Independent Bankers Association of Texas

Via electronic submission: *ATR.bankMergers@usdoj.gov*
October 15, 2020

Mr. Makan Delrahim
Assistant Attorney General for the Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: ANTITRUST DIVISION BANKING GUIDELINES REVIEW

Dear Mr. Delrahim:

The Independent Bankers Association of Texas (IBAT) thanks you for this opportunity to comment to the Department of Justice's Antitrust Division on whether to revise its Bank Merger Competitive Review Guidelines (Guidelines), which were issued in 1995. IBAT is a trade association, representing independent community banks domiciled in Texas. Its membership comprises more than 2,000 banks and branches in 700 Texas communities. These banks range in asset size from $21 million to $39 billion. A number of these have been adversely affected by these Guidelines in the past, due, we believe, to their unrealistic treatment of markets and products. Our comments are submitted with that history in mind.

Background. First, it is helpful to briefly review the pattern of bank distribution in Texas to put our comments in perspective. Branch banking was prohibited by the Texas Constitution and did not arrive in our state until a federal case preempted that law in 1988. Thus, at that point there were almost 2000 separate bank charters in the state. This watershed change occurred in the midst of the S&L Crisis with all but one of the major Texas bank systems failing and being acquired by large, out of state banks. Often, those banks shuttered rural branches after the acquisition.

In 1995, the Texas legislature approved a bill that approved interstate branch banking consistent with the Riegle-Neal Interstate Banking and Branching Efficiency Act. This furthered the influx of out of state, large banks into Texas. Many of them acquired existing Texas charters as a quick way to achieve a footprint in a community.

Currently, the total number of separate commercial and savings bank charters in Texas is 412. There are no traditional savings and loan associations. In addition, there are 433 credit unions. Texas credit unions are some of the largest in the nation, with many of them using a community basis or very lax and expansive "common bond" for their field of membership, and thus achieving an extensive branching network.

Geography. Texas has 254 counties and 25 metropolitan areas. The largest county is Harris with 4.7 million, and the smallest is Loving with a mere 169 souls. The largest metropolitan area is Dallas-Fort Worth with a population of 7.6 million. Houston is next with 7.1 million. All but a few counties have at least one bank located in them. For example, Hardeman County with a population of 3922 has three banks in its county seat. That county borders Oklahoma along the Red River. Dallam County in the Texas Panhandle with a population of 7200 has four banks in Dalhart, its county seat.

Counties in our Panhandle are either square or rectangular, with no thought given to natural boundaries. By contrast, counties in the earlier settled parts of the state are oddly shaped, sometimes bordering on as many as six other counties. Brewster County has an area of 6,192 square miles and a population of 9,267. The Rio Grande River forms its southern border with Mexico.

The demographics of the state are equally varied with Spanish the second and Vietnamese the third most common language used. In Houston, there are 145 different languages spoken. Many southern border counties are approximately 95% Hispanic.

Impact on Banking Needs. The diverse demographics of Texas translates into a need for financial services that is as diverse as the state itself. In some areas, that may mean a very traditional brick and mortar facility that serves as a hub for the community. In others, it may include expansive loan and deposit production offices in lieu of branches. Still other banks may rely on extensive branch networks.

During the current COVID-19 pandemic, the community banks in Texas have followed the best practices outlined by our Governor and the CDC and limited in-person services. In March, virtually all bank lobbies closed to regular business, and customers were served at drive-through facilities, ATMs, interactive teller machines, and expanded online banking services. Even banks that had been heavily dependent on physical networks found that innovative delivery through technology could provide the products and services that their customers needed. However, parts of the state simply do not have widely available broadband access (particularly in certain rural areas). In those areas, reliance on drive-throughs and telephone connection to a banker carried the day.

IBAT cannot speak to the unique needs of the community banks in other states, but we understand from our colleagues with other independent, community bank trade associations that the challenges of branch banking and with merger activity vary greatly depending on their state's demographics and geography.

With this background now in place, IBAT would like to share our thoughts on the specific questions raised in the public comments topics and issues guide.

Banking-specific merger review guidance. IBAT strongly supports the continuance of issuing merger guidelines specific to the banking industry. Banks don't produce widgets, like manufacturers, but rather rely on relationships and heavily regulated programs for delivery of deposit, lending, and other services. Furthermore, the size and type of banks varies widely from single location, small asset size to regional behemoths with a chain of branches across the nation and the ability to fairly easily eliminate a single branch if that would facilitate a merger.

Geographic Markets. In Texas, we have seen scenarios in which the only two banks in a county need to merge in order to achieve the necessary scale to survive in an increasingly competitive and highly regulated environment. We recommend that the Guidelines be fine-tuned to avoid the absurd result of such a merger being turned down, leaving the only recourse selling out to an out of state mega-bank that could use a different market base to avoid anti-competitive effect analysis. In short, the needs of rural communities and the unique profiles of banks in such areas should be considered in revising the Guidelines.

Similarly, the unique challenges of banking in a metropolitan area should also be taken into consideration. For example, the Dallas-Fort Worth metroplex is a conurbated MSA encompassing 11 counties with a population of 7.6 million. In addition to Spanish and Vietnamese, a number of Chinese and other Asian languages are spoke there as well as Hindi and African languages. Certain branches in that area actually have bankers on staff who speak many different Asian languages. They may also have mortgage production offices in order to effectively reach out to potential local customers. In short, urban institutions have a different style and systems than those of their rural counterparts. Thus, just as the peculiar needs of rural communities should be considered in evaluating competition, so should the unique characteristics of urban areas.

Non-Traditional Banks. Just as community banks have expanded online banking services, so have a wide variety of financial institutions (non-traditional banks and fintechs). This leads to two considerations. First, there is a growing un-tethering of customers to a physical financial institution. Also, there is an explosion of financial products, including credit, deposit, investment, and other services through online delivery. Certainly anyone who watches television has seen advertisements for Rocket Mortgage or Quicken Loans on the mortgage side. In addition, Chime has aggressively marketed its alternative deposit product (which must be supported, albeit fairly silently, by an FDIC regulated bank). Between the increase in online (non-traditional) banks, expanded online services by traditional banks, and products and services through fintechs (nonbanks), there is truly no simple way to geographically align products and competition! There is one exception, and that is in the area of mortgages. Through HMDA reporting, information on mortgage origination can be gathered. On the other hand, banks must report on deposits, but nonbanks have no such duty. Perhaps some data might be gathered through questionnaires to deposit brokers.

Credit Unions. These institutions are no longer tied to simple fields of membership but rather can use community-base or a large number of fields. As an example, Randolph-Brooks Federal Credit Union in Texas has 901,239 members, $11.71 billion in assets, and over 50 branches. The 433 credit unions with headquarters in Texas have more than 1,600 branch office locations. They have a total of 9.4 million members with over $121.49 billion in assets. These institutions offer traditional banking, mortgage, auto loans, credit cards, and deposit-type products. They have aggressively deployed online banking systems. Commercial lending is somewhat limited but still widely available.

The image of a member-run credit union operating out of the church basement is a thing of the long-distant past. These entities are aggressive (and effective) competitors of community banks. Further, since they are exempt generally from taxation, they are able to unfairly compete on price. Many years ago, they effectively cornered the market in auto lending in Texas. They should always be considered in the competitive analysis.

Farm Credit System. In the agricultural lending sector, community banks face significant competition from the Farm Credit System, including the numerous production credit associations and the Federal Farm Credit Bank. These offer loans for purchase of agricultural land as well as operation loans at subsidized rates. They should always be considered in evaluating competition when rural banks seek a merger.

De Minimis Exception. IBAT strongly supports a reasonable de minimis exception to simplify the analysis process. The federal banking regulator can adequately perform the analysis. A review by the Antitrust Division simply adds time and cost to a transaction without achieving public policy objectives. That threshold could be tied to $600 million or less in assets—the size threshold that the SBA uses to identify a bank as a "small business." That size was also recently used by the Office of Comptroller of the Currency in identifying a small bank in its recent amendment to the Community Reinvestment Act regulation.

Conclusion. Again, IBAT appreciates the opportunity to provide input into this important process. In Texas, we have seen the damage that an outdated analysis can wreak when smaller, community institutions in a locale seek to survive through merger. After twenty-five years, an explosion of technology, and a pandemic, it is time to update the Guidelines.

Thank you for your consideration.

Sincerely,

Christopher L. Williston

Christopher L. Williston
President and CEO