



Office of Commissioner
Melissa Holyoak

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Statement of Commissioner Melissa Holyoak

In the Matter of Tempur Sealy International, Inc. and Mattress Firm Group Inc.
Matter Number 2310016
July 2, 2024

Vertical mergers do not eliminate head-to-head competition¹ and—compared to horizontal mergers—are more likely to generate efficiencies that prevent anticompetitive effects.² “For example, vertical mergers often benefit consumers through the elimination of double marginalization, which tends to lessen the risks of competitive harm.”³ Despite the increased likelihood of procompetitive effects from vertical mergers, they may still result in harm in some circumstances. Consistent with these well-established economic principles, I vote in favor of filing this complaint based upon the substantial evidence generated by staff’s thorough investigation, especially the parties’ own ordinary-course documents. I have reason to believe that the effect of Tempur Sealy’s acquisition of Mattress Firm “may be substantially to lessen competition.”⁴

¹ See, e.g., *Ohio v. Am. Express*, 585 U.S. 529, 543 n.7 (2018) (“[V]ertical restraints are different. Vertical restraints often pose no risk to competition.” (citation omitted)); *United States v. AT&T*, 916 F.3d 1029, 1032 (D.C. Cir. 2019) (“[U]nlike horizontal mergers, the government cannot use a short cut to establish a presumption of anticompetitive effect through statistics about the change in market concentration, because vertical mergers produce no immediate change in the relevant market share.”); Francine Lafontaine & Margaret E. Slade, *Presumptions in Vertical Mergers: The Role of Evidence*, 59 REV. INDUS. ORG. 255, 256 (2021) (“[T]here is not a direct expectation that vertical mergers will lead to higher prices for consumers.”).

² John Kwoka, *The Changing Nature of Efficiencies in Mergers and in Merger Analysis*, 60 ANTITRUST BULL. 231, 242 (2015) (“These cost savings may take several forms: The information and transactions costs of using the market can be avoided. Supply can be ensured and stages of production can be better coordinated by vertical integration. And integration can eliminate the problem of ‘double marginalization’ wherein an independent downstream stage can mark up the upstream markup and create a distortion to the firm as well as the market. All of these and more can result in cost savings to the merging firm and very possibly to consumers as well.”); see Philip Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 1000a (4th & 5th ed. Supp. 2018-2023) (“Against those possible harms [of vertical mergers], however, must be set the likelihood that a vertical merger will promote efficiencies or other procompetitive benefits, which must be regarded as even more substantial than the efficiencies flowing from horizontal mergers.”).

³ U.S. Dept. of Just. & Fed. Trade Comm’n, *Vertical Merger Guidelines* at 2 (Jun. 30, 2020). Notably, the 2023 Merger Guidelines relegate the elimination of double marginalization (“EDM”) to one footnote. See U.S. Dept. of Just. & Fed. Trade Comm’n, *Merger Guidelines* at 16 n.31 (Dec. 18, 2023). Scholars question the agencies’ recent skepticism of EDM. See Carl Shapiro & Herbert Hovenkamp, *How Will the FTC Evaluate Vertical Mergers?* ProMarket (Sep. 23, 2021), <https://www.promarket.org/2021/09/23/ftc-vertical-mergers-antitrust-shapiro-hovenkamp/> (“EDM applies (a) to multi-product firms, (b) regardless of whether the firms at either level have monopoly power or charge monopoly prices, and (c) regardless of whether the downstream production process involves fixed proportions. All of this has been included in economics textbooks for decades While EDM does not save every vertical merger, it should be part of any vertical merger inquiry and is not nearly as limited as the majority’s statement suggests.”).

⁴ 15 U.S.C. § 18.