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RBC deal for HSBC may hurt competition

Federal authorities reviewing proposed $13.5-billion merger of lenders

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HSBC Canada has only a small share of the country's mortgage market, but in recent years it has carved out a reputation as a scrappy competitor, advertising lower rates than the big banks and often forcing them to match or at least reduce their offerings.

That could all go away if RBC's $13.5-billion deal to acquire the Canadian division of global bank HSBC wins federal approval, and experts say there's little in Canada's competition law that could justify stopping the transaction.

Federal authorities, including the Competition Bureau and the banking regulator, are reviewing the merger, announced in November, and the minister of finance will make the final call on the deal that would see RBC buy Canada's seventh-largest lender.

The bureau wrapped up a call for public input on the merger in June while the finance department just extended a deadline on its own consultation until July 21. And against the backdrop of those ongoing reviews came news this week that Laurentian Bank is conducting a strategic review that could lead to its sale and even more consolidation in the industry.

Ottawa blocked a pair of mergers involving four of the country's largest banks in the late 1990s, but with a smaller player like HSBC now in the spotlight, Keldon Bester said he's "not optimistic" that either the Competition Bureau or the minister will stop the merger despite how it could change the competitive dynamics in the mortgage market.

"The bureau is very unlikely to be able to block the transaction because of how our law discounts the role of small, aggressive competitors," said Bester, co-founder of the Canadian Anti-Monopoly Project.

The Competition Bureau's merger review guidelines state that the watchdog will not generally challenge a transaction when the merged firm would control less than 35 per cent of the market.

RBC is Canada's biggest bank, but with five other major players, it doesn't control an overwhelming amount of the market. A Barclays report from January pegged RBC's share of overall domestic deposits at 22 per cent and its share of domestic lending at 21 per cent.

Combine that with HSBC's share of about two to three per cent, depending on the type of banking product, and you still don't get close to that 35-per-cent threshold.

But mortgage strategist Rob McLister argues that HSBC has an outsized influence on the market and he urged the bureau to take that into account in a submission he filed as part of the consultation.

"HSBC has been like a godsend for mortgage consumers since it started its everyday low-pricing model in 2016," McLister said. "Its small market share really belies its impact on the market overall... its real value to the market is it gets non-HSBC customers better deals."

"If HSBC didn't exist, people wouldn't have as much ammunition to use in rate negotiations," he said, adding that the other lenders, who still want to be seen as competitive, also often lower their own rates to something close to the HSBC rates.

Jennifer Quaid, a competition law professor at the University of Ottawa's Civil Law Section, said the bureau will analyze the merged company by both geographic area and product type, and it's possible that combining the two banks' shares could be problematic in some places but not others.

HSBC Canada has more than 130 branches and about 800,000 customers, and its operations are heavily concentrated in urban areas where it often serves clients with international roots, particularly Vancouver and the lower mainland in British Columbia and the Greater Toronto Area.

"If RBC is able to work out some sort of conditions, or things they will do differently for those markets, then probably the deal will go through," Quaid said.

When RBC announced the deal in late November, CEO Dave McKay suggested that adding his bank's market share to HSBC's in various markets across the country would not hinder competition.

"We are not aware of any areas where the bureau is likely to have concerns and are not aware of any reason why competition clearance will not be received," he said on a conference call.

"In the big scheme of things... this is still a relatively small bank by market share of two per cent or less," he continued. "And therefore, as we go through and look at whether it's by product, by geography, we don't have any reason to believe right now... that there should be concerns."

A coalition of climate-focused not-for-profit groups have also written to the bureau to protest the merger. They have criticized RBC's refusal to divest from fossil fuel investments and note that while HSBC globally said in December it would stop financing for many oil and gas projects, the bank excluded its Canadian division from that policy change owing to the RBC takeover process.

For its part, RBC maintains that it is committed to taking action to combat climate change and working with its clients to reduce their carbon emissions. On the HSBC deal, spokesperson Andrew McGrath said one of the reasons the acquisition was attractive to RBC was because of HSBC's own offerings in sustainable finance.

"We know that the minister of finance's main priority is to protect the public interest and ensure the safety and soundness of Canada's financial system," McGrath said, adding that the proposed deal supports that priority "by keeping more of Canada's financial sector under Canadian ownership."

Quaid said it is unlikely that the bureau would place much weight on climate-related concerns but added that the finance minister could take such factors into account as part of a consideration of the broader public interest.

Still, she said, the biggest factor for the government is likely to be the strength of Canada's banking sector.

"I don't think green concerns or even a little bit of concentration will bother them over the reliability and stability of the banking system."