Acting Comptroller of the Currency Michael J. Hsu

Opening Remarks for the

OCC Bank Merger Symposium

February 10, 2023

Good morning and welcome to the OCC Bank Merger Symposium. It is fantastic to see so many brilliant minds come together to debate the future direction of bank merger policy. I am going to get us started by offering a few rounds of thanks.

First, thanks to all of you who are attending the symposium in person and remotely. I am confident that it will be worthwhile.

Second, thanks to our all our panelists. I know many of you have traveled long distances to be here and taken time away from your busy schedules.

Third, thanks to Prof. Peter Conti-Brown for giving the keynote address, which you'll hear this afternoon, "The Political Complexities of Bank Merger Policy: An Intellectual and Political History." I can't think of a more apt theme to close out today's discussion.

Fourth, thanks to our fellow bank regulators, the Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System, as well as the competition experts from the Antitrust Division of the U.S. Department of Justice. Our collective and sometimes overlapping responsibilities in bank merger reviews mean that it is critical we work together toward a consistent approach. We appreciate your input on the symposium and for acting as the moderators of our four panels.

Fifth and finally, thanks to all the OCC staff, and in particular to Amber Melton and Valerie Song, for making today happen. I know your team put in countless hours of hard work, and it shows.

Before we move to our first panel, I'd like to address two questions: first, why it's important to have a discussion now about bank mergers, and second, why I believe this symposium can help to advance that discussion.

On the first question, bank mergers have received significant attention during my time as Acting Comptroller. There is a robust ongoing debate about the effects of bank mergers on competition, on U.S. communities, and on financial stability. At the same time, many experts have raised questions about the ongoing suitability of the current bank merger standards at a time of intense technological and societal change.

As I've said before, I believe the framework for analyzing bank mergers needs updating.[1] Without enhancements, there is an increased risk of approving mergers that diminish competition, hurt communities, or present systemic risks. By the same token, a moratorium on mergers would lock in the status quo and inhibit growth and improvements that could help communities and increase competition. We need to build a better mousetrap so that healthy mergers get approved while unhealthy mergers get rejected. Importantly, this mousetrap needs to be not only theoretically sound and consistent with our values, but also capable of implementation within the statutory criteria for merger review.

Consider, for instance, the competition prong of the merger review framework. Bank regulators currently use the Herfindahl–Hirschman Index, or HHI, to assess market concentration before and after mergers. The most recent Bank Merger Competitive Review guidelines from the

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[1] Acting Comptroller of the Currency Michael J. Hsu, Remarks before the Wharton Financial Regulation Conference 2022, "Financial Stability and Large Bank Resolvability," Apr. 1, 2022; Acting Comptroller of the Currency Michael J. Hsu, Remarks at Brookings, "Bank Mergers and Industry Resiliency," May 9, 2022.

Department of Justice establish a safe harbor for mergers resulting in HHI levels below 1800 points for a given market with a rise of less than 200 points.[2]

This approach has a number of positive attributes. HHI is a transparent, empirically proven, efficient, and easily understood measure of concentration. The index is objective, based on a consistent measure of market presence based on deposit share. Furthermore, the use of HHI is efficient, in that it is simple to compute and provides ex ante certainty for merger participants.

Nevertheless, in some ways HHI might have become less relevant since the bank merger guidelines were last updated in 1995. For example, the growth in online and mobile banking and rise of nonbank competitors may have made HHI—which is based only on deposits—a less effective predictor of competition across product lines. This is so because a bank's deposit base may have become less probative of its offering of other banking products. In addition, the size of the relevant markets for these products may have expanded exponentially with the rise of online banking products and services, while nonbank competitors have grown to an extent unimagined in 1995. I expect a discussion of the use of deposit share to define markets will be one of many topics our panelists will discuss today.

Another key topic for today will be financial stability, which became a mandatory component of merger analysis following the enactment of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. From my perspective, the current framework for assessing the financial stability risks of bank mergers bears examining. As I discussed in a speech last year at the Wharton School of the University of Pennsylvania, there is a resolvability gap for large

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[2] United States Department of Justice Antitrust Division, Bank Merger Competitive Review – Introduction and Overview (1995).

regional banks in that our resolution tools may not be up to the task.[3] I look forward to hearing perspectives on this issue and potential practical solutions from our panel on financial stability.

Also crucial to merger review is the analysis of a merger's effects on the convenience and needs of communities served, from branch closures to changes in product offerings and terms. An assessment of each bank's Community Reinvestment Act (CRA) performance is of course a critical part of this analysis, and I believe CRA performance and ratings are only a starting point. The OCC has heard many times from bankers and community groups on the value of public feedback and community reinvestment plans in the regulatory assessment of bank mergers. Our panel on convenience and needs will discuss the many ways that we may refine bank merger analysis to improve banking services in communities across the nation.

On the second question of why this symposium can help advance discussion, in my experience, sometimes it takes in-person exchanges of ideas to spur us to action. To that end, we put great care in making sure that each of our panels today represents a range of views and backgrounds, and we left plenty of blank space between panels to allow for spontaneous conversations. I am honored to welcome such a varied and distinguished gathering of thinkers under one roof, and I look forward to putting today's practical idealism into action.

Please enjoy our program!

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[3] Acting Comptroller of the Currency Michael J. Hsu, Remarks before the Wharton Financial Regulation Conference 2022, "Financial Stability and Large Bank Resolvability," Apr. 1, 2022