STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

ANDREW M. CUOMO
GOVERNOR

February 10, 2016

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Amy S. Friend
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Jeffrey Martino
Chief, Antitrust Division, New York Office
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26 Federal Plaza
Room 3630
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Dear Mr. Alvarez, Ms. Friend, and Mr. Martino,

KeyCorp's ("Key Bank") proposed acquisition of First Niagara Financial Group, Inc. ("First Niagara") raises significant anti-trust concerns that, if allowed to proceed, will have a devastating impact on the retail banking industry and consumer access in Upstate New York. This letter strongly urges you to block the proposed acquisition and supplements the November 10, 2015 letter submitted by my Counsel, Alphonso David.

The proposed acquisition by Key Bank of First Niagara would reduce retail banking competition by limiting consumer access in the Upstate New York region to an unacceptably low level. The consolidation is expected to result in thousands of lost jobs at the corporate and branch levels, with little hope these individuals will find alternative work in the retail banking field due to the oversatured market conditions. In addition to the loss of jobs in local communities, consumers will face further limitations on branch access. As it stands, tens of thousands of Buffalo area residents do not have access to reliable bank deposit services. Eliminating branches will only exacerbate the existing problem.

This conclusion is unequivocally supported by using the Herfindahl-Hirschman Index ("HHI"), a mathematical formula used by the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") in evaluations of the anti-competitive effect of an acquisition application. The HHI index has been used for more than thirty years to ensure that mergers and acquisitions do not result in unhealthy market concentration. A merger or acquisition that fails to meet the standards established by the DOJ and the FTC should be rejected due to anti-trust concerns.

The DOJ and FTC jointly publish their "Horizontal Merger Guidelines." A horizontal merger is a merger involving two or more firms in the same industry, such as Key Bank acquiring First Niagara in Upstate New York. According to the Guidelines, a lower HHI score indicates a healthy banking market. The Guidelines establish that an HHI score of less than 1,500 indicates an "Unconcentrated Market," which is a positive score and reflects a healthy amount of competition. An HHI above 2,500 is considered a "Highly Concentrated Market" and raises anti-trust concerns. In addition to the absolute score on the HHI index, the DOJ and FTC Guidelines recommend an increase of less than 200 on the HHI index during a merger or acquisition. The unifying theme of the Guidelines is that mergers should not be permitted to create, enhance, or entrench market power or to facilitate its exercise.

The proposed acquisition by Key Bank of First Niagara greatly exceeds the numerical standards of what should be acceptable in any marketplace. The Buffalo-Niagara Metropolitan Statistical Area ("MSA") has a pre-merger HHI of 3,157 and the post-merger HHI would be 3,591, a considerable jump of 434 on the HHI. Thus, not only do the pre- and post-acquisition HHI scores significantly exceed the DOJ's standards for a healthy banking marketplace, but the change in the HHI index as a result of the merger is 2.17 times the reasonable limit established by the DOJ and FTC Guidelines. In simpler terms, the proposed merger would lead to Key Bank having an anti-competitive market saturation of approximately one third of the total deposits in the Buffalo area.

In short, Key Bank's acquisition of First Niagara will, by any objective measure, further limit the ability of Upstate New York consumers to access the financial services and products offered by banks. This will likely push consumers to rely on non-bank alternatives, such as payday loans and check-cashing, which come with higher consumer transaction costs.

The impact of this proposed merger runs contrary to the Bank Holding Company Act and Bank Merger Act of 1966, which clearly instructs regulators to deny any proposal with anticompetitive effects unless the regulators find that the impact is "clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."[1] This merger will not lead to increased convenience to the communities impacted. To the contrary, the immediate impact to the community is negative, with lost jobs and branch closures expected as Key Bank consolidates its services.

In light of the above, we reiterate in the strongest possible terms the State's objections to Key Bank's proposed acquisition of First Niagara. If the acquisition application is not blocked, we will be forced to consider legal redress with the courts to protect the rights of New York's Upstate residents.

We look forward to your response to this critical issue as soon as possible.

Very truly yours,

ANDREW M. CUOMO

[1] 12 U.S.C.A. § 1828(c)(5)(B); 12 U.S.C.A. § 1842(c)(2)