ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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October 29, 2008

Secretary Henry Paulson, Jr.
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20530

Chairwoman Sheila C. Blair
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Chairman Benjamin S. Bernanke
Board of Governors of the Federal
Reserve System
20th and C Streets, NW
Washington, DC 20551

Comptroller John C. Dugan
Office of the Comptroller of the Currency
Administrator of National Banks
250 E Street, SW
Washington, DC 20219

Mr. Thomas O. Barnett
Assistant Attorney General for Antitrust
Department of Justice, Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Director John M. Reich
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Messrs. Paulson, Bernanke, Barnett, Dugan, Reich, and Chairwoman Blair:

We are writing regarding recent disclosures that funds approved by Congress pursuant to the Emergency Economic Stabilization Act of 2008 are not being used to acquire troubled assets or facilitate lending in these troubled times, but largely to facilitate acquisitions by preferred banks of other, smaller banks. While we certainly understand and appreciate the fact that difficult financial times may lead to some industry-wide consolidation, it is unusual, if not unprecedented, for the federal government not only to arbitrate the consolidations, but to affirmatively take sides by funding specific acquisitions. Furthermore, we are concerned that the antitrust laws may be ignored in the rush to consolidate and that antitrust enforcement may be prejudiced by the government's actions.

Under the Troubled Asset Relief Program, Congress authorized $700 billion for the Treasury to buy troubled assets to prevent disruption in the economy.[1] A little over one week

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[1]Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008).

after the Act was passed, the Administration decided that it would use some of these funds to recapitalize some banks by buying shares in the Nation's leading banks. As stated by President Bush, "This new capital will help healthy banks continue making loans to businesses and consumers. And this new capital will help struggling banks fill the hole created by losses during the financial crisis, so they can resume lending and help spur job creation and economic growth."[2]

Despite this stated intention, it has been reported that the banking industry "has no intention of using the money to make new loans"[3] and that one of the principal purposes of providing funds under the bailout legislation was to drive consolidation. Having obtained access to a conference call among JP Morgan employees and executives on October 17, *New York Times* reported that a JP Morgan executive said the cash infusion would "help us ... be a little bit more active on the acquisition side or opportunistic side for some banks who [sic] are still struggling ... I think there are going to be some great opportunities for us to grow in this environment, and I think we have an opportunity to use that $25 billion in that way and obviously depending on whether recession turns into depression or what happens in the future, you know, we have that as a backstop."[4] Anonymous sources in the Treasury confirmed that "[o]ne purpose of this plan is to drive consolidation,"[5] while yesterday's *Wall Street Journal* reported that banks had acknowledged that "only a small chunk of [bailout] money would be funneled into loans."[6]

In particular, it appears that the Federal government may be picking which banks will survive and which will either fail or be primed for a buyout by a larger bank. Last Friday, PNC Financial Services Group Inc. announced that it would purchase National City Corp and is using $7.7 billion of the bailout fund to help make the acquisition. Media accounts have revealed that "some of that $7.7 billion would have gone to NatCity if the government had deemed it worth saving."[7] National City Corp. reportedly agreed to the deal because it feared "it could not survive

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[2]President George W. Bush, Address at the Rose Garden Regarding the Economy, (Oct.14, 2008).

[3]Joe Nocera, *So When Will Banks Give Loans?*, N.Y. TIMES, Oct. 25, 2008, at B1.

[4]*Id.*

[5]Mark Landler, *U.S. Is Said to Be Urging New Mergers in Banking*, N.Y. TIMES, Oct. 21, 2008, at B1.

[6]David Enrich, *et al.*, *Much Bank Aid May Not Go to Loans*, WALL ST. J., Oct. 28, 2008, at C1.

[7]Joe Nocera, *So When Will Banks Give Loans?*, N.Y. TIMES, Oct. 25, 2008, at B1.

the stigma of the government's rejection."[8] The Mayor of Cleveland, Frank G. Jackson, stated that "if the government had agreed to invest in National City, 'we would not be having this conversation.'"[9]

This acquisition could prove economically problematic for Ohio. In northeastern Ohio, where National City Corp. has 8,000 employees, thousands of jobs may be cut.[10] Cleveland Mayor Jackson likened the departure of National City to "the loss of a steel mill or other major employer, as well as a stalwart corporate citizen that has been engaged in almost every philanthropic endeavor in the city."[11]

Of particular concern to the Judiciary Committee is the potential anticompetitive consequences of these matters – namely, that large national banks could use taxpayer money to entrench their dominant positions while eliminating competition and reducing consumer choice. Under the Bank Merger Acts of 1960 and 1966[12] and the Bank Holding Company Act,[13] banks seeking to merge require preliminary approval from the federal entity (Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the FDIC, or the Office of Thrift Supervision) overseeing that category of banks. The federal entity is instructed to take into account Section 7 of the Clayton Act (prohibiting mergers and acquisitions that tend to lessen competition). Each regulatory agency is required to obtain a report from the Department of Justice before approving a commercial bank merger and the Federal Reserve obtains similar reports when reviewing banking holding company mergers. After preliminary approval has been granted, the Attorney General typically has thirty days in which to file an injunction to block the merger; if no injunction is filed, the merger is immunized from further antitrust suit. These laws were passed assuming that the banks were operating under free market conditions. They did not anticipate that the federal government would be providing billions of dollars in spending money

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[8]Michael A. Fletcher, *Takeover by PNC Heralds Fall of a Cleveland Institution*, WASH. POST., Oct. 25, 2008, at A01.

[9]*Id.*

[10]Chris Knape, *PNC Financial purchase of National City banks expected to have minimal impact in Michigan,* GRAND RAPIDS PRESS, Oct. 24, 2008.

[11]*Id.*

[12]Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129 (1960), amended by Act of Feb. 21, 1966, Pub. L. No. 89-356, 80 Stat. 7 (1966) (codified as amended at 12. U.S.C. § 1828).

[13]Bank Holding Company Act of 1956, Pub. L. No. 109-41, 70 Stat. 133 (codified as amended at 12 U.S.C. §§ 1971-78, 1841-1850).

to the largest market players at the expense of smaller competitors, and potentially to the detriment of bank customers.

Because of the concerns detailed above, we request the following information from you:

Questions for the Federal Reserve, Department of Treasury, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision

1. Please detail what conditions have or will be imposed upon the use of the federal funds provided to PNC Financial Services Group or any other financial entity through the Emergency Economic Stabilization Act. Describe and explain any factors taken into account when federal tax dollars are being used to help fund an acquisition of another firm. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) from September 2008 onward relating to any aspect of the foregoing.

2. Please detail the methodology and criteria that were considered in connection with the possible transfer of federal funds through the Emergency Economic Stabilization Act to National City Corporation as compared to the other regional banks for which you recently approved funding. Also, please describe the extent to which any impact on National City Corp.'s customers and employees as well as the relevant local economy was taken into consideration with regard to approval or denial of funds to National City and the proposed acquisition of National City by PNC. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) from September 2008 onward relating to any aspect of the foregoing.

3. As noted above, the press has recently reported that the banking industry "has no intention of using the [bailout] money to make new loans"; the Treasury has acknowledged that one of their principal motives in allocating the funds is to "drive consolidation"; and a JP Morgan official acknowledged that the bailout funds would allow them to be "more active on the acquisition side." Please detail any knowledge by your departments or agencies of these matters, as well as any discussions or understandings you may have regarding the use of the funds the government is providing and their possible use with regard to mergers and consolidations. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) from September 2008 onward relating to any aspect of the foregoing.

Question for Department of Justice, the Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision

4. Please detail the manner in which antitrust considerations generally have been and are being taken into account in recent consolidations, and particularly in the proposed acquisition of National City Corp. by PNC Financial Services Group. Please detail how the antitrust review is impacted by the fact that the Treasury or Federal Reserve, their employees and/or representatives may have participated in discussions involving the possible acquisition of one financial entity by another financial entity. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) relating to any aspect of the foregoing.

We ask that you provide the requested documentary materials and other information to us by Monday, November 10, 2008. Responses and any questions should be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation in this matter.

Sincerely,

John Conyers, Jr.
Chairman

Betty Sutton
Member of Congress

cc: The Honorable Lamar S. Smith
The Honorable Barney Frank
The Honorable Spencer Bachus