FTC Blocks Tapestry/Capri 'Affordable Luxury' Deal, but Court Applies Traditional Horizontal Merger Analysis

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On October 24, 2024, the Federal Trade Commission (FTC) succeeded in blocking the proposed merger of Tapestry and Capri Holdings, which would combine popular fashion brands such as Coach, Kate Spade and Michael Kors.

Following several losses in recent merger enforcement challenges, the decision marks a noteworthy victory for the FTC. Nonetheless, this decision is largely consistent with a conventional review of horizontal mergers, as it places a particular emphasis on the companies' internal documents.

The decision also dodges the more novel theories of harm advanced by the new Merger Guidelines. Accordingly, this case is unlikely to signal a significant step toward the interventionist enforcement approach that the antitrust regulators are seeking. See our December 21, 2023, client alert "DOJ and FTC Release Final 2023 Merger Guidelines Formalizing Aggressive Merger Enforcement Playbook."

The Case

In April, the FTC sued to halt Tapestry's $8.5 billion acquisition of Capri Holdings. The FTC alleged that merging Tapestry-owned brands Coach and Kate Spade with Capri's Michael Kors would hinder competition in the market for "accessible luxury" handbags. In its complaint, the government alleged that the parties are head-to-head competitors in the sale of such handbags, which "boast quality leather and craftsmanship (as distinguished from mass-market handbags) at an affordable price (as distinguished from true luxury handbags)." Describing the brands' "laser-like focus on each other," the FTC argued that the merger would deprive consumers of fierce competition on discounts, price, promotions, innovation, design, marketing, and employee wages and benefits.

The Decision

The Southern District of New York granted the FTC's request for a preliminary injunction of the merger. Affirming the FTC's market definition, the court found "accessible luxury" handbags distinguishable from "mass-market" and "true luxury" bags. The court applied the Brown Shoe factors to determine that "accessible luxury" bags comprise a distinct market, as these bags are typically constructed from comparable materials, manufactured in Southeast Asian production facilities, discounted in similar ways, and considered "good-quality" products sold at affordable prices.

While the defendants challenged this definition as "arcane" and "gerrymandered," the court pointed to a litany of ordinary course documents where the defendants themselves used the "affordable luxury" term. Documents also played a significant role in the court's ultimate conclusion that the deal would harm competition.

In concluding that Tapestry and Capri have a "deep competitive focus on each other's brands," the court highlighted internal communications and strategic documents that describe Michael Kors as Coach's closest competitor and vice versa. To demonstrate competition on price, the opinion references documents showing that defendants closely monitored and responded to each other's pricing actions. In particular, the court focused on a Tapestry presentation outlining M&A prospects, which included a slide suggesting that a merger with Capri would create an "opportunity to reduce MK discounting."

The court also determined that the parties compete on marketing strategies, referencing various communications where Michael Kors executives tracked and reacted to Coach's actions in the marketplace. Ultimately, the court ascribed greater credibility to the various documents than the trial testimony of the merging parties, which it deemed "self-serving." The defendants filed notice of an appeal to the 2nd Circuit on October 28.

Key Points

The preliminary injunction is a notable victory for the FTC, which has recently suffered a string of high-profile losses in federal court (*e.g.*, Microsoft/Activision, Meta/Within). Nevertheless, as highlighted by the key takeaways below, the decision does not reflect a departure from merger review norms.

- **Courts continue to apply traditional market definition analysis.** While "accessible luxury handbags" might seem like a niche and implausible market at first glance, the court's decision relies on traditional evidence and established market definition principles. The court applied a conventional Brown Shoe analysis to find that such bags share manufacturing and pricing characteristics that are distinct from brands at the lower and higher ends of the spectrum. Accordingly, this decision should not be seen as a newfound willingness by the courts to embrace esoteric markets without supporting evidence.
- **Company documents continue to be critical to merger review.** The decision illustrates the continuing significance of ordinary course business documents in merger review. Though the court also cited economic data, it found the companies' documents particularly useful in establishing the closeness of competition between the parties and the likely effect of the transaction. Indeed, the court summarily observed, "Despite the efforts of Tapestry and Capri witnesses to 'minimize the significance of the evidence of head-to-head competition between' them, 'the documents tell the story.'" In particular, the court relied on a Tapestry document that explained why the deal would provide an opportunity for the merged company to charge higher prices.
- **Courts may be more comfortable in relying on long-standing precedent than on novel theories in the new Merger Guidelines.** The Tapestry/Capri decision marks the first case litigated under the new Merger Guidelines, which the FTC and Department of Justice agencies unveiled in December 2023. In its complaint, the FTC relied in part on one of the new Guidelines (Section 2.2), arguing, "A merger is unlawful if it substantially lessens competition between the parties independent of the analysis of market shares." Notably, the court's decision steers clear of this assertion and relies instead on traditional analysis of the market and market concentration levels.