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Antitrust Implications of Capital One-Discover Merger Harm Consumers, Merchants, and Communities

The proposed Capital One takeover of Discover would create a mammoth bank that would undermine competition, raise prices, and harm consumers. Antitrust and banking regulators should make every effort to block the transaction. The merger would combine Capital One's 359-branch bank with Discover's credit and debit card networks to create the fifth-largest bank by deposits and sixth-largest by assets.

The merger would create the biggest credit card lender — holding nearly one-third of credit card loans to consumers with non-prime credit scores — and put Capital One in a position to use its market power to raise prices on virtually captive consumers. The unique vertical elements of the merger — combining a bank with a credit and debit card network — would entrench Capital One as a dominant high-cost credit card issuer and raise costs for merchants and consumers. Far from injecting competition into credit card markets, it would merely re-arrange the oligopoly and would *worsen* competition as Capital One's higher-prices displaced Discover's more affordable cards.

Horizontal merger of credit card lenders would substantially lessen competition and harm consumers: The merger would create the biggest credit card lender with 75 million cardholders and $250 billion in loans — 22% of total credit card loans. After the merger, the top four credit card lenders would hold nearly two-thirds (64.5%) of outstanding debt. Concentration would jump substantially and become more acute in the non-prime credit card market where the combined firm would hold more than 30% of loans — an increase and concentration level that is presumptively violative of antitrust laws under the 2023 merger guidelines. Capital One would have the market power to raise prices, especially for the Discover cardholders who now pay interest rates that are two percentage points lower than what Capital One charges.

Consumers are vulnerable to credit card price hikes because they cannot easily switch to another credit card. Unlike many other products or services, consumers must *apply* for a credit card and more than half of all applications are rejected; 83% of applications by those with subprime credit scores are rejected. Even if consumers secure a new credit card, switching can have hidden costs (balance transfer fees and loss of accumulated rewards) or harm their credit scores (increased credit utilization, shortening credit history, even searching for a new credit card) which would all raise costs. Capital One cardholders are effectively captive consumers that cannot avoid price increases, especially for cardholders with non-prime credit scores and/or significant outstanding balances.

Consumers with non-prime credit scores — disproportionately Black and Latine — have fewer credit card options, have more difficulty securing credit cards, and are more susceptible to the imposition of higher fees and penalty interest rates. The merger would eliminate the current rivalry between Capital One and Discover for customers with non-prime credit scores. Consumers with non-prime scores — current cardholders of the merged company and those seeking credit cards — would likely face fewer choices and higher prices.

Merger would worsen competition in branded credit cards: The merger would increase already concentrated branded credit card market power by eliminating Discover, which now offers credit cards with lower prices and better customer service. Contrary to Capital One's contention that the merger would foster credit card competition, the merger would merely rearrange which firms dominate the hyper-concentrated industry and supplant Mastercard with a vertically-integrated credit card network that would also be a top 10 bank. Most of Capital One's credit cards are on the Mastercard network; when Capital One shifts those accounts to Discover it will essentially trade positions with Mastercard, giving Capital One the market power to entrench anticompetitive prices and practices. Antitrust authorities are rightly skeptical of unverified promises of efficiency gains and pro-competitive effects, and they do not erase or outweigh the anticompetitive impacts of the merger. Most of the merger's efficiencies and savings will likely be captured as profits, not shared with cardholders.

Merger would enable Capital One to dodge debit interchange fee caps: The merger would allow Capital One to evade federal debit interchange fee caps by shifting its debit business to Discover's debit network and impose anticompetitive and higher prices on merchants, which get passed on to consumers. (Due to an exemption in regulations implementing the Durbin Amendment, federal debit interchange fee caps do not apply to Discover because it both owns the network and issues the debit cards.) Capital One's CEO highlighted that the debit interchange fee caps "explicitly exclude networks like Discover" and planned to shift all its debit cards to Discover, which currently charges interchange fees that are *double* the fees banks are allowed to charge. Capital One estimates the shift to Discover would generate $1.2 billion in higher revenues and efficiencies, in part from higher interchange fees which will be paid by merchants and passed on to consumers.

Merger would create a data monopoly that would erode consumer privacy: The merger would increase Capital One's control of consumer data and enable it to extract and exploit consumers' personal information and undermine their privacy, especially for the 300 million Discover cardholders whose data would be shifted to Capital One's weaker privacy policies. Capital One deploys its data collection, aggregation, and analytics in 80,000 annual experiments to test consumers' willingness-to-pay (the upper limits of what interest rates and fees they would accept) in order to lock in higher prices and extract economic value from its consumers.

For more information, see AFREF's [The Anticompetitive Effects of the Capital One-Discover Merger]