

**ROUNDTABLE ON COMPETITION, CONCENTRATION
AND STABILITY IN THE BANKING SECTOR**

-- Note by the US Department of Justice --

1. This paper addresses questions from the Chairman's letter of December 2, 2009. For a more detailed discussion of the structure of the U.S. banking industry, see the U.S. Submission to the February 2009 Roundtable on Competition and Financial Markets, DAF/COMP/WD(2009)11.

Competition and Concentration: General Issues

How is competition in the financial sector measured in your jurisdiction? Please refer to the applicable decisions or competition guidelines of the relevant authorities in your jurisdiction.

2. In the United States, the federal antitrust laws generally apply to commercial banking and investment banking products and services in the same manner as to other economic sectors. Similarly, the Horizontal Merger Guidelines¹ (Guidelines) of the U.S. Department of Justice (Department) and the U.S. Federal Trade Commission apply to the analysis of mergers across sectors. Premerger notifications relating to non-bank mergers in the financial sector are filed pursuant to the Hart-Scott-Rodino Act² and are analyzed under the Guidelines. For the review of bank mergers, special procedures have been implemented. These policies are outlined in a document, "Bank Merger Competitive Review,"³ which is implemented jointly by the Department and the bank regulatory agencies.⁴ In the implementation of these policies, the Department applies the principles of the Guidelines and screens for bank merger transactions that would result in market concentration that exceeds the Herfindahl-Hirschman Index thresholds, thereby requiring further review.

Are the standard structural measures of competition (market shares, Herfindahl index, etc.) suitable to measure concentration in the financial sector in your jurisdiction? If not, why?

3. The standard structural measures of concentration are sufficiently flexible to measure concentration in the financial sector in the United States. Calculating market shares and concentration, however, is only the first step in analyzing whether concentration will create or enhance the exercise of market power. With regard to banking, these measures specifically have been adopted by two of the bank regulatory agencies, as discussed in the "Bank Merger Competitive Review" document. Indeed, studies by the Federal Reserve Board staff have found that less concentrated local banking markets perform better in

competition terms than more concentrated markets.⁵ The joint adoption of these guidelines was necessary, as the bank regulatory agencies and the Department share jurisdiction for competitive review of bank mergers and concurrently analyze the potential competitive effects of such mergers. While the Department applies Section 7 of the Clayton Act, the bank agencies, in addition to considering potential competitive effects, must consider the “financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.”⁶

In your jurisdiction, is competition in the banking sector measured differently than in other industries?

4. As discussed above, the federal antitrust laws and the Guidelines apply to mergers in the financial sector in the same manner as those in other industries.

How concentrated and how competitive was the banking system in your jurisdiction before the crisis? Can you refer to cases (e.g. mergers) where your agency had to review the degree of competition in the banking sector?

5. Despite the current financial situation, more than 7,000 separately insured banking entities and more than 12,000 credit unions currently operate in the United States, and most product and urban geographic markets remain relatively unconcentrated.⁷ Most recently, in 2008, the Department reviewed the proposed acquisition of National City Corporation by PNC Financial Services; after review, the

What policies were implemented to facilitate/hinder the consolidation process, if any?

7. As explained above, the enactment of certain statutes greatly expanded the geographic areas and
