



Taskforce on Federal Consumer Financial Law Listening Session

*October 15, 2020
1:00 pm to 2:00 pm Eastern*

Organization: Department of Justice Antitrust Division

CFPB Participants: Todd Zywicki, Bill MacLeod, Jean Noonan, Alex Eckstein, David Hixson, Ashlie Tarpley, Ross Rutledge, Alex Nongard, Jeff Magliato

DOJ Participants: Chief Technology and Digital Platforms Section Aaron D. Hoag, Chief Financial Services, Fintech, and Banking Section Owen Kendler, Chief Competition Policy & Advocacy Section Dave Lawrence, Assistant Chief Competition Policy & Advocacy Section Karina Lubell, Attorney Advisor Competition Policy & Advocacy Section Charles Ramsey, Paralegal Competition Policy & Advocacy Section Benjamin Baldwin

Purpose: On Thursday, October 15, 2020, Taskforce Members and staff met remotely via WebEx with staff of the DOJ Antitrust Division in furtherance of the Taskforce's commitment to engage with external stakeholders to gain insights regarding the financial service industry and financial consumer protection laws. Competition and its role in consumer protection within the financial services sector was the focus of discussion.

Discussion:

1) Introductions and Opening

Participants introduced themselves competition. Taskforce members explained the topic of interest for the meeting: Competition.

2) Competition

- The DOJ antitrust financial groups recently reorganized to consolidate financial services work into one group, the Financial Services, Fintech, and Banking Section. The group covers banking and financial services, credit and debit cards, insurance, and commodities. The consolidation into one group allows for better interaction across markets, participants, and allows DOJ to take a holistic view. The financial world has

changed considerably with the advent of the internet and mobile phone technology so the DOJ changed to better deal with the current marketplace.

- DOJ Antitrust is reactive. It takes on cases and work as they arrive. The group does not do forward looking analysis separate and apart from cases.
- Antitrust pushes its competition ideas via coordination with other agencies and participates as a commenter when agencies engage in the public comment solicitation process. Recently comments were made to SEC about proxy advisors and high frequency trading activity.
- Priority of DOJ is criminal prosecution in the financial service market. Blockchain is also a subject of interest.
- DOJ has a bank merger guidelines document that hails from the 1990's. DOJ recently put out a solicitation for comments about what changes should be made to the guidelines. Changes could be addition of new factors that are not currently listed in the merger guidelines. Due to absence of the DOJ staffer with the requisite knowledge, no comment was received in response to a Taskforce member's inquiry about whether the amount of deposits held by a bank is a, or the only, factor used when looking at a merger's effect on competition.
- Competition is a key component in the financial industry. Regulations create costs and costs can be a barrier to entry for new market players. Even the need to hire a compliance attorney is a burden that can act as a barrier to entry.
- The concept of scaling costs is an idea that might help foster market entry by keeping costs low for smaller entities as they start operations. In tort law, there exists natural scaling. The more customers a provider has the more income it has and thus the larger possible monetary loss so larger the amount of spending to handle the risk of the sizable loss. The smaller entity naturally spends less as its potential loss is less.
- Mention was made of an American Express case from a few years past that centered on high merchant fees and involved issues of competition.
- Interagency cooperation is important especially at the mid and senior levels especially due to the regular turn over at the c suite level (political appointee). So on-going agreements such as the one the DOJ has with the FTC over antitrust matters is important.
- FDIC conducted a recent rulemaking about industrial banks and DOJ is still deciding if it should comment.
- The payment business is worth watching. Financial data aggregators might help lower costs.
- Actions such as phone number portability that cut costs to consumers are good.

3) Potential recommendations:

1. To overcome the cost of compliance to a new entrant and lessen the barriers of entry issue a certificate to certify compliance that exempts the new entrant from oversight.
2. Consider effects on competition in the regulation creation process.

4) Potential Action Items:

1. Obtain the results from DOJ's solicitation for comments about its bank merger guidelines.