market transparency. These goals are discussed below.

##### **1. Widening of the ownership base:**

The increase of depositors leads to the increase of loans and thus of profits. A merger creates such expansion; but introducing legislation which increases the number of banks' shareholders and organizes the

circulation and transfer of shares, i.e. which makes the entrance to the market free to those who possess financial, administrative, and moral competence - would complement the merger law.

In Lebanon, bank ownership structure is characterized by a degree of shared monopoly which impairs free competition, if not amongst the small banks, but at least amongst the large ones. For example, as mentioned in Chapter two, in dealing with the Labour market; pricing of interest rates; concentration of deposits and credits etc... Furthermore, the banks in Lebanon are characterized by their individual, family, confessional and political backgrounds. Such characteristics accentuate the monopolistic tendencies in the market. If the eighty banks are paired, ie merged, the eighty or so families in control of the market are likely to be slashed in two. Whereas if a market is controlled by eight banks, but ownership is wide and diverse, i.e. thousands of shareholders own these banks, merging would increase monopolistic tendencies, but not by as much as in the former case. In other words, monopoly ownership is not accentuated in the latter case, as in the former. This is perhaps why banks should be required either to list their equity on the stock market. This may not, however, be acceptable to authorities, as they prefer to maintain a hold on the transfer of shares, and therefore, transparency of ownership to ensure that only well - reputed applicants own such shares. Another safeguard which should be acceptable to them is to separate between the executive role of bank administration and the ownership of its capitals as is the case in American and some European legislations.

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## **2. Borrowers' rights to have access to bank credit**

The responsibility of protecting borrowers' rights to have access to bank credits should not necessarily be the function of monetary authorities, but rather that of courts of law. As discussed in Chapter two, Section E, there is tremendous concentration of credits, and rights of borrowers to access such funds are not in fact protected by laws. Legislation is not yet in force to aid them in encouraging the wide spreading and equal opportunity of access to all borrowers. Accordingly a law should be passed to this effect as outlined in Section B below.

S. Dabbagh noted that in Lebanon, some banks run branches in very

distant villages - that extend small loans ranging between US \$ 3000 and 5000 for some commercial and real estate purposes... However, large banks refuse to extend such loans, whereas in other countries all consumers have the right to receiving credits. The banks and the needs of the society are harmed, (Dabbagh, S. 1992, p106). This underlines the need to provide access to "equal credit oppruntunity", which is free from any discrimination.

### **3. Controlling bank merging operations**

As is the case in the American and many European legislations, laws are passed to control bank merging operations to forbid collusion among few banks. Article 2 of the Sherman Act, and Article 7 of the Clayton Act allow judicial authorities to cancel the merger operation if it is proved that it led to monopoly.

### **4. Providing market transperancy**

Transperancy means visibility, i.e. ability of depositors and customers to see that their funds are in secure hands. If charges, interest rates, and services offered by banks are similar or equal, what then sets them apart? Given the large number of failures in the U.S., and the recent ones in the Lebanon, it is the security that makes the difference. Banks have to be visible for a depositor to feel secure. The wise depositor is not a client in a bank on the basis of interest return, but rather on the basis of the guarantee of refunding the deposited principal amount. This is achieved by providing proper and sound auditing standards. In the Lebanon, the standards applied are not in line with international accounting standards. Applying international standards, and more importantly reforming the accounting and auditing profession are today a necessity.

If transperancy and visibility to become fully operational, the Bank Secrecy Law should also be reviewed. According to a number of bankers interviewed, Bank Secrecy is the most important single ingredient of confidence. By offering secrecy, banks obtain more foreign deposits, hence more profits.

In Switzerland, Banking Secrecy Law has played an important part in the reputation of Swiss banks as well as solidity, security and conservation over the past century. But the element of secrecy is not confined to

Swiss banks alone. Other banking systems, such as Austria, have greater secrecy, but they do not enjoy the same level of confidence. It is the domestic, political and economic stability, in addition to the Banking Secrecy Law in Switzerland which sets the Swiss Banking System apart. (Blackman, W. p48).

Further, the belief that bank records are a customer's private records which banks can not reveal to third parties without the customer's consent, is not wholly true. For example the Congress in the U.S. passed the Right to Financial Privacy Act in 1976, which holds that records at a financial institution are not the private property of its customers... but rather they belong to this institution and may be reviewed by government agencies. The Act uses concepts of disclosures requiring that customers be informed before the government inspects their records at financial institutions. (Conboy, J. p360).

In Lebanon, Banking Secrecy exists as an essential and integral part of banking confidence, but secrecy does not mean that the Bank's Control Commission should not be allowed to check all accounts. Rather, they must work under Bank Secrecy Oath and check both the liabilities and asset sides of the balance sheet.

Transparency means also referencing of depositors. Lebanon being a free open country should apply such referencing regulations. The existence of the Banking Secrecy in Swiss banking does not imply that the Swiss banks accept deposits without checking the financial background of the depositor. Any potential depositor, particularly ones holding large deposits, is carefully checked for a reference. Such a reference could be in the form of a letter from a reputable foreign bank signed by a senior official of that bank. Such referencing is standard banking procedure in Switzerland. The purpose being to identify criminals before they are permitted access to Swiss bank deposits. (Blackman, W. p49). In Lebanon, there might exist some "unsavoury" funds in the Lebanese banks just as in any other banking system. This creates a necessity for deposits to be carefully checked for a reference.

## **B. Antitrust Law in the Lebanese Banking System**

### **1. Objectives of the Law**

A draft bill is presented below and is suggested for implementation in Lebanon. This draft has three basic objectives:

The first is to help create and maintain safety and sound banking market for the benefit of business and consumers. Simply driving out weak banks is not enough if banks' services are to be traded freely throughout the banking system. Regulations have to be enacted and enforced to ensure that Merger Law does not create new barriers by establishing large banks.

The second objective of the Antitrust Law is to prevent large banks from abusing their economic power. Here the law must ensure that the power to take economic decisions is dispersed over a large number of independent units to the benefit of the economy as a whole.

The third objective is to induce banks to keep up with technical and scientific developments. In this way, competitive policy can help bring about more competitive banks in the market place.

### **2. An Antitrust - Draft law**

#### **a. Basic provisions of the Law:**

The proposed provisions of the draft law should at least include the following seven sections:

Section 1: Every contract or combination between banks to form trusts or industrial combines, to fix prices, divide markets, and freeze out competitors, or any agreement between banks, bankers or customers to create restriction of trade and competition, is declared to be illegal.

Section 2: Every person who combines or conspires with any other person to monopolize or attempt to monopolize part of the trade or commerce shall be deemed guilty of a felony.

Section 3: Any concentration is subject to control if competition is restricted in particular by creating a dominant position. For example, price discriminations, unless they are justified by differences in qualifica-

tions, they are prohibited if they tend to lessen competition or create monopoly.

Section 4: Anti - merger rules based on market structure and market share measurements, prohibit the acquisition by one corporation of another corporation, if such acquisition lessens competition or tends to create a monopoly. Horizontal mergers are also considered unlawful, and should not be permitted to create or enhance market power.

Section 5: No person can be at the same time a director in more than one corporation, if this corporation has capital and profits higher than a certain amount (to be determined by authorities).

Section 6: An opportunity to evaluate the impact of certain acquisitions on competition is given to the Courts before these acquisitions are accomplished. Report forms should be filed and waiting periods should be specified for the evaluation process.

Section 7: The Banking Control Commission of the Central Bank has the right to ask for any explanation and to consult the files of the bank it is controlling, and have the power to make investigations and to stop the transactions if a dominant market position affects competition.

#### **b. Proving monopolization under the Law:**

All monopolies should be considered to be in contravention of the law, and socially undesirable; but to determine if a particular restraint on competition is lawful or unlawful under the Antitrust Law, the following standards should be applied:

1 - If a particular restraint is reasonable in terms of its purpose and probable effect on competition, it is lawful.

2 - Any restraint for the purpose of restricting competition is invalid, and considered as illegal per se or unreasonable; proof of that activity is sufficient to establish its anticompetitive nature, and no further evaluation will be made, nor evidence will be presented. Such restraints include horizontal and vertical price fixing, horizontal division of customers or geographical markets.

3 - An oligopoly, is considered to be lawful if its dominance is not a



result of unlawful conduct that create a monopoly power; otherwise it is a violation of Antitrust Law.

4 - Courts consider many factors in deciding whether a firm has the monopoly power to control prices, or to exclude competitors in a market. These factors are:

- a. The size of the market share which could be more than 50% or less depending on the structure of competition mentioned in (c) below. In fact, shared monopolies allow a small number of banks to dominate the market and easily control more than this share.
- b. The size achievement through natural growth or by acquiring competitors.
- c. Number and financial strength of competitors.
- d. Barriers to entry by potential competitors.

5 - Intent to monopolize is sufficient when a single firm uses means and practices that accomplish monopolization, i.e. pricing policies that injure actual competitors or exclude potential competitors or create barriers to enter the market.

6 - In deciding whether horizontal mergers create or enhance market power, the following guidelines describe the specific standards that can be used to analyse transactions:

- a. Degree of concentration caused by merger.
- b. Free entrance to the market.
- c. No gains can be achieved by both parties through other means than mergers.

**c. Enforcement of the Law:**

Wide variety of powerful enforcement tools should be available to the Courts, such as:

1 - Injured parties could recover treble damages. Any person injured in his business or property because of anything prohibited in the Antitrust Laws can recover treble damages.

2 - Judicial authorities or any customer of the merged bank should

be allowed to cancel the merger operations if they prove that they led to monopoly or to a decrease in competition.

3 - Violators of the law should be punishable by scheduled amounts against banks or individuals, or years of imprisonment, or both. (amounts and years are to be determined by authorities). The Court should consider some practices i.e. price fixing, division of market as being hard core violations.

4 - A variety of ways should be used by courts to restrain violators, such as divestiture, dissolution, or cessation of payment of banks that would restrain trade.

### **C. Reforms Needed**

In addition to the new laws that the legislature should pass, some administrative and legal reforms are also needed to safeguard the banking system and promote free economic enterprise. The most important reforms are:

#### **1. Changing legislation pertaining to bank stock trading**

The law no. 32, issued in 1991, specifies that all the shares of the Lebanese banks are to be nominal and the transfer of these shares is subject to a prior authorization by the Central Council of the Central Bank of Lebanon. Bank shares should ideally be open to ownership and participation by a wider sector of society. This implies that if not all bank shares should be dealt in the stock exchange, at least the majority should, with the remainder held as "nominal" shares by traditional owners. Some professionals interviewed by the author have mentioned that at least 25% of bank shares should be held publicly. But this minority is insufficient if 'transparency' is to be achieved. Moreover, such public listing of bank shares would "widen" the capitalization base of the stock market. (See Maad, S. p58 - 64).

#### **2. Listing and filing requirements**

Accordingly, if the above recommendation is to be implemented in Lebanon, Listing and Filing Requirements must be established if a wider ownership base is to be encouraged. Ideally, banks should be required to list their equity on the stock market. In addition, filing requirements for

acquisition of more than 5% or 10% of a bank's equity should be adopted. The schedule form which obviously should be implemented for all shareholding companies, to be filed should include the following disclosures:

a - Description of the security purchased and its issuer.

b - Identification and background of the person filing the form.

c - Source and amount of funds used to acquire the securities.

d - Purpose of the transaction, including any plan that results in business combinations such as mergers, consolidations sales or acquisition of assets.

e - Any material changes or development.

### **3. Separation between executive administration and ownership**

Banks must rely on a strong highly qualified administration capable of reducing problems and applying modern and advanced technologies in banking operations in which efficient means are used in the networks of communication and information and in achieving the daily operations of clients. This function should be separated from ownership, as executive administration should not be mixed with ownership. The owner is invariably profit - oriented, which means that his main motive is to maximize profits. This motive is at odds with those of depositors and employees. The depositor is concerned about safety and security of the bank, and of receiving cheap services and high deposit rates. The employee is also at odds with the owners motive, as he seeks to improve his salary, benefits, and to work in a more comfortable environment, and even to take a share in the profits, or at least to be rewarded for the bank's performance. It is this conflict of interest which sets the two parties apart. The executive is not only looking to satisfy the owners, but has duties towards his clients and bank personnel. This is perhaps why the separation of functions is called for.

### **4. Equal Credit Opportunity Act (ECOA)**

As mentioned in Section E, Chapter two, The ECOA is a civil rights act passed in the US. to provide access to credit without discrimination based on sex, marital status, race, color, religion, national origin, or receipt of income from public assistance. The ECOA applies to all

types of credit, including consumer and business credit.

A similar law should be passed in Lebanon which specifies that:

a. Under no circumstances can a creditor seeking information for the purpose of extending credit ask an applicant's race, religion, color, national origin, sex, or family - planning practices and expectations.

b. A creditor may ask questions about marital status, age and public assistance income only under limited circumstances.

c. In the credit evaluation process, a creditor may use any information it receives about an applicant from whatever source, so long as the information is not used to discriminate against an applicant on a prohibited basis.

d. Violations of ECOA should be subject to both regulatory and civil enforcement action.

#### **5. Providing market transparency**

For depositors to feel secure, banks must provide market transparency. This is achieved by:

a. Visibility that means ability of securing deposits.

b. Providing proper and sound auditing standards: Since Bank Control Commission examiners are bound by the Bank Secrecy Oath, they should, as is the case in Switzerland, be allowed to check debtor and creditor accounts, i.e. both the liability and asset sides of the Balance Sheet. This reform need should not be construed as a weakening of the law. It rather allows better transparency and enables the monetary authorities to monitor these banks and help them act in good time in order to avoid the repetition of the failures of 1990. Therefore, if the scope of financial auditing and examination is expanded in line with Swiss laws, the level of liquidity, the quality of loans, the guarantees and the provisions and the movement of funds between (creditor, debtor) accounts would be better controlled to the benefit of the bank and without discouraging depositors.

c. Review of Bank Secrecy Law: Government agencies and the Bank's Control Commission examiners should be excluded from any secrecy law for the records of banks' financial transactions. They could

demand, and banks must reveal the financial records of individuals or banks themselves, with their knowledge, nor their consent. In addition examiners of accounts should work under the Bank Secrecy Oath and check both liabilities and asset sides of the Balance Sheet.

d. Referencing regulations: Lebanon should apply such regulations to check the background of the depositors. Depositors, especially of large deposits, should be checked for a reference from a reputable foreign bank signed by a senior official of that bank. The purpose is to identify criminals before they are permitted hold and to "launder dirty money" through Lebanese bank deposit accounts.

#### **6. Coordination with international and Arab institutions**

Coordination must be encouraged between Lebanon and Arab and international institutions firstly, to provide accurate information concerning "money laundring", in order to prevent as much as possible the flow of such funds. Secondly, coordination with international and Arab institutions, especially with the Arab Monetary Fund, and the Union of Arab Banks must exist to organize training sessions, establish experts and technical staff, and unify legislation and accounting rules.

#### **7. Reinforcement of the role of the NDIC**

Activation of the National Deposit Insurance Company's role requires structural changes related to its nature and functions.

The NDIC's main functions and activities are to insure up to a certain amount the deposits of banks operating in Lebanon, to pay depositors in the event of bank failures. This role should be reinforced to promote and preserve public confidence in banks and to protect the money supply. This could be achieved by giving wider authorities in supervising and periodic examinations of insured banks. Authorities must also extend to make loans to, or purchase assets from, insured banks in order to facilitate mergers or to engage in unsafe and unsound banking practices or in violations of law or regulations, similar to the role assigned to the Federal Deposits Insurance Corporation (FDIC) in the U.S.A. (Encyclopedia, volume 5, p184 F).

## **8. Banks' Holding Companies (BHC)**

In accordance with the American Legislation Act of 1956, the Bank Holding Companies were established to enable the establishment of powerful banks without resorting to mergers. The holding company owns the shares of various banks instead of merging them, and safeguards the identity of the banks' owners for their participation in the board of directors of the Bank Holding Company.

In Lebanon Law Decree No.45/83 permitted the establishment of Holding Companies as a means of protecting and strengthening the companies and to enable them to overcome financial problems. However, article 4 of the law forbids the ownership by the Holding Companies of more than 40% of the capital of two companies operating in the same field; (law decree No. 45/83); it therefore recognized the potential implications of these companies on competition in the market. Bank Holding Companies may be encouraged for establishment in Lebanon, to strengthen the banking system, instead of merging. Each bank member in the company would retain its independent legal identity, and the BHC holds the control and the management of various banks. It would also buy doubtful debts of banks, or provide the necessary funds against guarantee.

## CHAPTER FIVE

### **Conclusions and Recommendations**

The ownership structure of Lebanese banks is characterized by a degree of share monopoly which impairs free competition at least amongst largebanks. The factors that influence the free entry and limit a broader participation in this sector are the regulation which requires share ownership to be nominal, and their transfer to the subject to prior authorization by the Central Bank. In addition, the structure of Lebanese bank is characterized by family or individual ownership, and the sector is controlled by a linked - oligopolic power leading, amongst other things, to a collusion in price - setting of foreign currency loan interest rates which could reach twice the international rate. It also leads to the concentration of deposits in a small number of banks, and to a limited number of loan beneficiaries utilizing them. The Lebanese law does not provide borrowers the right of access to loans without discrimination. The resulting credit concentration provides sufficient evidence of discriminatory behavior on the part of commercial banks. Another instance of discriminatory behavior in the banking system is the labour union - management agreement which leads to the elimination of free negotiation of wages and salaries. Finally, both the Merger Law passed in Lebanon in 1991, aimed at reducing the number of banks, and the decree law passed in 1992 designed to facilitate bank mergers, may further intensify the market concentration and power particularly in the absence of any law that forbids monopoly and safeguards competition.

The problems that encountered many Lebanese banks and the failure of some others between the years 1966 and 1991 cast doubt on the efficiency of present regulations. The banking sector could be more successful with the special features that characterize it such as the economic freedom and the Bank Secrecy Law, if authorities promulgate laws and

establish reforms that eliminate the barriers to free entry and allow a broader participation in this sector. All this supports the argument for the need for Antitrust laws and their possible implementation parallel to the Merger Law in order to prevent a potential increase in concentration in the market, and to protect competition.

An Antitrust law prohibiting monopolies and protecting competition, as is the case in most European and American laws, is proposed to widen the ownership base, safeguard the rights of borrowers to have access to bank credit, counteract bank merging operations and provide market transparency especially for depositors. The basic provisions of the proposed Antitrust law are intended to maintain safe and sound banking, prevent large banks from abusing their economic power, and to bring about more competition into the market place.

The reforms needed to safeguard the banking system and promote free economic enterprise include the legislation pertaining to bank stock trading to ensure wider participation in ownership. Listing and Filing Requirements must be established, and the executive administration and ownership must be separated. An equal credit opportunity act should also be passed in Lebanon to cover all types of credit, and to provide access to credit without discrimination. Market transparency can only be established if proper and sound auditing standards are implemented, and Bank Control Commission examiners are permitted to check debtor and creditor accounts; Bank Secrecy Laws need not be different in Lebanon to those in Switzerland, giving the NDIC a wider role especially in managing and liquidating the assets of failed banks, and in deciding in merger, and assumption may also solve some of the existing sticky problems. From this study's comparison of American and some European Antitrust laws, it is clear that the legislature in each of these countries has sought to avoid or limit some of the time - consuming, expensive and complicated proceedings caused by antitrust issues, by the formulation of the per se prohibition. Other practices or restraints that are not per se violations are judged by courts under the Rule of Reason to determine if the particular restraint is unreasonable and therefore unlawful.

Finally, one ought to venture a statement about the possible con-



sequences on the banking market and the economy at large should these laws be implemented. In all likelihood, this market would become more efficient with credit allocated more broadly, and borrowers having much wider access to bank loans, and participation in the ownership of the sector becoming much broader.

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