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December 7, 2015

Hon. William J. Baer
Assistant Attorney General for the Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Hon. Deborah Feinstein
Director
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: The anti-competitive nature of the proposed KeyCorp/First Niagara Financial Group Merger.

Dear General Baer and Ms. Feinstein:

I expect that you have received or will shortly receive a Hart-Scott-Rodino notice regarding the proposed merger of First Niagara Financial Group (FNFG) into Key Corp. While I am very concerned about the potential negative local employment impact associated with this purchase, I know that the federal authorities cannot interfere with a proposed merger on that basis; anti-trust concerns are the only basis under existing law to stop a merger among banks of this size.¹

I write today to inform you that the above-referenced merger, as presently proposed, would greatly reduce banking competition across upstate New York, to a level which is significant under the mathematical formulae for market competitiveness employed by your agencies (the Herfindahl-Hirschman Index). As such, I argue that the authorities must compel these banks to either cancel

¹ Jim Burke (Senior Economist, Board of Governors of the Federal Reserve System), "Divestiture as an Antitrust Remedy in Bank Mergers", 1998, p. 3,
<http://www.federalreserve.gov/pubs/feds/1998/199814/199814pap.pdf>.

this merger altogether, spin off the upstate FNFG branch network as an independent organization, or sell the upstate FNFG network as a block to an organization without significant operations in upstate New York. Though it has no bearing on your decision making, any of these three options is likely reduce the negative local jobs impact associated with this proposed merger.

Under the market competitiveness formulae employed by your agencies, an index score where the first value is above 1500 and the second value is above 100 “raises significant competitive concerns” and a score above 2500/200 is presumed on its face to be illegally anti-competitive.² In 17 of the 48 upstate counties, the merger fails the 1500/100 “significant competitive concerns” test. In 8 of these counties, the merger fails the more serious 2500/200 test, and must be presumed to be illegally uncompetitive (table is attached).

The results are similar when one uses various alternative methodologies. For example, if one uses the twelve upstate “Bank Markets” as delineated by the Federal Reserve Bank of New York³ as the geographic unit of analysis instead of counties, five of the twelve markets fail the 1500/100 test including Buffalo, the largest market, which also fails the 2500/200 test. While the 1500/100 and 2500/200 tests are based on joint Federal Trade Commission and Department of Justice guidance from 2010 (ibid.), older guidance from the Department of Justice from the year 2000 proscribed a single standard of 1800/200.⁴ The trend continues under this rubric, under which ten counties fail the test as well as the two largest Fed “Bank Markets”, Buffalo and Albany.

The results of the competitive analysis are not surprising when one looks at the raw share of market the proposed new organization would have across upstate New York. The combined bank would have, for example, 40.9% of the market in Rensselaer County, 46.5% in Albany County, 46.8% in Montgomery County, 47.4% in Wayne County, 49.9% in Columbia County and 64.1% in Niagara County.

Thank you very much for your leadership and your consideration regarding this important matter.

Sincerely,



Brian Higgins
Member of Congress

² U.S. Department of Justice and Federal Trade Commission, “Horizontal Merger Guidelines”, August 19, 2010, pp. 18, 19, <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf>.

³ Federal Reserve Bank of New York, “2nd Federal Reserve District Bank Markets”, pp. 3-6, <http://www.newyorkfed.org/banking/mkt-definitions.pdf>.

⁴ United States Department of Justice, “Bank Merger Competitive Review-Introduction and Overview (1995) (current as of 9/2000),” <http://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf>.

Type of Geographic Unit	Geographic Unit	Pre-Merger Score	Post-Merger Score	Δ	2500/200 2010 DOJ/FTC	1500/100 2010 DOJ/FTC	1800/200 Year 2000 DOJ
County	Niagara	2780.8	4587.5	1806.7	X	X	X
County	Franklin	4149.1	4453.0	304.0	X	X	X
County	Fulton	4044.0	4264.7	220.7	X	X	X
County	Erie	3531.5	3929.6	398.1	X	X	X
County	Montgomery	2720.7	3532.0	811.3	X	X	X
County	Columbia	2384.3	3285.6	901.3	X	X	X
County	Cortland	2628.7	2996.6	367.9	X	X	X
County	Albany	2063.4	2688.5	625.1	X	X	X
County	Orleans	1710.5	2234.8	524.4		X	X
County	Rensselaer	1488.4	2200.3	711.9		X	X
County	St. Lawrence	2118.6	2222.3	103.7		X	
County	Schenectady	1838.0	1994.8	156.8		X	
County	Monroe	1701.2	1854.5	153.3		X	
County	Cayuga	1445.3	1782.5	337.2		X	
County	Chautauqua	1544.3	1767.8	223.5		X	
County	Onondaga	1525.4	1744.9	219.5		X	
County	Saratoga	1072.2	1186.3	114.2		X	
2nd Federal Reserve District Bank Markets	Buffalo	3152.8	4737.5	1584.7	X	X	X
2nd Federal Reserve District Bank Markets	Albany	1017.5	2272.6	1255.1		X	X
2nd Federal Reserve District Bank Markets	Franklin	2931.1	3098.1	167.1		X	
2nd Federal Reserve District Bank Markets	Jamestown	1779.3	1933.6	154.3		X	
2nd Federal Reserve District Bank Markets	St. Lawrence	2118.6	2222.3	103.7		X	