Bank groups ask Justice Department to limit changes to merger guidance

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Market Intelligence

Bank trade groups urged the Justice Department to limit changes it might make to its merger guidance, while left-leaning advocacy groups pushed for greater scrutiny of proposed deals.

The DOJ issued a request for public comment Dec. 17, regarding whether the Antitrust Division should revise bank merger review guidelines from 1995 and, if so, how. It accepted comments through Feb. 15. The request addressed President Joe Biden's executive order in July.

Two letters, one from the Consumer Bankers Association and a joint one from the Bank Policy Institute and the Mid-Size Bank Coalition of America, told the DOJ that the merger review process is sufficient as is.

"Most bank mergers do not have adverse competitive effects or result in decreased competition within the United States; to the contrary, typically the greater scale and market coverage resulting from merger transactions increase competition," the Consumer Bankers Association wrote in its letter. The increased scale and coverage also help them better meet customers' evolving needs, the group added.

If the Biden administration decides reviewing merger policies is necessary, halting deals while the DOJ conducts its review would be inappropriate and would delay economic benefits or even result in harm to the economy, the association added.

However, the American Bankers Association said current guidelines "fail to account for significant competition in many product lines, including in many rural markets." The association emphasized a need for consistency between the department's Antitrust Division and the federal banking agencies.

The Independent Community Bankers of America, meanwhile, called for an exception for deals in which both banks have $1 billion in assets or less, or in the alternative, if they meet the Small Business Administration's definition of a "small business" by having assets of $600 million or less.

Additionally, the ICBA said the DOJ should include credit unions as "other institutions" in Herfindahl-Hirschman Index calculations, which measure market concentration, and give credit unions a 100% weighting as bank competitors. Lastly, data used to quantify banking activity in a market should include fintech companies, large banks and online lenders, the group said.

Advocacy groups weigh in

Better Markets said financial stability and systemic risks need special scrutiny when assessing deals and that the assessment process should work to improve product and service availability in underserved communities. The group also recommended maintaining existing thresholds for anticompetitive effects.

The Americans for Financial Reform Education Fund said mergers need more DOJ scrutiny, as deals have raised fees for basic services and caused other harms to consumers, shifted local markets away from smaller banks and increased financial stability risks.

The Committee for Better Banks, which represents frontline bank employees, recommended that agencies collect information about employment to better assess the competitive effects of bank mergers.

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