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# Three Noteworthy Aspects of the DOJ's First Announcement Relating to a Bank Merger Under the Biden Administration

On May 25, 2021, the Antitrust Division of the U.S. Department of Justice ("DoJ") made its first public announcement (available here) regarding resolution of a bank merger under the Biden administration. Three aspects of the announcement are noteworthy:

First, the resolution largely follows the model that the DoJ has used to resolve competitive concerns in bank mergers for decades, focusing principally on the divestiture of branches in the geographic regions in which the merging parties' overlapping branches together have high deposit levels relative to their competitors that also have branches in the region. The lack of any fundamental change in approach comes against the backdrop of the DoJ's September 2020 press release (available here) stating that it was "examining" its policies regarding bank mergers and soliciting public comment on whether those policies should be "modernize[d]" to take into account "emerging trends in the banking and financial services sector." Under the Biden administration, the DoJ has not provided updates on that examination process begun under the Trump administration, but this week's announcement demonstrates that, to date, no fundamental change in approach has resulted. President Biden has not yet announced a nominee to serve as the Assistant Attorney General for the Antitrust Division, however, so it remains possible that new political leadership at the DoJ could take up the review process.

Second, the divestitures reflect that the geographic markets through which the DoJ assessed the merger's competitive effects were in some instances narrower than the geographic markets that the Federal Reserve defines and makes publicly available through its CASSIDI system (available here). The DoJ's press release does not expressly define the geographic markets implicit in its analysis but does focus on individual counties and even an individual city. In particular, the divestitures indicate that the DoJ viewed some areas located at a distance from major metropolitan areas as their own geographic markets despite the Federal Reserve's designation of those outlying areas as part of a larger geographic market. Because narrow geographic markets often lead to greater divestitures than those that would result from broader geographic market definitions, the announcement highlights the need to conduct a careful analysis of a potential merger's competitive effects rather than merely relying on the "What If" pro forma analysis available through CASSIDI.

Third, the DoJ required one unusual provision respecting post-merger branch closures. With respect to the geographic markets in which the DoJ has determined the proposed merger threatens harm, it is common for the DoJ to require the merged entity to promise to make available to another bank or financial institution the land and building associated with any branch that is closed within three years of the merger. The purpose of that provision is to facilitate entry into the geographic markets in which the merger threatens harm (because it is easier for a new entrant to do business from a building that customers already associate with a bank branch). In its announcement, the DoJ stated that Huntington agreed to a provision covering closure of "any traditional branches located in any overlap market in Michigan and Ohio." That is unusual because the branches being divested were all located in Michigan and none was in Ohio. It is not clear whether that provision (covering both geographic areas in which divestitures were required and geographic areas in which no divestitures were required) reflects a new policy for all transactions going forward or was based on considerations specific to the particular transaction.

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