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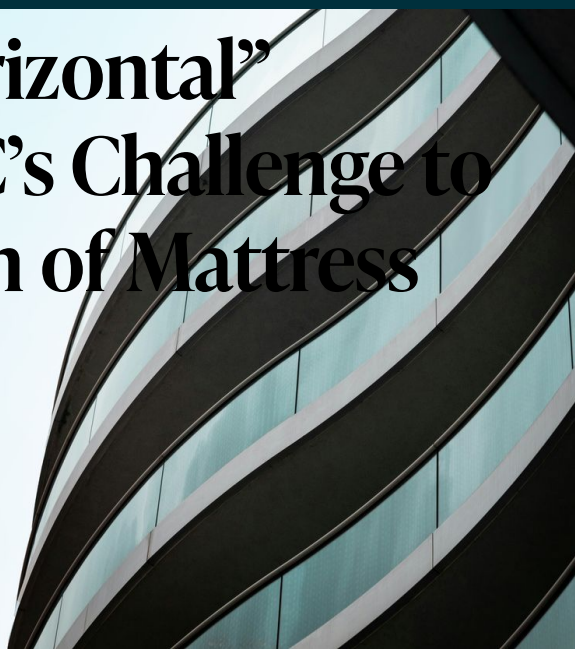
A Vertical Merger in a "Horizontal" Market: Court Rejects FTC's Challenge to Tempur Sealy's Acquisition of Mattress Firm



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On January 31, 2025, the U.S. District Court for the Southern District of Texas denied the Federal Trade Commission's request for a preliminary injunction to block Tempur Sealy's (the world's largest mattress manufacturer) proposed acquisition of Mattress Firm (the largest U.S. mattress retailer with over 2,300 stores). With the FTC opting not to seek emergency relief from the Fifth Circuit, the deal closed on February 5, 2025.

Key Takeaways

- **Courts Remain Skeptical About Predicting Harm to Consumers from Vertical Mergers**
  The *Tempur Sealy* ruling underscores the judiciary's cautious stance on vertical merger enforcement. The court did not cite the 2023 Merger Guidelines but instead referenced Areeda & Hovenkamp, emphasizing that vertical integration "virtually never poses a threat to competition when undertaken unilaterally and in competitive markets." Judge Eskridge also accepted arguments that the merger would eliminate double marginalization (EDM) without requiring further proof that cost savings would be passed on to consumers.

  This decision adds to a series of agency losses in vertical merger cases, including *Microsoft/Activision* (2023), *UnitedHealth/Change Healthcare* (2022), and *AT&T/Time Warner* (2018). While the FTC successfully blocked Illumina/Grail (2023), outright litigation victories in vertical cases remain rare. However, regulatory scrutiny has led some companies—like

Lockheed Martin/Aerojet Rocketdyne (2022) and *NVIDIA/Arm* (2022)—to abandon vertical deals rather than endure prolonged legal battles.

- **Unilateral Commitments Matter**
  Courts have been receptive to unilateral commitments made by merging firms, even without formal consent decrees. In *FTC v. Tempur Sealy*, just like prior vertical merger challenges *UnitedHealth/Change*, *Microsoft/Activision*, *AT&T/Time Warner*, the court credited these assurances.

- **Market Definition Must Reflect Economic Reality**
  The court rejected the FTC's narrow market definition of "premium mattresses" priced above $2,000, emphasizing that consumers shop across price points and industry participants do not universally recognize such segmentation. This contrasts with the recent *Tapestry* case, where the FTC successfully argued for an "accessible luxury" handbag market, showing that courts may be more likely to credit functional and industry-based distinctions rather than seemingly arbitrary pricing thresholds.

Background

In July 2024, following a unanimous (i.e., bipartisan) 5-0 vote, the FTC filed an administrative complaint and sought a preliminary injunction to prevent Tempur Sealy, from acquiring Mattress Firm. The FTC argued that the merger would reduce competition by enabling Tempur Sealy to disadvantage rival mattress brands at Mattress Firm retail locations, thereby limiting consumer choice and raising prices.

In particular, the agency alleged that Tempur Sealy's control over Mattress Firm would allow it to restrict shelf space for competitors, raise their wholesale costs, or otherwise hinder their ability to compete. The FTC contended that these actions could result in higher prices, reduced innovation, and weakened competition in the premium mattress market.

A seven-day evidentiary hearing in November 2024 featured testimony from industry executives, economists, and competing mattress brands. The FTC relied on economic models to predict higher prices and foreclosure risks, while Tempur Sealy presented evidence of procompetitive efficiencies and a remedial commitment to maintaining a multi-brand retail strategy at Mattress Firm.

In a 115-page opinion, Judge Charles Eskridge ruled that the FTC failed to demonstrate that the merger was likely to substantially lessen competition in a properly defined market and denied the injunction.

Key Findings

A. Market Definition: Court Rejects FTC's Narrow "Premium Mattress" Market

The FTC sought to define the relevant market as "premium mattresses" priced above $2,000, arguing that Tempur Sealy held a dominant position in this segment. However, the court

rejected this narrow market definition as arbitrary and inconsistent with commercial realities, relying on the *Brown Shoe* framework.

The court emphasized that price alone does not define an antitrust market, citing *Brown Shoe Co. v. United States*, which requires analyzing interchangeability and cross-elasticity of demand. It found that:

- Consumers frequently shop across price points, making price an insufficient market differentiator.
- Retailers do not use a uniform price cutoff to define "premium" mattresses—some set the threshold at $1,500, while others include products as low as $1,000.
- The FTC failed to prove that mattresses priced below $2,000 were not competitive substitutes, undermining its claim that a distinct "premium mattress" market exists.

"The evidence on the whole doesn't support a bright-line distinction of that sort based so rigidly on price," the court concluded. The court distinguished its analysis from the recent *Tapestry/Capri* (2024) case, where the FTC successfully defined "accessible luxury" handbags as a distinct market. In *Tapestry*, industry consensus, material and craftsmanship differences, and strong brand recognition supported a separate market definition. By contrast, in *Tempur Sealy*, the court found that:

- Mattress quality exists on a continuum, with no clear segmentation.
- Industry players had varying definitions of "premium," unlike the clear agreement seen in Tapestry.
- There were no separate production facilities or customer bases for high-end mattresses, further undermining the FTC's market claim.

The court also rejected the FTC's hypothetical monopolist test for defining the "premium mattress" market. The FTC's expert claimed a 5-10% price increase on premium mattresses would be profitable because consumers would not switch to lower-priced alternatives. However, the court found that consumers frequently move between price segments due to discounts, promotions, and financing options. The FTC's test failed to account for temporary price fluctuations, which can shift a mattress in or out of the proposed premium category.

On the geographic market, the FTC argued that mattress sales—especially premium ones—occur in a national market. While the court did not reject this outright, it found that local competition weakened the FTC's market foreclosure theory. Many mattress sales happen through localized retail competition among Mattress Firm, independent stores, department stores, and direct-to-consumer brands. Pricing varies significantly by region due to local demand, store promotions, and competitor presence.

The court held that the FTC's failure to establish a relevant antitrust market was fatal to the request for a preliminary injunction. Nonetheless, the court proceeded to analyze the transaction's competitive effects.

B. Court's Analysis of Foreclosure Theory

The FTC's primary theory of harm was customer foreclosure, arguing that Tempur Sealy would use its control of Mattress Firm to disadvantage rival mattress manufacturers. Although the court found that the merged firm would have the ability and incentive to foreclose Tempur Sealy's rivals, the court held that the merger would nonetheless not substantially harm competition.

The court further rejected the FTC's economic model as unreliable due to flawed assumptions that dismissed the potential for elimination of double marginalization. Specifically, the model incorrectly assumed that retailers exert the same effort to sell a mattress regardless of the retail margin and that wholesale and retail margins maintain a fixed percentage relationship—both of which were contradicted by market evidence and contracts. The court noted that correcting these errors led to a model predicting lower, not higher, post-merger prices.

Further, the court highlighted the availability of alternative retail channels for competing mattress brands, including direct-to-consumer sales, department stores, and rival furniture retailers. This weakened any argument that Tempur Sealy could meaningfully constrain competition by limiting access to Mattress Firm.

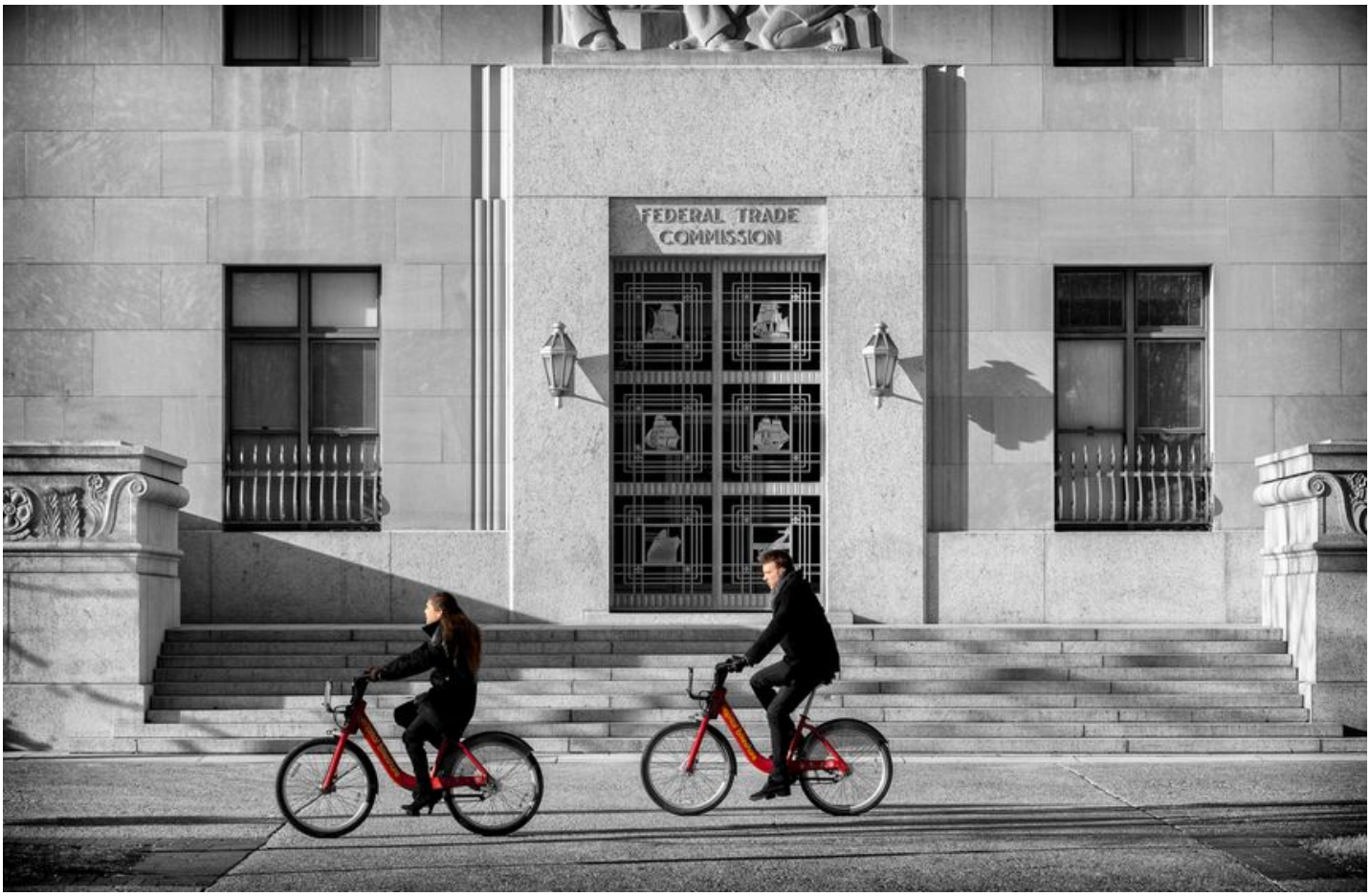
Tempur Sealy's past separation from Mattress Firm (2017–2019) also undercut the FTC's argument. Despite losing a key retail partner during that period, Tempur Sealy remained competitive through other channels, suggesting any potential foreclosure would not significantly harm market competition.

Additionally, the court emphasized that two remedial commitments by the defendants "resolved any lingering concern":

- **Divestiture to Mattress Warehouse** – The sale of certain stores to a smaller competitor to reduce potential foreclosure concerns.

- **Slot Reservation and Supply Agreements** – A commitment to keep a portion of Mattress Firm's floor space available for third-party mattresses priced at $1,500 and above for at least five years, along with post-merger supply agreements with various suppliers, including an open offer to Serta Simmons.

The court rejected the FTC's argument that these commitments were unenforceable, emphasizing that while the defendants are not legally required to follow them, "Defendants would choose to ignore such representations at their own peril." The court also noted that the FTC or any affected competitor could later challenge the enforceability of these commitments through proper legal action if needed.



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