

United States Senate
WASHINGTON, DC 20510-3203

April 7, 2024

Mr. Richard Fairbank
Chief Executive Officer
Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102-3491

Dear Mr. Fairbank:

I write regarding Capital One Financial Corporation's (Capital One or your firm) proposed \$35 billion acquisition of Discover Financial Services (Discover), announced on February 19, 2024. This deal, if consummated, would likely create a new powerhouse in the financial ecosystem, and I seek to better understand the competitive effects.

Currently, 80 percent of the U.S. credit card market is dominated by the 10 largest issuers, of which Capital One and Discover are the 4th and 6th largest.¹ This deal would add Discover's network of 305 million cardholders to your firm's 100 million customers, making the combined bank the largest credit-card issuer in the United States, according to some reported metrics.² Excessive market concentration has historically harmed consumers as larger issuers tend to charge consumers higher interest rates than smaller issuers.³ Big banks may also wield even higher market power in subsegments of the industry. The competitive analysis that Capital One and Discover provided to our banking regulators on March 20, 2024, asserts that the national market for credit-card issuance is fragmented without considering how competition operates in smaller markets. This is a significant factor in antitrust law because certain customer types may not view all competing products as substitutes, and some of your companies' products may be designed to appeal to or maintain specific demographics. Thus, I would like to examine the competitive landscape on narrower bases.

While the Department of Justice, the Federal Reserve, and the Office of the Comptroller of the Currency (OCC) will assess the potential anticompetitive or other harmful effects this transaction may produce, Congress also has a duty to investigate whether its laws are functioning as intended or need to be updated. We passed the Clayton Act in 1914, prohibiting any acquisition whose effect "*may be substantially to lessen competition*"⁴ in any line of commerce.

¹New York Times, "What to Know About Capital One's Proposed Acquisition of Discover," Santul Nerkar and Emily Flitter, February 20, 2024, <https://www.nytimes.com/2024/02/20/business/capital-one-discover-what-to-know.html>.

²New York Times, "What to Know About Capital One's Proposed Acquisition of Discover," Santul Nerkar and Emily Flitter, February 20, 2024, <https://www.nytimes.com/2024/02/20/business/capital-one-discover-what-to-know.html>.

³Axios, "The problem with big credit card companies," Felix Salmon, February 19, 2024, <https://www.axios.com/2024/02/20/problem-big-credit-card-companies>

⁴ 15 U.S.C. 18 (emphasis added).

We passed the Bank Holding Company Act in 1956 and Bank Merger Act in 1960, along with several subsequent amendments, to prohibit anticompetitive bank mergers as well as require the Federal Reserve and the OCC to consider whether proposed mergers would meet the needs of communities to be served.⁵ Nevertheless, there appears to be excessive concentration in the banking industry – consolidation incompatible with the legislative intent of those statutes and controlling judicial interpretations. In the 1960s, the Supreme Court held in *United States v. Philadelphia National Bank* that a merger resulting in a firm with at least thirty percent of a relevant market would likely be unlawful under the Clayton Act.⁶ Some proponents of this merger have argued that this deal would enable the new firm to unlock new efficiencies and compete more vigorously against Visa and Mastercard in the payment-network sector;⁷ however, the Supreme Court has also held that “possible economies [from a merger] cannot be used as a defense to illegality.”⁸ Thus, additional concentration – beyond acceptable levels – is a concern in spite of any alleged procompetitive synergies.

In order to better understand the possible implications of this proposed transaction, I request responsive information to the following by April 21, 2024:

1. Please identify your firm’s 10 largest competitors overall in the credit-card issuer market.
 - a. Please also include breakdowns by borrower risk profile, including deep subprime, subprime, near-prime, prime, and super-prime (or other similar categories).
2. For each company identified in Request 1, please estimate the company’s market share.
3. Please share any market studies or reports (whether prepared internally or by third parties) that discuss competitive dynamics or market shares in the relevant markets.
4. Please identify and quantify any procompetitive efficiencies or synergies the transaction is expected to produce.
 - a. For each identified efficiency or synergy, please identify the population or entities expected to benefit.
5. Will this transaction lead to any employee layoffs at your firm or Discover?
6. What commitments has your firm made regarding post-merger employee layoffs?

⁵ 12 U.S.C. 1828; 12 U.S.C. 1842.

⁶ 374 U.S. 321, 364-65.

⁷ Wall Street Journal, “Capital One Calls Discover’s Credit Card Network a ‘Holy Grail,’” Kailyn Rhone, February 20, 2024, <https://www.wsj.com/livecoverage/stock-market-today-dow-jones-earnings-02-20-2024/card/capital-one-calls-discover-s-credit-card-network-a-holy-grail--FAEERZoazyB6PV0gplbK>.

⁸ 374 U.S. 321, 371.

7. For each of the last 10 years, please indicate your firm's median (i) annual percentage rate (APR) and (ii) annual fee for credit-card holders.
 - a. Please also include breakdowns by borrower risk profile, including deep subprime, subprime, near-prime, prime, and super-prime (or other similar categories).
 - b. Please also include breakdowns by borrowers' race or ethnicity.
 - c. Please also include breakdowns for rural areas and urban areas.
8. Please describe any planned or anticipated increases in advertising post-merger.
9. Please share any strategy documents or presentations (whether prepared internally or by third parties) that explain the rationale for this transaction.

Sincerely,



Charles E. Schumer
United States Senator