

## Cabinet News and Views

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### DOJ Antitrust Assistant AG Speaks on Bank Merger Policy



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Earlier this week, Jonathan Kanter, Assistant Attorney General for the Antitrust Division of the Department of Justice (“DOJ”), delivered remarks at the Brookings Institution titled “[Merger Enforcement Sixty Years After Philadelphia National Bank](#).” In his remarks, Assistant AG Kanter noted that the Antitrust Division invited public comment on changes to the 1995 Bank Merger Guidelines, and that the Division is considering the comments received during the two rounds of public comment they requested. He also noted steps the Division is already undertaking.

Said Assistant AG Kanter: “The division is modernizing its approach to investigating and reporting on the full range of competitive factors involved in a bank merger to ensure that we are taking into account today’s market realities and the many dimensions of competition in the modern banking sector.” He went on to note that “[t]hese analyses will include consideration of concentration levels across a wide range of appropriate metrics and not just local deposits and branch overlaps.”

Assistant AG Kanter stated that the division will pay particular interest to two areas as it prepares its competitive factor reports: (1) “the division will closely scrutinize mergers that increase risks associated with coordinated effects and multi-market contacts,” and (2) “the division will carefully consider how a proposed merger may affect competition for different customer segments.” On the first point, smaller community banks will likely be heartened to hear that Assistant AG Kanter believes “we will not limit our analysis to small and local bank acquisitions.”

As we [discussed](#) over a year ago, the banking agencies are also considering updates to their bank merger policies as part of the whole-government response to the President’s [Executive Order](#) in July of 2021. There are some who may be somewhat disappointed in Assistant AG Kanter’s remarks, as they seem to indicate an increasing scrutiny of bank mergers from the DOJ. Some had hoped that a [thawing](#) in bank and financial regulators’ views on bank mergers may have recently occurred in the wake of March and April bank failures. The interaction between

and amongst the DOJ and the banking agencies with regard to bank merger review will continue to be of great interest.

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