Banks Thrive at Scale. So Do Consumers.

Feb. 10, 2022

The Department of Justice has sought public input on whether it should update its standards for assessing proposed bank mergers under the U.S. banking and antitrust laws. The initiative is one of several policy efforts across the federal government to intensify scrutiny of bank mergers and acquisitions (M&A). But bank M&A today takes place in a thriving, competitive marketplace and already undergoes rigorous antitrust review under a long-standing analytical framework that leaders from both political parties have stood behind for decades.

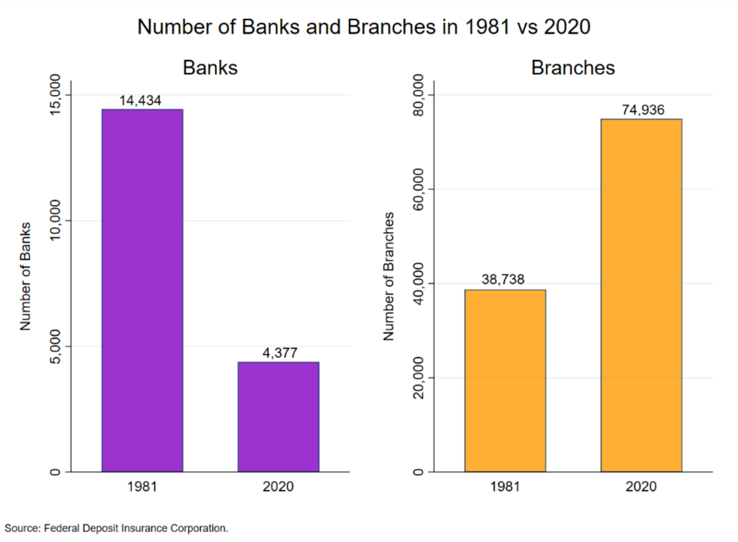
Why It Matters:

When U.S. banks seek to merge, they face government competition review standards that are far more rigorous than any other U.S. industry. Moreover, those standards generally ignore competition coming from Big Tech and FinTech, which has grown substantially since those standards were last updated. New restrictions on bank M&A would undercut the industry's ability to keep pace with the evolving financial technologies, consumer needs, and marketplace structures, ultimately undermining the competitiveness the Administration seeks to achieve.

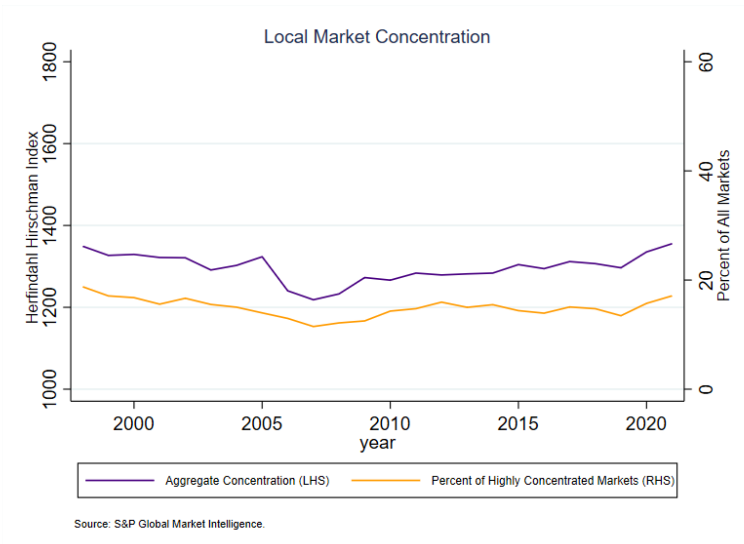
Crucial Context:

The existing, consensus approach to assessing the legality of bank mergers was developed incrementally over decades at the DoJ and the federal bank regulators under both Democratic and Republican Administrations and based upon analyses conducted by highly professional and expert career staff. Consistent with the underlying statutes and the case law, the current DoJ approach to competition analysis of bank mergers focuses on local geographic markets and seeks divestiture of branches in any local markets in which competition would be harmed.

- **Mergers benefit customers:** Bank M&A serves customers through greater lending capacity, greater innovation and tech investments, a wider range of products and services, stronger cybersecurity, and additional community investments, as a result of lower operating costs from the presence of scale economies. One healthy bank is better than two failing ones.
- **The DoJ's current framework reflects a consensus approach that works well:** The consensus approach that has governed bank merger competition review for decades has proven successful in protecting customers and competition. If anything, it's too stringent: bank mergers face stricter standards than any other industry, even as they compete with less regulated Big Tech and FinTechs whose competitive presence is ignored.
- **Branches have increased even as the number of banks has decreased:** Between 1981 and 2021, the number of bank branches nearly doubled as banks responded to federal legislation that allowed interstate branch networks. The result is that the average bank's branch network grew from 2.7 branches to 17.1 branches over 40 years. That is a far more relevant statistic than the nominal number of banks in terms of customer convenience and efficiency.



- **Less concentrated:** The U.S. banking industry is much less concentrated than other industries that serve U.S. households, such as airlines, department stores, telecom, autos and prescription drug manufacturers. (Also, the comparison understates the true level of competitiveness in financial services from FinTechs or money market funds.) For a list of concentration levels by industry, see Appendix A.
- **Local concentration has not increased:** Banking competition at the local market level continued to thrive, with market concentration as measured by branch deposit shares showing little change between 1998 and 2021. This measure of competitiveness, in fact, understates the true extent of financial choices that customers have because it is based solely on the presence of brick-and-mortar branches and does not include digital-first or digital-only options.[1]



- **DoJ lacks statutory authority** to review proposed mergers for systemic-risk issues. Congress authorized the federal banking regulators specifically to consider this factor outside of the competition analysis provision, not DoJ whose mandate is to review competition.

Recommendations:

BPI requests that DoJ's Antitrust Division and the federal bank regulators

1. adhere to the well-developed approach that has governed bank-merger policy for over 40 years
2. take into account competitors lacking a physical branch in a local geographic market when assessing a merger's likely competitive effects (especially financial institutions that offer banking services but do not have a banking license)
3. provide notice, public comment, and an opportunity for judicial review of any new Bank Merger Guidelines, and
4. apply any changes to bank-merger policy only prospectively.

The Bottom Line:

M&A allows banks to meet strong customer demand for robust branch networks, seamless digital banking, robust cybersecurity and innovative products and services. Any objective review of the U.S. banking industry reveals an intensely competitive marketplace.

[1] There has been a slight increase in concentration during the COVID-19 pandemic most likely owing to the Federal Reserve's Quantitative Easing (QE) (i.e., asset purchases and resulting growth in reserve balances and deposits). That increase is expected to come down as the Federal Reserve normalizes its balance sheet.

Appendix A: Concentration Level of a Subsample of Industries that Serve U.S. Consumers

Industry	Concentration Level (%)[1]
Couriers and express delivery	91
General merchandise	84
Department stores	73
Air transportation	69
Telecommunication carriers	62
Cable programming	62
Motor vehicle manufacturing	62
Health and personal care stores	60
Electronics and appliance stores	58
Automotive rental and leasing	57
Taxi service	56
Building materials and supplies dealers	55
Non-depository credit intermediaries	41
Consumer goods retail	39
Electronic shopping and mail order houses	37
Shoe stores	36
Grocery stores	35
Home furnishing stores	32
Dry cleaning and laundry	30
Clothing stores	30
Brokerage	30
Jewelry, luggage and leather goods stores	29
Travel arrangements	24
Furniture stores	22
Depository credit intermediation *(includes the banking industry)*	20
Gasoline stations	17

Source: United States Census Bureau: Concentration of Largest Firms for the U.S., 2017.

[1] Concentration level is defined as the share of sales that the top four firms capture in a given industry.