

**Federal Trade Commission  
v.  
Tempur Sealy International, Inc.  
and Mattress Firm Group**

**December 16, 2024**

Closing Argument of Defendants

# Vertical Integration Is Ubiquitous and Procompetitive

“[V]ertical integration is ubiquitous in our economy and virtually never poses a threat to competition when undertaken unilaterally and in competitive markets.”

*Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 990–91 (D.C. Cir. 2013) (Kavanaugh, J., concurring) (quoting Areeda)

“Vertical mergers often generate efficiencies and other procompetitive effects.”

*United States v. AT&T*, 310 F. Supp. 3d 161, 197 (D.D.C. 2018)

“A vertical merger, unlike a horizontal one, does not eliminate a competing buyer or seller from the market, 2 P. Areeda D. Turner, Antitrust Law.”

*Fruehauf Corp. v. FTC*, 603 F.2d 345, 351-52 (2d Cir. 1979) (cleaned up)



# FTC's Customer Foreclosure Theory Has Not Been Accepted in 50+ Years



## FTC's Theory

“[T]his is what's known  
as a customer  
foreclosure case.”

Day One Hearing Tr. (FTC Opening Statement) 14:20–21



**No court has adopted a  
customer foreclosure  
theory in 50+ years**

# FTC's Central Claim: Preventing Rivals From Selling at Mattress Firm



“This type of vertical merger presents the danger of what the antitrust laws call foreclosure, a risk that Tempur Sealy will use its newfound ownership and power over Mattress Firm to prevent its rival premium mattress suppliers from being able to sell at Mattress Firm.”

Day One Hearing Tr. (FTC Opening Statement) 7:22–8:1

# Potential Foreclosure of 8.8% Is Not “Substantial”

Maximum  
Foreclosure In  
This Case Is 8.8%

*Fruehauf* (2d Cir. 1979): Holding 5.8% potential foreclosure “would merely be a realignment of existing market sales without any likelihood of diminution of competition.”

*Fruehauf Corp. v. FTC*, 603 F.2d 345, 360 (2d Cir. 1979)

*Alberta Gas* (3d Cir. 1987): Recognizing “de minimis foreclosure” is insufficient and citing cases rejecting vertical merger challenges where maximum foreclosure was 5.8%, 8.8%, 5.5%, and 19%.

*Alberta Gas Chems., Ltd. v. E.I. Du Pont de Nemours & Co.*, 826 F.2d 1235, 1236, 1246 (3d Cir. 1987)

# No Foreclosure Is “Likely”

**purple**

**“[M]y fear really is not being fully discontinued.”**

Day One Hearing Tr. (DeMartini) 120:19–20

**Serta  
Simmons  
Bedding**

**Forecast growth at Mattress Firm through 2027**

Ex. 4401; Wyn Dep. (10/10/24) 41:5–16; Day Five Hearing Tr. (Genender) 37:13–23

**TEMPUR+SEALY**

**MATTRESSFIRM®**

**Consistent plan for multiple brands  
(including SSB and Purple)  
at Mattress Firm after merger**

Day Four Hearing Tr. (Thompson) 223:10–11; Day Seven Hearing Tr. (Neu) 31:12–21;  
Exs. 5889; 5639; 5542; 5560; 5561; 5563; 5926; 5519; 5601; 5593; 3611; 5575; 5549; 5595

# FTC's Single-Incentive Foreclosure Theory Is Regularly Rejected

## Recent Cases Rejecting Vertical Merger Challenges

- ▶ *FTC v. Microsoft Corp.*,  
681 F. Supp. 3d 1069 (N.D. Cal. 2023)
- ▶ *United States v. UnitedHealth Grp. Inc.*,  
630 F. Supp. 3d 118 (D.D.C. 2022)
- ▶ *United States v. AT&T, Inc.*,  
916 F.3d 1029 (D.C. Cir. 2019)

“[I]f this merger could be condemned simply because the combined company would derive *some* economic benefit from withholding, *any* vertical merger could be condemned on the same ground, despite the indisputable pro-competitive effects of many vertical mergers.”

*FTC v. Microsoft Corp.*, 681 F. Supp. 3d 1069, 1084–85 (N.D. Cal. 2023)

# The FTC Failed to Prove a \$2000+ “Premium” Market



# Product Markets Defined by Price Often Rejected

“It would be unrealistic to accept Brown’s contention that, for example, men’s shoes selling below \$8.99 are in a different product market from those selling above \$9.00.”

*Brown Shoe Co. v. United States*, 370 U.S. 294, 326 (1962)

“Courts have repeatedly rejected efforts to define markets by price variances or product quality variances. Such distinctions are economically meaningless where the differences are actually a *spectrum* of price and quality difference.”

*Murrow Furniture Galleries, Inc. v. Thomasville Furniture Indus.*, 899 F.2d 524, 528 (4th Cir. 1989)  
(quoting *In re Super Premium Ice Cream Distrib. Antitrust Litig.*, 691 F.Supp. 1262, 1268 (N.D. Cal. 1988))

# The Concept of “Premium” Is a Sliding Scale

## This Case



“[I]t’s a sliding scale.”

Day Six Hearing Tr. SEALED (Galimidi) 6:5



“[K]ind of like an arbitrary line we drew.”

Day Two Hearing Tr. (Studner) 35:22–23



“There is no single definition for premium that I’ve seen at the company.”

Day Two Hearing Tr. (Moore) 156:21–24

## Tapestry

“[T]he Court finds that ‘accessible luxury,’ ‘affordable luxury,’ and similar terms are well-recognized by industry participants as referring to good-quality handbags that cost under \$1,000.

\* \* \*

The Court bases these credibility findings not only on its firsthand impressions of the witnesses’ demeanors while testifying, but also on the substantial body of compelling evidence, including reams of ordinary-course documents, showing that terms like ‘accessible luxury’ are used frequently and consistently.”

*FTC v. Tapestry, Inc.*, 2024 WL 4647809, at \*20 (S.D.N.Y. Nov. 1, 2024)

# Most Evidence Suggests “Premium” Starts Around \$1,000, Not \$2,000



**Melissa Barra**

EVP of Chief Sales and  
Services Officer

sleep  number

**THE COURT:** Could I ask you, you just referenced to the premium market. How do you define that market? What do you see that as?

**THE WITNESS:** Over \$1,000.

**THE COURT:** Over \$1,000. All right.

**THE WITNESS:** Yeah. That's a general industry definition that we just go with.

Day Three Hearing Tr. SEALED (Barra) 8:16–22



Q. The internal dollar threshold that Rooms To Go uses to classify a mattress as prestigious is currently \$1,299 . . . ?

A. That's correct.

Q. Rooms To Go does not ever use the dollar value 2,000 and up for classifying its mattresses in the ordinary course of business, correct?

A. We do not.

Day Two Hearing Tr. (Studner) 31:8–15



Q. What do you understand the word premium to mean with respect to the mattress industry?

A. ...around a thousand dollars is the demarcation...

Megibow Dep. Tr. (9/12/24) 194:18–195:5



A. . . . [T]hey range from 1,400, as I said, to about \$2,000.

\* \* \*

Q. And does Purple consider all of its mattresses to be premium mattresses?

A. Our definition of the category, yes.

Day One Hearing Tr. (DeMartini) 84:2–3, 138:4–6



“[P]remium starts roughly in the 12 to \$1,300 price band . . .”

Diamonstein Dep. Tr. (9/18/24) 143:3–5



“The Premium or Middle price point ranges might be an overlap and might be somewhere between 1,200, 1,000, 1,200 to, say, maybe 24 -- 22, 2,499.”

Hood Dep. Tr. (9/17/24) 37:22–25



Q. [T]he categories for mattress retail prices are . . . premium at 700 to 1,200 or 1,300 . . .

A. About that, yes.

Day Six Hearing Tr. (Binke) 41:13–42:1

# Evidence From TSI Shows “Premium” Concept Is Fluid



**Aubrey Moore**

VP of Investor Relations, Insights, & Analytics

TEMPUR+SEALY

**Q.** Why does Tempur Sealy look at different price points that refer to premium?

**A.** We look at a variety of price points. It just all in the context of what business questions we’re trying to address.

Day Two Hearing Tr. (Moore) 158:10–13



**Cliff Buster**

Chief Executive Officer, North America

TEMPUR+SEALY

**Q.** And you’re discussing the \$2,000 plus premium segment has grown more rapidly than 1,000 to \$2,000 segment in this slide. Is that correct?

**A.** Correct. But including the 1,000 to 2,000 segment within that description of premium.

Day Three Hearing Tr. (Buster) 106:3–7

## “Premium” Market Opportunity

- *How large is the premium mattress market (i.e., \$1,500+)*

Differences between budget shoppers (<\$1k) compared to premium shoppers (>\$1k).  
How does this compare to 2017?



# Das Varma's "Overall Impression" Unreliable and Wrong



**Dr. Das Varma**

FTC Expert

**CRA** Charles River  
Associates

**A.** Yeah. So I reviewed these documents over a long period of time, and I did not count how many documents say that, \$2,000 and above, and how many say less than \$2,000 and above. But **my overall impression** from having reviewed these documents over a long period of time for, you know, months is that I've come across more -- much more of \$2,000 and above.

**Q.** So it wasn't based on any quantitative method, correct?

**A.** **No, I did not count the number of documents. Yes.**

Day Five Hearing Tr. (Varma) 225:2-9

# Practical “Indicia” Do Not Support \$2000+ “Premium” Market

| Factor                              | Evidence  |
|-------------------------------------|---|
| ✗ Industry Or Public Recognition    | No common industry recognition  |
| ✗ Unique Production Facilities      | No evidence supporting \$2,000+;<br>same facilities across price points                     |
| ✗ Distinct Customers                | Customers shop across price points  |
| ✗ Peculiar Characteristics And Uses | Sliding scale (per Macy’s); quality benefit in the<br>“eye of the beholder” (per Das Varma) |
| ✗ Specialized Vendors               | Vast majority of \$1,000+ and \$2,000+<br>sold through brick and mortar                     |
| ✗ Distinct Pricing                  | UPP/MAP at higher price points,<br>but not necessarily \$2000+                              |
| ✗ Sensitivity To Price Changes      | Unreliable evidence of COVID pricing  |



# Das Varma's HMT Fails; Does Not Hold Everything Else Constant

**What the HMT Should Do:**

**5% Price  
Increase**



**TSI  
Premium  
Mattresses**

**Das Varma Admits He Did Not Hold Constant:**

**Effective  
Price Increase**



**TSI  
Non-  
Premium  
Mattresses**

**Effective  
Price Decrease**



**Other  
Premium  
Mattresses**

# \$2,000+ Cutoff Is Arbitrary in Application

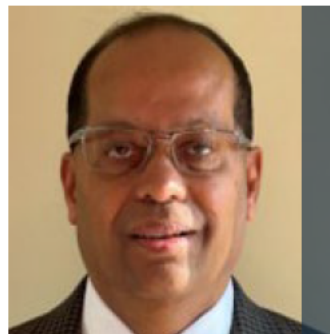
## Purple Hybrid Premier 3

Queen Size (Sep. 2023)



| Retailer                                    | Average Retail Price | Premium |
|---|----------------------|---------|
| Mattress Firm                               | \$2,594              | ✓       |
| Denver Mattress                             | \$1,528              | ✗       |
| Perez Mattress                              | \$1,300              | ✗       |
| Rooms To Go                                 | \$1,140              | ✗       |
| Mattress Warehouse                          | \$675                | ✗       |
| Purple Stores and All Other Rival Retailers | \$1,999              | ✗       |

# FTC's Litigation-Driven Definition Should Be Rejected



**Dr. Das Varma**

FTC Expert

**CRA** Charles River  
Associates

**Q.** When you define the premium mattress market, you chose the threshold that led to the highest share for Mattress Firm, right?

**A.** I chose the threshold that -- yeah.

Day Five Hearing Tr. (Das Varma) 233:17–20

“[T]he Government attempts to gerrymander its way to victory without due regard for market realities.”

*United States v. Booz Allen Hamilton Inc.*,  
2022 WL 9976035, at \*10 (D. Md. Oct. 17, 2022) (cleaned up)

# **FTC Failed to Prove the Merger Is Likely to Substantially Lessen Competition**

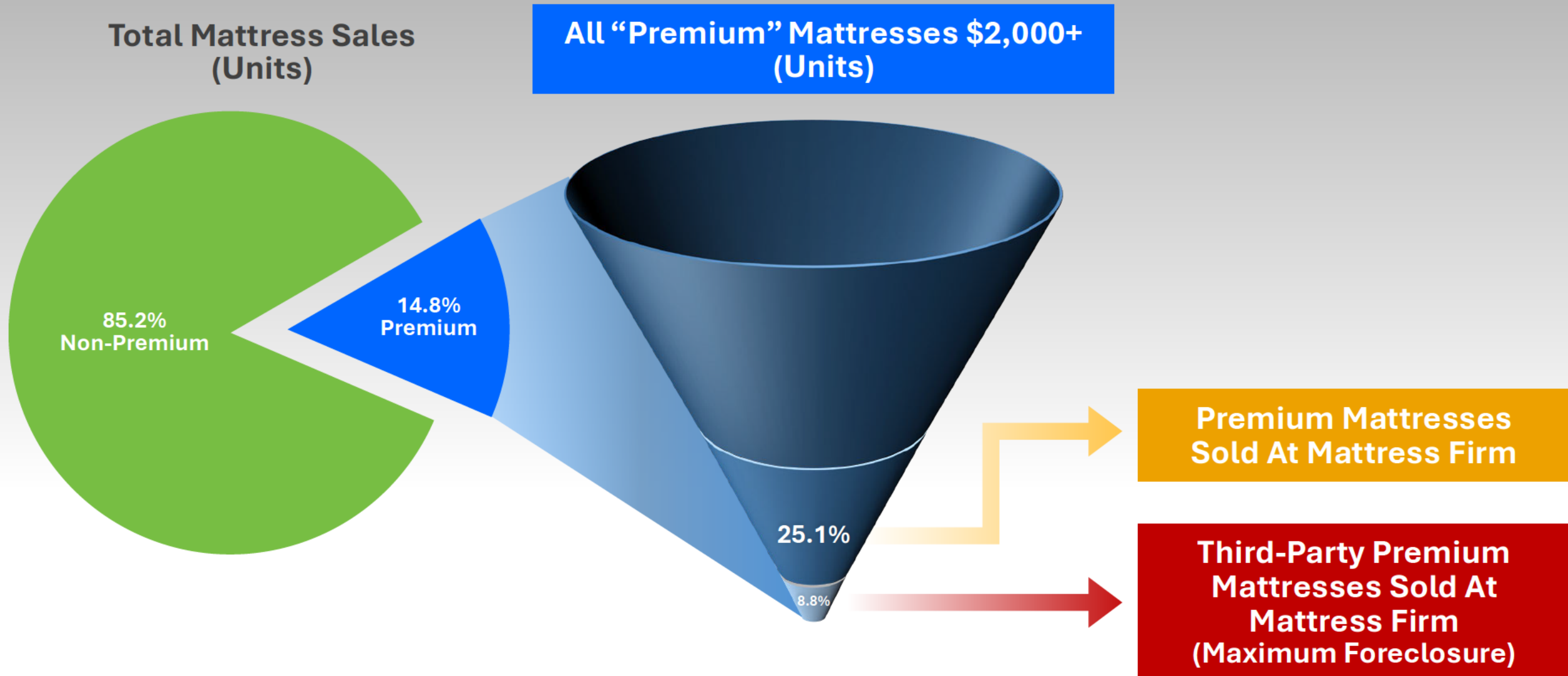
# FTC's Failure of Proof on Substantial Competitive Effects

- 1 Maximum Possible Foreclosure of 8.8% or Less Is Insufficient
- 2 Testimony From FTC's Key Witnesses, SSB and Purple, Refutes Any Foreclosure
- 3 Overwhelming Evidence of TSI's Multi-Branded Plan Refutes Foreclosure
- 4 Expert Evidence Shows Consumer Benefits From Transaction
- 5 Natural Experiments Confirm No Foreclosure or Competitive Harm
- 6 Commitments Ensure No Substantial Lessening of Competition

# **Maximum Possible Foreclosure Insufficient to Raise Competitive Concerns**



# Maximum Foreclosure Is 8.8% or Less



## 8.8% Overstates Risk of Foreclosure

If relevant market is \$1000, Mattress Firm's market share drops from 25% to 14%

Divestiture decreases Mattress Firm's market share and gives third parties more options to reach consumers

Slot commitment guarantees at least 20% of Mattress Firm's slots for third parties

# Just Insignificant Sales From Two Competitors (SSB and Purple) Even at Risk of “Foreclosure”

/endors at

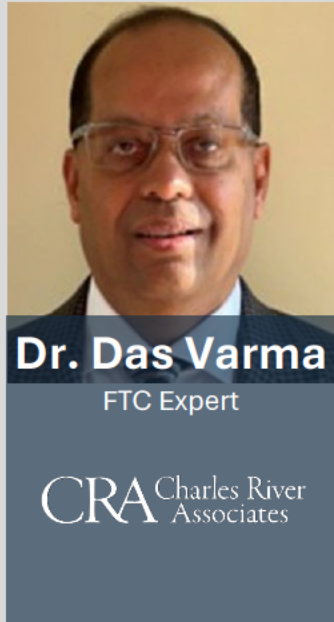
**Vast majority of premium sales at Mattress Firm are TSI's; no possible “foreclosure” from merger.**

**Serta Simmons and Purple distant second and third premium suppliers at Mattress Firm.**

# Acquiring Company's Sales Not Part of Foreclosure Analysis

“[M]arket share represented by the acquiring company's previous supply to the acquired firm is not part of the foreclosure.”

*Alberta Gas Chems., Ltd. v. E.I. Du Pont de Nemours & Co.*, 826 F.2d 1235, 1245 (3d Cir. 1987)  
(citing *United States v. Hammermill Paper Co.*, 429 F.Supp. 1271, 1282 (W.D. Pa. 1977))



**Q.** So when I'm looking at scope of foreclosure at a retailer, I should look at the percentage of the sales that the rivals are currently earning, excluding private label and excluding the Tempur Sealy share?

**A.** Definitely look at that, yes.

Day Seven Hearing Tr. (Israel) 48:10–14 & DX 103-37 (quoting Das Varma Dep. (10/28/24) 10:21–11:4)

# Vertically Integrated Sales Cannot Be Excluded from Foreclosure Analysis

“The record contains undisputed evidence that direct sales to end-users are an alternative channel of distribution in this market.

\* \* \*

Contrary to plaintiffs’ contention, these alternatives are relevant to assessing market foreclosure.”

*Omega Env’t, Inc. v. Gilbarco, Inc.*, 127 F.3d 1157, 1163 (9th Cir. 1997)

# Potential Foreclosure of 8.8% Is Not “Substantial”

**Maximum  
Foreclosure In  
This Case Is 8.8%**

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***Alberta Gas* (3d Cir. 1987):** Recognizing “de minimis foreclosure” is insufficient and citing cases rejecting vertical merger challenges where maximum foreclosure was **5.8%, 8.8%, 5.5%, and 19%.**

*Alberta Gas Chems., Ltd. v. E.I. Du Pont de Nemours & Co.*, 826 F.2d 1235, 1236, 1246 (3d Cir. 1987)



# This Case Is the Opposite of *Illumina*

*Illumina*



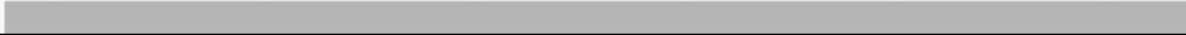
**This Case**



“Illumina’s monopoly power . . . means that, even if other customers did learn about Illumina’s foreclosing behavior and therefore wanted to take their business elsewhere, they would have **nowhere else to turn.**”

*Illumina, Inc. v. FTC*, 88 F.4th 1036, 1053 (5th Cir. 2023) (cleaned up)

# SSB and Purple Premium Sales at Mattress Firm Are Small



# Many “Premium” Mattress Manufacturers Do Not Rely on Mattress Firm

## Most Succeed Elsewhere; Mattress Firm Has No Unique “Kingmaker” Ability

### Not Sold at Mattress Firm

sleep  number

AVOCADO  Casper

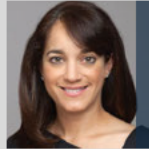
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Melissa Barra

EVP of Chief Sales and Services Officer  
sleep  number

**Q.** And Sleep Number has no plans to start selling any mattresses through Mattress Firm?

**A.** We do not.

Day Three Hearing Tr. SEALED (Barra) 7:21–24



John Eck

Chief Executive Officer  
MATTRESS  FIRM

“[W]e had gone through a lengthy set of conversations with Avocado. . . . They decided they didn’t want to work with us. . . . And I was disappointed that we did not get the opportunity. And [Avocado’s] goal was to be in 600 doors, starting with Living Spaces.”

Day Three Hearing Tr. (Eck) 48:2–20



Vy Nguyen

Chief Executive Officer  
AVOCADO 

**Q.** Okay. And the five-year plan [to reach \$700 million - \$1 billion in sales] doesn’t specifically contemplate that you’ll begin selling mattress Firm. Is that correct?

**A.** Correct.

**Q.** Okay. So you could achieve those targets with or without Mattress Firm as a wholesale customer?

**A.** Correct.

Day Five Hearing Tr. (Nguyen) 75:3–9

# **SSB and Purple Refuted Foreclosure Theory**

# Purple Is Not Worried About Being Defloored



**Robert DeMartini**

Chief Executive  
Officer

**purple**

“[M]y fear really is not being fully discontinued.”

Day One Hearing Tr. (DeMartini) 120:19–20

“I certainly get that [Scott Thompson] stated consistently that he wants a multi-branded floor.”

Day One Hearing Tr. (DeMartini) 140:24–141:1

# Serta Simmons Expects Ongoing Growth at Mattress Firm

## Financial Projections Relied Upon by the Bankruptcy Court

| (\$ in Millions, unless otherwise noted) | 2023            | 2024           | 2025          | 2026            | 2027            |
|--|-----------------|----------------|---------------|-----------------|-----------------|
| <b>Consolidated P&amp;L</b>              |                 |                |               |                 |                 |
| <b>Gross Profit</b>                      |                 |                |               |                 |                 |
| Net Sales                                | \$ 2,060        | \$ 2,230       | \$ 2,368      | \$ 2,515        | \$ 2,693        |
| Cost of Sales                            | (1,254)         | (1,330)        | (1,396)       | (1,475)         | (1,567)         |
| <b>Gross Profit</b>                      | <b>\$ 807</b>   | <b>\$ 899</b>  | <b>\$ 972</b> | <b>\$ 1,040</b> | <b>\$ 1,126</b> |
| Selling, General, & Administrative       | (790)           | (844)          | (907)         | (907)           | (962)           |
| Amortization of Intangibles              | (56)            | (44)           | (44)          | (44)            | (44)            |
| <b>Operating Income / (Loss)</b>         | <b>\$ 11</b>    | <b>\$ 11</b>   | <b>\$ 60</b>  | <b>\$ 90</b>    | <b>\$ 120</b>   |
| Interest Expense                         | (30)            | (45)           | (42)          | (42)            | (42)            |
| Income Tax                               | (3)             | (11)           | (22)          | (28)            | (34)            |
| Restructuring Related Costs              | (99)            | -              | -             | -               | -               |
| <b>Net Income / (Loss)</b>               | <b>\$ (172)</b> | <b>\$ (45)</b> | <b>\$ (4)</b> | <b>\$ 20</b>    | <b>\$ 44</b>    |
| Interest Expense                         | 30              | 45             | 42            | 42              | 42              |
| Income Tax                               | 3               | 11             | 22            | 28              | 34              |
| Depreciation & Amortization              | 102             | 90             | 90            | 90              | 90              |
| Restructuring Related Costs              | 99              | -              | -             | -               | -               |
| Other Adjustments <sup>3</sup>           | 42              | 33             | 20            | 19              | 19              |
| <b>Adjusted EBITDA</b>                   | <b>\$ 104</b>   | <b>\$ 133</b>  | <b>\$ 170</b> | <b>\$ 199</b>   | <b>\$ 228</b>   |

Growth Through 2027 at **MATTRESS FIRM**



# No Coherent or Credible Explanation for SSB's Contradictions



**Mark Genender**  
Chairman of Board  
of Directors

**Serta  
Simmons  
Bedding**

|    |             |                                      |
|----|-------------|--------------------------------------|
| 1  | 12/1/22     | HUFF (CEO): FTC Interview            |
| 2  | 1/23/23     | SSS FILES FOR BANKRUPTCY             |
| 3  | 2/23        | PROJECT ARTEMIS Begins               |
| 4  | 3/23        | Mgmt Presentation - TEMPURAWARD PLAN |
| 5  | 3/22/23     | Ch. 11 Feasibility PLAN FILED        |
| 6  | 5/9/23      | MFRM/TSE Merger Announced            |
| 7  | 5/14/23     | SSS Requests for Bankruptcy Approval |
| 8  | 6/14/23     | BANKRUPTCY COURT APPROVES PLAN       |
| 9  | 8/15/23     | LINKER (CFO): FTC Interview          |
| 10 | 9/28/23     | EITEL (CEO): FTC Interview           |
| 11 | 10/24/23    | WYN (CFO): FTC Interview             |
| 12 | 11/9/23     | " : IH Testimony                     |
| 13 | 5/13/23     | Genender (CEO): FTC Interview        |
| 14 | 6/13/24     | " : IH TESTIMONY                     |
| 15 | 9/17-18/24  | " : Deposition                       |
| 16 | 11/14-24/24 | " : HEARING TESTIMONY                |
| 17 |             |                                      |
| 18 |             |                                      |
| 19 |             |                                      |
| 20 |             |                                      |

DEFENDANT'S  
EXHIBIT  
5969

- December 2022**  
Serta Simmons speaks to FTC regarding the proposed transaction
- February 2023**  
Project Artemis begins; Serta Simmons analyzes the effect of the proposed transaction on its business
- March 2023**  
Feasibility plan filed with bankruptcy court anticipating growth within Mattress Firm through 2027
- May 9, 2023**  
Mattress Firm / Tempur Sealy merger announced
- May 14, 2023**  
Serta Simmons requests bankruptcy approval; certifies nothing has changed; does not disclose Lima as a risk
- June 14, 2023**  
Bankruptcy court approves Serta Simmons plan relying on SSB representations on future growth at MFRM

# No Coherent or Credible Explanation for SSB's Contradictions



**Mark Genender**  
Chairman of Board  
of Directors

**Serta  
Simmons  
Bedding**

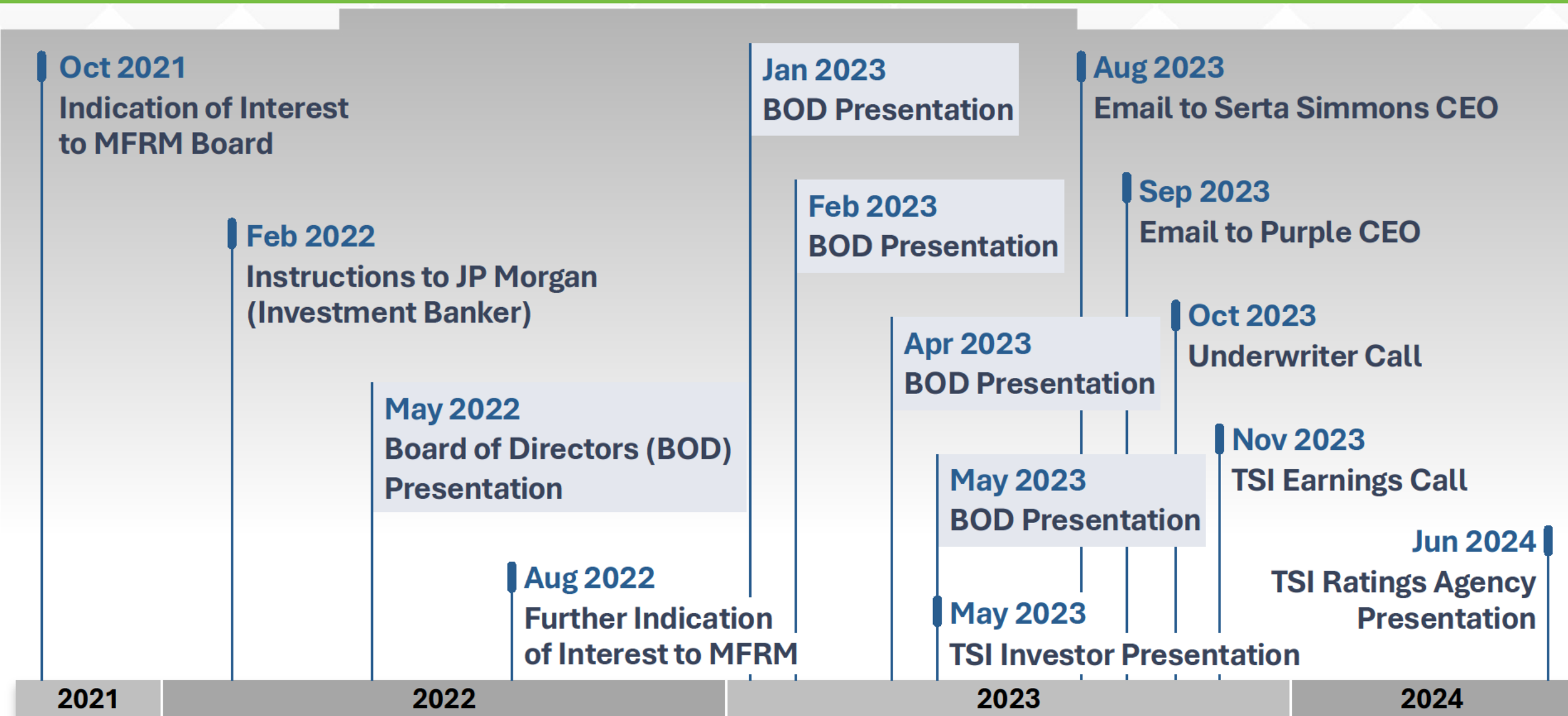
**THE COURT:** I have to ask a question because representations were made to the bankruptcy court. You are characterizing it in this court as an existential threat. Has something happened between May 14th in 2023 that was not known before the bankruptcy court that has occurred now that you would say it's an existential threat but which you would not advise the bankruptcy court of that fact before you emerged from bankruptcy?

**THE WITNESS:** We -- we believe that the risk of loss -- it's all a question of what was going to happen post-transaction would be the risk. And we don't -- we didn't know what the risk would be post-transaction, I guess is the question -- is the way I would answer that question.

Day Five Hearing Tr. (Genender) 57:2-14

**Overwhelming Evidence Shows Consistent  
Multi-Branded Plan → No Foreclosure**

# TSI Consistently Planned on a Multi-Branded Floor



Exs. 5889; 5639; 5542; 5560; 5561; 5563; 5926; 5519; 5601; 5593; 3611; 5575; 5549; 5595



# Modeling and Fairness Opinion Predicated on Multi-Branded Floor

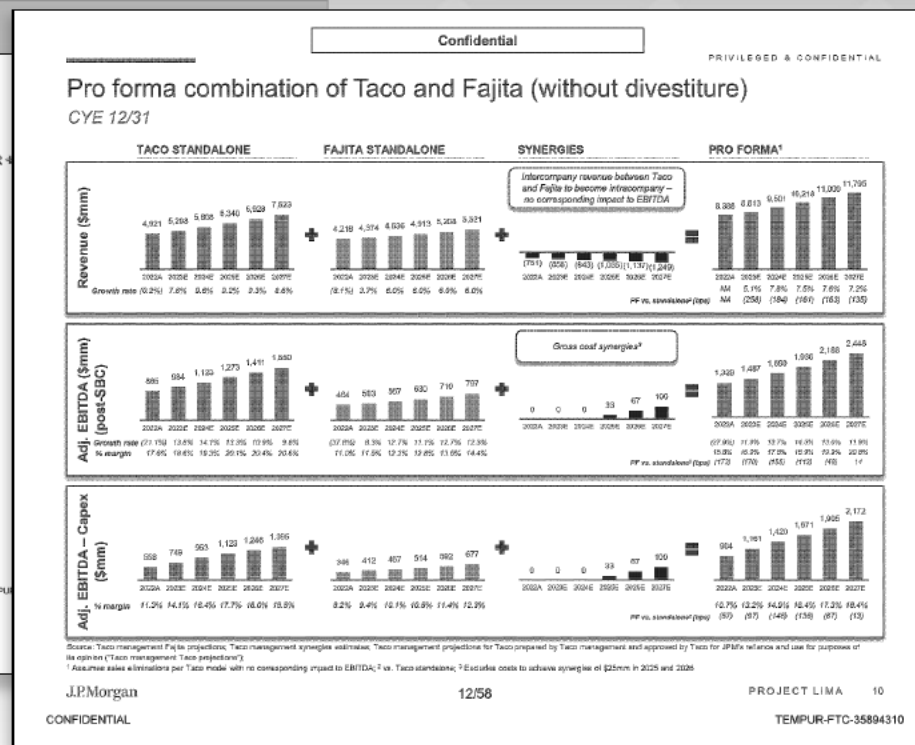


**Rick Neu**  
Lead Director  
of TSI Board

TEMPUR+SEALY



Ex. 5926-12



“If [removal of third-party brands] were part of our investment thesis, you would see it in the board deck. You would see it factored into our financial models. You would fact -- see it factored into the fairness opinions of the bankers. You would see it factored into our lenders.”

Day Seven Hearing Tr. (Neu) 83:12-17

# TSI Touted Benefits of Selling More Third-Party Brands

Defendants  
Case No. 4:24-cv-02508

Exhibit 5601-21

## Accelerates Omnichannel Retail Strategy

*TPX has developed a strong retail presence both organically and through the acquisition of Dreams in the U.K. The acquisition of Mattress Firm accelerates the retail strategy*

| (\$ in Millions)  | TEMPUR+SEALY | TEMPUR+SEALY +  |
|---|--------------|-----------------|
| North America Direct Channel                            |              |                 |
| Direct channel sales (TTM 3/31/24)                      | \$516MM      | \$4.6B (+783%)  |
| Brick & mortar stores (As of 3/31/24)                   | 243          | 2,562 (+954%)   |
| Retail sales associates (As of 3/31/24)                 | 588          | 6,688 (+1,037%) |
| Retail traffic * (TTM 3/31/24)                          | 45MM         | 109MM (+142%)   |
| Global sales  |              |                 |
| Global sales by TPX brands (TTM 3/31/2024)              | 91%          | 68%             |
| Global sales by other brands (TTM 3/31/2024)            | 9%           | 32%             |
| Global sales by direct / retail channel (TTM 3/31/2024) | 24%          | 65%             |

Source: Company filings; presentations.

\* Retail traffic includes brick & mortar and e-commerce traffic.

Notes: All combined figures are based on the TTM period ended 3/31/2024 for Tempur Sealy and 1/2/2024 for Mattress Firm, assumes Mattress Firm sales are 100% through direct / retail channel.

TEMPUR+SEALY

21

CONFIDENTIAL

TEMPUR-LIT-00125314

Exhibit 5601-1



**Scott Thompson**  
Chief Executive Officer  
TEMPUR+SEALY

“This is spreading risk . . . diversifying our risk from 91 percent our historical brands to 68 and picking up sales from other brands that could be hot in a marketplace . . . for a rating agency, this is a big positive.”

Day Four Hearing Tr. (Thompson) 202:3–13

TEMPUR+SEALY  
Rating Agency Presentation  
June 2024

CONFIDENTIAL

TEMPUR-LIT-00125294



# Multi-Brand Is Essential to Mattress Firm's Business Model

## Departing from Multi-Brand Offering Risks Lost Traffic and Sales



John Eck  
CEO

**MATTRESSFIRM**

**Q.** Could Mattress Firm maintain the same level of traffic if it only offered mattresses from a single manufacturer?

**A.** [I] don't think so. I think it would be a fool's errand to do that. I think we would lose traffic as a result of it. I can't imagine, you know, a customer walking in looking for a Beautyrest Black and us, our sleep experts saying, we don't have it, and then the customer is just going to walk out. The retailers have choices for the mattresses that they sell, and there's plenty of places to sell a mattress, and we need to be competitive with our assortment. It's essential to our success.

\* \* \*

**A.** [T]hat would [ ] significantly impair the Mattress Firm results. Our [ ] multi-brand model, as it exists today, is essential to traffic driving. And I think it would be a mistake, and it would – it would degrade the results of the company in the short term and the long term.

Day Three Hearing Tr. (Eck) 19:5–16, 53:3–8



Anne Dament  
EVP, Chief Merchandising Officer

**MATTRESSFIRM**

“It would be catastrophic to me to lose the SSB portfolio, and it would be even more catastrophic if I didn't have it and other people had it because they are high-indexing, advertised brands that people want, that come in for. And if I'm a competitor that has it and Mattress Firm doesn't have it, I'm going to do everything I can to tout that because I know people are looking for those brands.”

Day Four Hearing Tr. (Dament) 59:2–9

# Other Retailers Agree That Multi-Brand Is Critical for Their Success

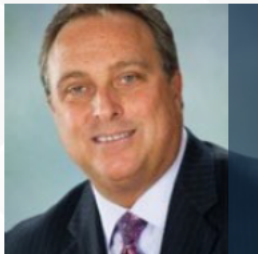


**Bill Papettas**  
Chief Executive Officer

**MATTRESS  
Warehouse**

“I think when you give consumers lots of choices, I think when you add more brands, you generate more traffic. I think it’s also better for the consumer to be able to try different things out. Having a variety of price points available for the consumer is important. I also think that for the associates, it’s a bit of a morale boost because they – I’m sure they have people coming in today in those Sleep Outfitters stores that are asking for stuff they don’t sell, and they have to say no, I don’t carry that.”

Day Three Hearing Tr. SEALED (Papettas) 58:16–24



**Jon Studner**  
Chief Executive Officer

**ROOMS  
TO GO**

**Q.** You also believe that retail sales associates at Rooms To Go’s stores would prefer to have [alternative brands] to sell, correct?

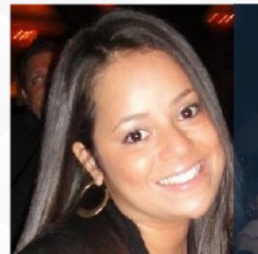
**A.** . . . I think that they would prefer as large of a selection as I can give them, yeah.

\* \* \*

**Q.** And you believe it’s good to offer a number of choices to customers across different brands?

**A.** Yes.

Day Two Hearing Tr. (Studner) 25:21–26:10



**Sarah Galimidi**  
Mattress Buyer

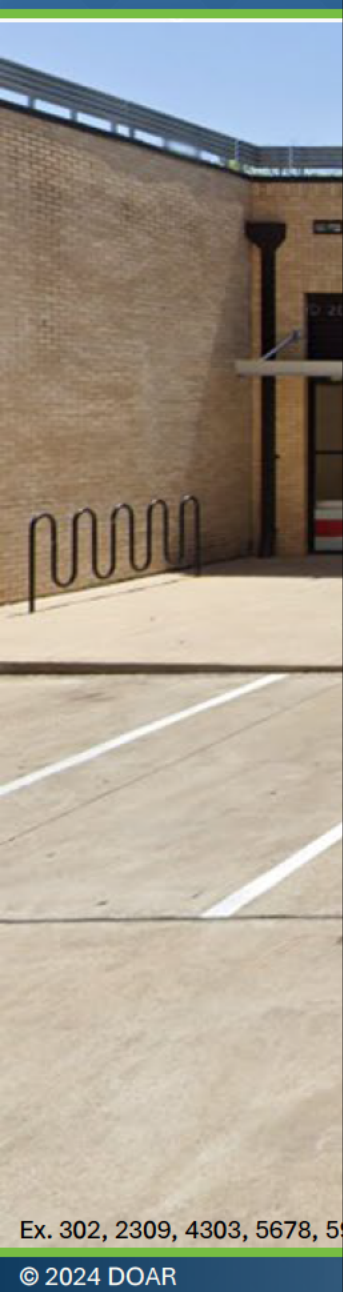
★ **macy's**

**Q.** [I]f Mattress Firm stopped carrying Serta Simmons mattresses after the transaction, would you expect there to be diverted customer demand for SSB that some of those consumers might turn to Macy’s to find those mattresses?

**A.** I do.

Day Six Hearing Tr. (Galimidi) 22:3–8

# TSI Acted on Multi-Branded Plan Through Post-Close Supply Agreements





# TSI Wants SSB on Mattress Firm Floor Post-Closing



**Scott Thompson**  
Chief Executive Officer

TEMPUR+SEALY

**A.** Yes. The offer is still open for a two-year post-closing supply agreement. We want them on the floor. We need them.

Day Four Hearing Tr. (Thompson) 223:10–11



**Rick Neu**  
Lead Director of  
Board of Directors

TEMPUR+SEALY

**Q.** Okay. And from a board perspective, is the two-year offer to Serta Simmons still open?

**A.** Yes, uh-huh.

**Q.** All right. And if Serta Simmons does not sign that two-year agreement, does the board anticipate that Mattress Firm will still continue to negotiate with Serta Simmons to try to get them on the floor after this merger?

**A.** Yeah, absolutely.

**Q.** And why is that?

**A.** They're an important partner. . . .

Day Seven Hearing Tr. (Neu) 31:12–21

# FTC's Evidence Not Probative of Foreclosure

# FTC Ignores Changed Incentives Post Merger



“Tempur Sealy has for years sought to grow its business at Mattress Firm and restrict competitors from selling at Mattress Firm because Mattress Firm matters. **Those incentives won’t change.**”

Day One Hearing Tr. (FTC Opening Statement) 26:23–27:1

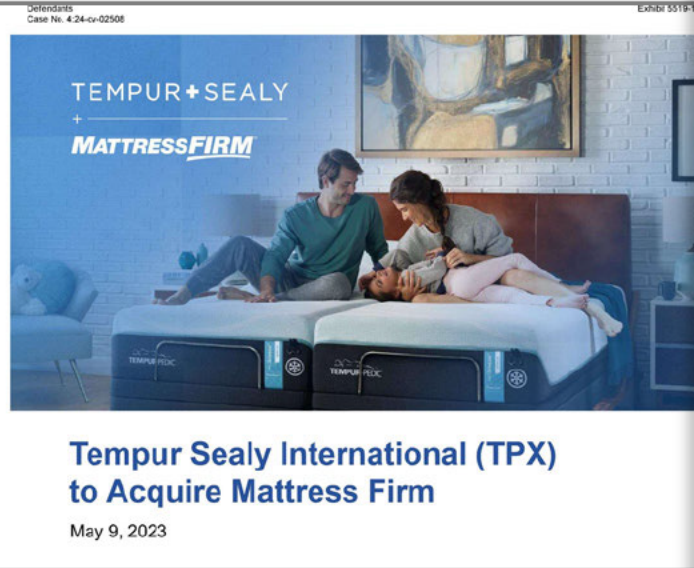


# Two-Thirds of Revenue Will Come From Retail Post-Merger



“[P]ost-acquisition, [] Tempur Sealy will primarily be a retailer.”

Day Two Hearing Tr. (Rao) 109:21–22



| TPX North America<br>TTM 3/31/23 Sales by Channel | Pre-Acquisition | Post Acquisition <sup>7</sup> |
|---|-----------------|-------------------------------|
| Wholesale   | 87%             | 35%                           |
| Direct  | 13%             | 65%                           |

# *Illumina* Focuses on *Post-Merger* Incentives

## Merger Closes

- TSI Predominantly a Manufacturer
- Fighting Hard for Floor Space and Manufacturer Profits

- TSI Predominantly a Retailer
- Multi-Branded Floor Drives Traffic at Mattress Firm

“We give the evidence about Illumina’s past behavior little weight . . .”

*Illumina, Inc. v. FTC*, 88 F.4th 1036, 1053 n.11 (5th Cir. 2023)

“[P]ost-merger, Illumina had a significantly increased incentive to crowd out Grail’s competitors . . .”

*Illumina, Inc. v. FTC*, 88 F.4th 1036, 1053 (5th Cir. 2023)

# Three “Moat” References Do Not Equal Foreclosure

Simon Dyer

4/4/2023, 10:51 AM

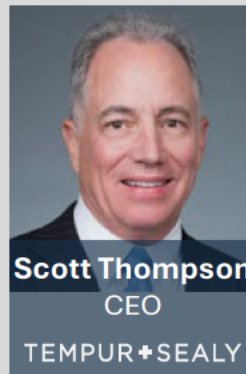
I don't find that easy to read. I think 2 (Omni channel), 4 (SOV), and 6 (OEM) are definitely true. 9 (ROIC) is probably true. 1, 3, 5, 7, and 8 may be true. Some of those will need a lot of time and effort. And the list generally doesn't have your characteristic simplicity/clarity.

The way I look at it, if we buy MF, we'll sell and make more (sales and profit), and put a significant strategic gap/moat between us and the competition (in terms of sales, distribution, brand strength, etc). And we eliminate the strategic threat of a 'hostile' purchaser. They are powerful reasons to proceed. But....

- (1) mattress retail has cyclical (in my experience)
  - (2) 2,500 stores (or whatever) is a lot to manage
  - (3) the senior management at MF is leaving
  - (4) We're taking on a lot of debt
  - (5) And I still worry about losing existing wholesale customers
- So, I come back to three things:
- (a) can we take on less debt (and still stay under the 19.9% new equity threshold)?
  - (b) have we got a capable dependable trustworthy MF leadership team (existing or new) to take us forward?
  - (c) do we have a clear strategy on how to run MF, TRS and our wholesale customers concurrently and successfully?

## Strategic Rationale Revised

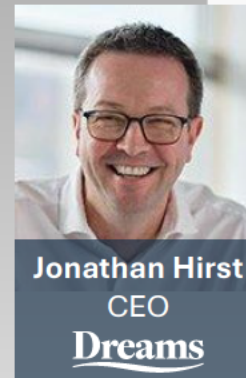
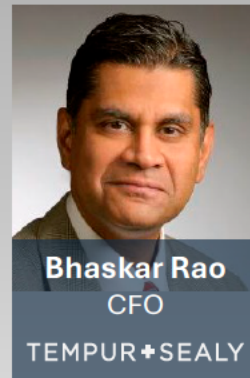
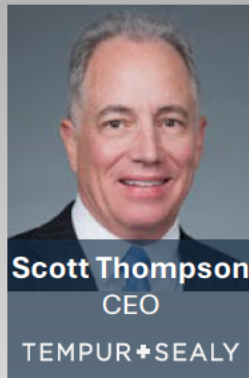
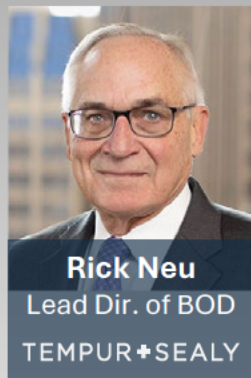
1. Moves our Brands closer to the customer. (Enhances the customer experience, develops life time relationship with customer, provides end customer information expanding customer data management and real world product testing)
2. Accelerates our Omnichannel strategy in the US.
3. Facilitates long term investments in Technology and Product Innovation. Aligning product development, manufacturing and distribution.
4. Drives share of voice and improves marketing and RSA training (better end customer understanding of features and benefits)
5. Improves rationalization of physical distribution of bedding products in US.
6. Expands distribution of OEM products both third party and private label, providing seamless vertical integration for customers
7. Improves end customer demand visibility across the end to end supply chain enabling improved inventory management, plant productivity and supply chain fortification.
8. Streamlines transportation, warehousing, supply chain planning, sourcing and product development. Facilitates efficiency and sustainable investments.
9. Structured to be higher ROIC than stock buy back.



“If you look at Point 6 . . . it points out that in that area, I’m actually writing that we expect to increase third parties on the floor.”

Day Four Hearing Tr. (Thompson) 119:22–120:1

# No Discussion Among Board of Foreclosure or Disadvantaging Rivals



## No Discussion at Any Board Meeting Regarding:

1

Throwing any manufacturer off the floor

2

Using the merger to increase Tempur Sealy's balance of share at expense of competitors

3

Disadvantaging third-party suppliers



# TSI Rejected “Noisy Minority” of Investors

Defendants  
Case No. 4:24-cv-02508

Exhibit 3602-1

CONFIDENTIAL

STRICTLY PRIVATE AND CONFIDENTIAL

Reviewed by both  
Company & Outside Counsel

## Project Lima – discussion materials

May 5, 2022

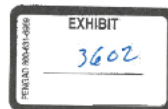
1.  $\frac{169}{248} \rightarrow$  Sales  $\frac{\$16}{\$810}$   $\frac{300-240}{300-240}$  EBITDA

2. Growth  $\rightarrow$  slower growth

BB - More Accretive  
BB - Less Operational Issues  
BB - Less Off Balance Leverage

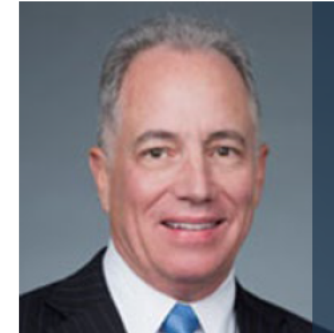
MF - More stability in Channel  
- own customer  
✓ - Control of Co Op Advertising  
Shape Brand  
✓ - Eliminate Kitchen Competition  
✓ - Block new Competitor  
✓ - Size Benefit

J.P.Morgan



PX1452-001

TEMPUR+FTC-34850587



**Scott Thompson**

Chief Executive Officer

TEMPUR+SEALY

**Q.** This statement ‘Eliminate future competitors’ is a reference to the fact that certain of your investors believe they would like to do this and would like to implement this business plan, correct?

**A.** There was a noisy minority that had voiced their thoughts on that, yes.

Day Four Hearing Tr. (Thompson) 105:13–18

“I said no. [] I explained to them our business strategy, multi-branded, why we were doing it, and the pros and cons, which later up -- show up in investor presentations.”

Day Four Hearing Tr. (Thompson) 177:3–5

# Overall Investor Reaction to Multi-Branded Plan Has Been Positive



**Rick Neu**

Lead Director of  
Board of Directors

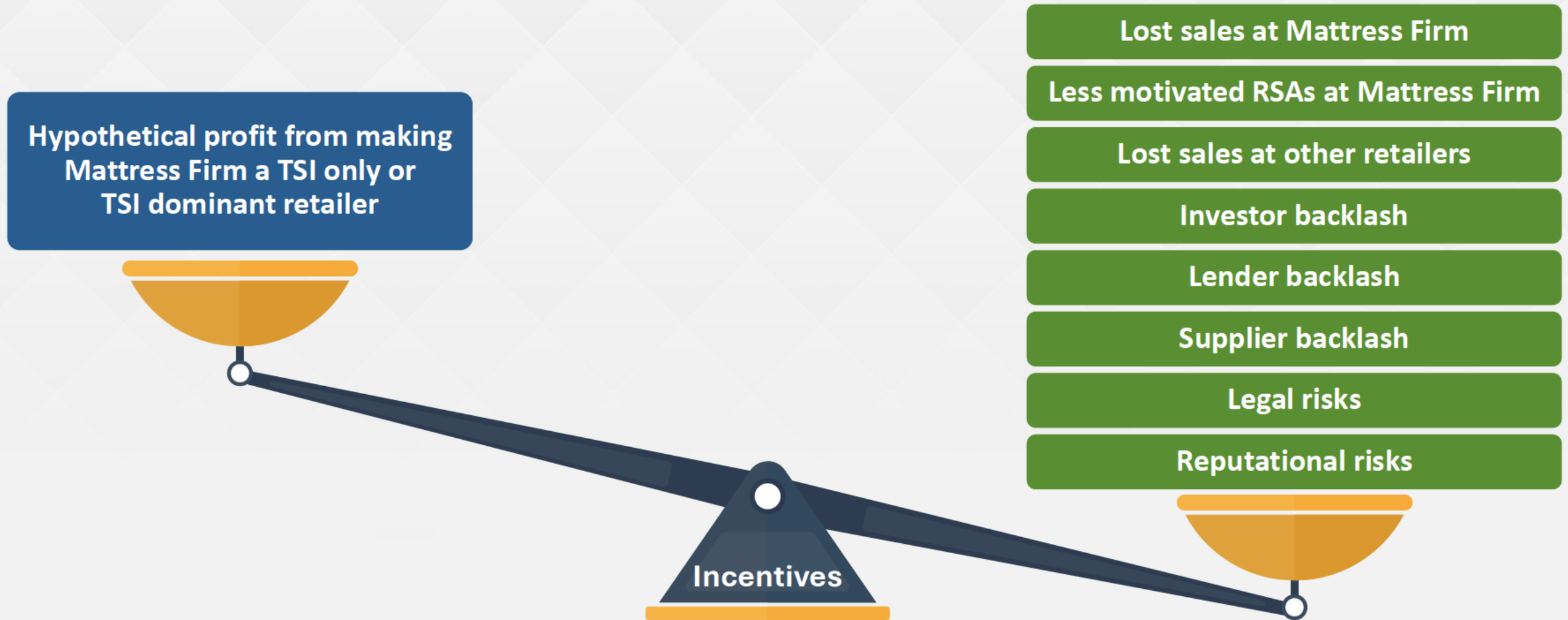
TEMPUR+SEALY

- Q.** All right. And you briefly hit this, but overall what's been the investor reaction to the strategy laid out?
- A.** It's been positive. I mean, the stock is up 50 percent since announcement. You know, it's been a generally upward trending market, but I would say it's been very, very positively received from a stock price standpoint.

Day Seven Hearing Tr. (Neu) 28:14–19



# Totality of the Incentives Refutes Foreclosure

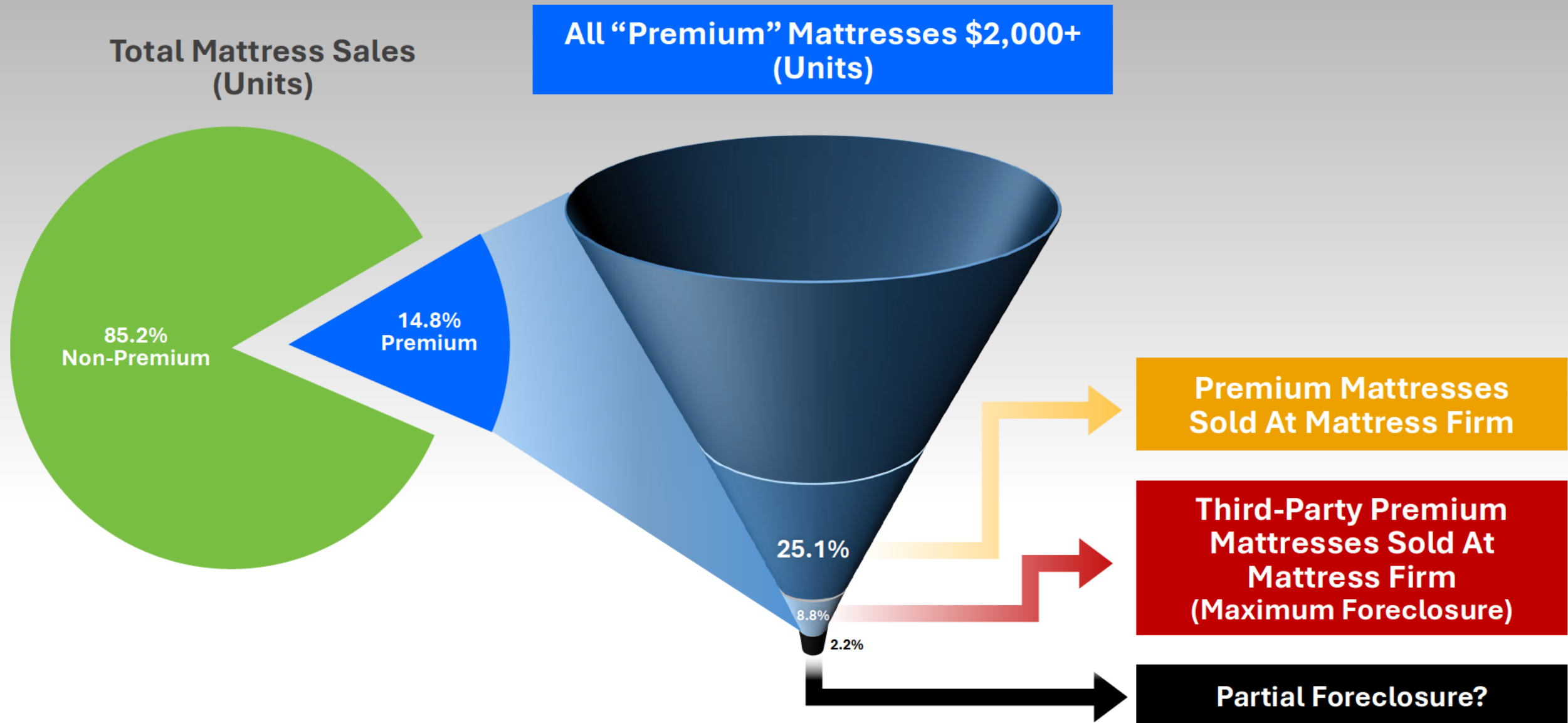


“Neither people nor companies act for one reason and one reason alone. Even the most mundane decisions involve weighing competing incentives. After all, an incentive is just the first step along the way to evaluating whether or not there’s an effect.”

*United States v. Booz Allen Hamilton Inc.*, 2022 WL 9976035, at \*7 (D. Md. Oct. 17, 2022)

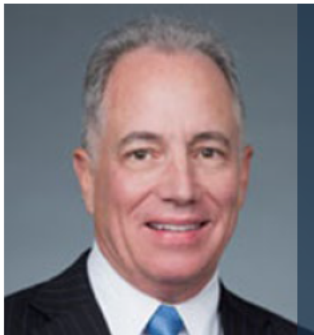
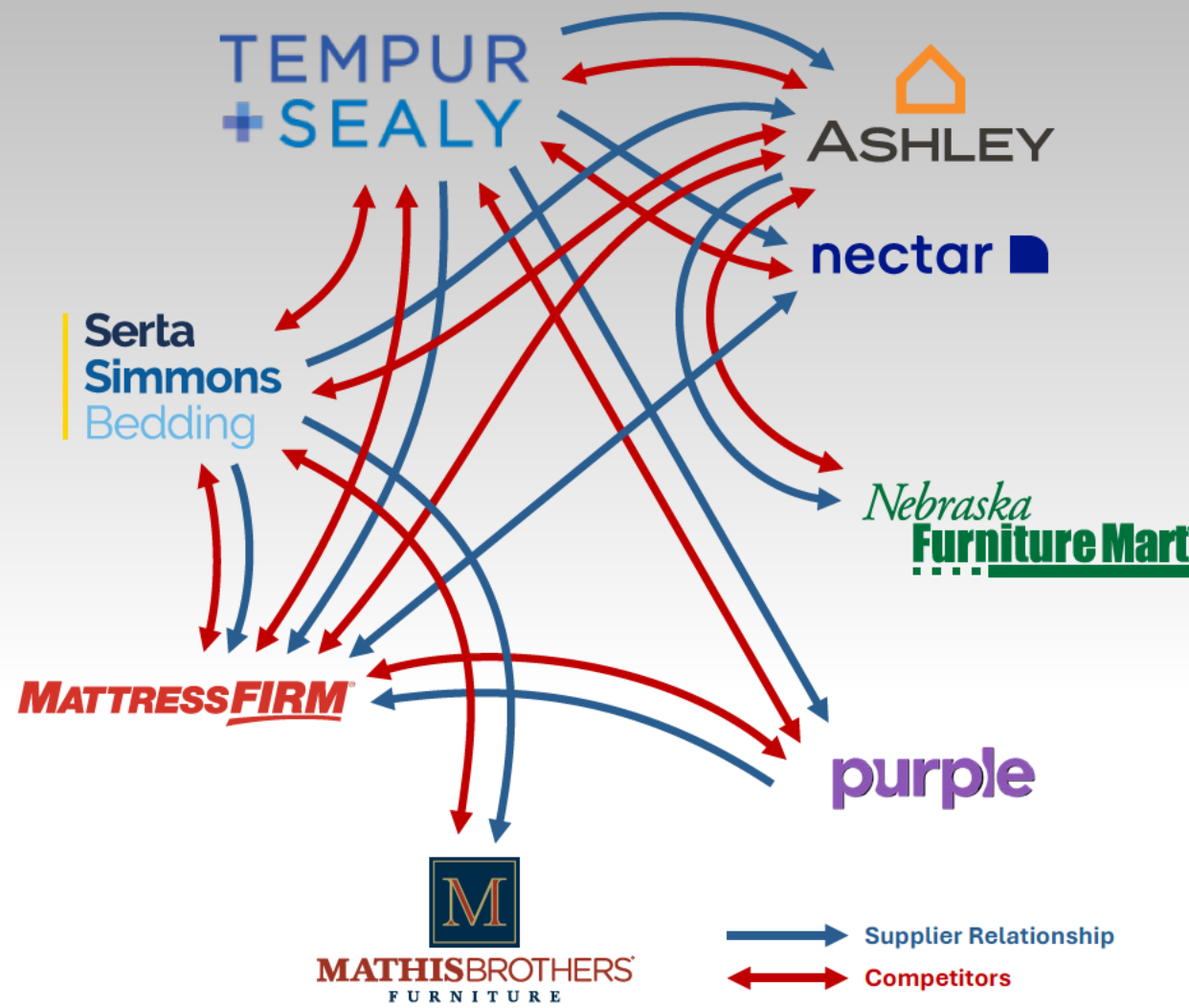
# FTC's "Partial" Foreclosure Theory Is Unfounded

# Risk From Partial Foreclosure Even More De Minimis



# Confidentiality Concerns Easily Resolved Through Firewalls

## Industry Relationships Today



**Scott Thompson**

Chief Executive Officer

TEMPUR + SEALY

A. My response to that was, yeah, of course we're going to have firewalls. We'll do that in a new contract. I don't know what your current contract says, and that's a post-closing kind of issue, but we'd certainly have firewalls and understand the importance of that issue.

Day Four Hearing Tr. (Thompson) 209:3-7

# Mattress Firm Feedback Not Necessary for Innovation



Vy Nguyen  
CEO

AVOCADO

- Q.** Did you use any external resources outside of Avocado whatsoever in designing and developing that Lux line?
- A.** No. . . .
- Q.** Okay. I don't know that we need to walk through all of the questions, but is it a similar situation with respect to Avocado's Eco mattress, that you didn't use any external resources in developing or designing that mattress?
- A.** Correct.
- Q.** Okay. And is it also the case with respect to the Avocado Green mattress, that you didn't use any external resources in developing or designing that mattress?
- A.** Correct.

Day Five Hearing Tr. (Nguyen) 81:18–83:5



Jon Studner  
CEO



- Q.** Some manufactures like Tempur Sealy, Serta, and Simmons, in fact, bring you on early in their product development to show you products or future lineups and get your opinion?
- A.** That's correct.

Day Two Hearing Tr. (Studner) 87:3–6



Rob DeMartini  
CEO

purple

- Q.** [Y]ou testified on direct, that Purple does not just get feedback from Mattress Firm, you get feedback from all of your retailers, correct?
- A.** Not all, but many.

Day One Hearing Tr. (DeMartini) 157:5–8

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# Steering Is Not Profitable; Suppliers Police Steering



Rob DeMartini  
CEO

purple

“[W]e do [secret shopping] on a regular basis. We hire third-party firms to go in and experience what the consumer experiences at our customers.”

Day One Hearing Tr. (DeMartini) 105:24–106:1



Nelson Bercier  
President

Sit 'n Sleep  
YOUR MATTRESS SUPERSTORE

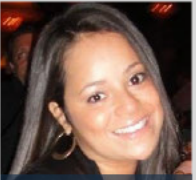
Q. Does Sit 'n Sleep incentivize its sleep consultants to steer customers . . . ?

A. No.

Q. Why not?

A. Because the only one that wins is the salesperson... they might sell a customer something that isn't right just because they're benefiting, so it's—no. That's a loser's—that game doesn't work.

Bercier Dep. Tr. (9/5/24) 68:16–69:1



Sarah Galimidi  
Mattress Buyer

★macy's

Q. If the salespeople were to steer customers towards a mattress that let's say wasn't the best mattress for them objectively, do you think that might result in, I don't know increased product returns, for example?

A. Yes, it would.

Q. Okay. And in the long run, might that impact Macy's mattress sales overall?

A. It would impact Macy's mattress sales, yes.

Day Six Hearing Tr. (Galimidi) 20:15–22

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# **FTC's Expert Analysis Is Unreliable and Refuted by Natural Experiments**

# Expert Evidence and Real-World Events Show Consumers Benefit

1

**Das Varma's model is unreliable evidence of foreclosure for at least three foundational reasons**

- ▶ Model is designed around a faulty \$2,000+ market; no testing below \$1,500 threshold
- ▶ Model does not account for *all* of Tempur Sealy's incentives
- ▶ Model contradicts the FTC's complete and partial foreclosure theories

2

**Das Varma's model effectively assumes away EDM, while Israel's allows for EDM and shows consumer benefit**

3

**Real-world events confirm neither foreclosure nor consumer harm is likely**

# Das Varma's Model Shows That, When There Is Bargaining Post-Merger, Mattress Firm Has No Incentive to Remove Serta Simmons



**Dr. Das Varma**

FTC Expert

**CRA** Charles River  
Associates

- Q.** ... And once the combined company is able to bargain with Serta Simmons, Serta Simmons stays on the floor at Mattress Firm, right?
- A.** Correct.
- Q.** And that's because Mattress Firm will no longer have an incentive to remove Serta Simmons from the floor, right?
- A.** Right.

Day Five Hearing Tr. (Das Varma) 263:5-11

# Das Varma's Bargaining Model Shows That Serta Simmons and Purple Are Not Disadvantaged on the Mattress Firm Floor

Defendants  
Case No. 4:24-cv-02508

Exhibit 5966-1

## Das Varma Bargaining Model Results

|        | Profit  | Revenue | Total Sales | Premium Market Share | BOS at Mattress Firm |
|--------|---------|---------|-------------|----------------------|----------------------|
| SSB    | 4.6% ↑  | 6.6% ↑  | 10.6% ↑     | 7.9% → 8.8% ↑        | 23.3% → 27.0% ↑      |
| Purple | 12.5% ↑ | 13.4% ↑ | 14.7% ↑     | 3.5% → 4% ↑          | 9.5% → 11.8% ↑       |

Sources:

Profit and Revenue: Dr. Israel Supplemental Report Table 5

Total Sales, Premium Market Share and BOS at Mattress Firm: Dr. Das Varma's Rebuttal Report Exhibit C1

© 2024 DOAR



# Undisputed That EDM Will Be Realized From the Merger



**Dr. Das Varma**  
FTC Expert

**CRA** Charles River  
Associates

“[O]ne of those margins simply becomes a transfer payment within the combined company . . . that’s called elimination of double marginalization . . . it creates downward pressure on the prices.”

Day Five Hearing Tr. (Das Varma) 188:9–20



**Dr. Israel**  
Defendants’ Expert

**COMPASS**  
**LEXECON**

“The fact that EDM exists, is a force in vertical mergers, and puts downward pressure on prices, I think we agree.”

Day Seven Hearing Tr. (Israel) 162:9–10

“By vertically integrating two such firms into one, the merged company is able to shrink that total margin so there's one instead of two, leading to lower prices for consumers. EDM is, therefore, procompetitive.”

*United States v. AT&T*, 310 F. Supp. 3d 161,197–98 (D.D.C. 2018) (cleaned up)

# Das Varma's Model Inconsistent With Industry Facts

| Das Varma's Assumption  | Actual Market Facts  | If Changed, Does Das Varma's Model Flip/Break? |
|---|--|--|
| <b>Retailers Do Nothing In Response To Manufacturers Changing Their Margins</b> | Multiple witnesses including SSB and Purple testified that manufacturers pay retailers to work to sell their mattresses                                | <b>Yes</b>                                     |
| <b>Retailers Receive Fixed, Unchanging Percentage Margins</b>                   | Many contracts, including Tempur Sealy's contract with Mattress Firm, use dollar margins. Margins are constantly renegotiated via incentive agreements | <b>Yes</b>                                     |
| <b>Consumers Are Insensitive To Price Changes</b>                               | No evidence presented that consumers are insensitive to mattress pricing   | <b>Yes</b>                                     |

# Israel's Model Reflecting Market Reality Shows Consumers Benefit

Total consumer welfare  
increase

**\$896 million**

Total consumer welfare  
increase per mattress

**\$181**

Decline in weighted-  
average prices

**15.6% or \$467**

- ▶ Better financing terms
- ▶ Store improvements
- ▶ Investment in supply chain and distribution
- ▶ Greater innovation
- ▶ More effective advertising
- ▶ Larger capital reinvestment into business

Day Seven Hearing Tr. (Israel) 164:2-13, 241:20-24

# Natural Experiments Show Merger Is Procompetitive

## “Prior Merger, Entry, and Exit Events.

The Agencies may look to **historical events** to assess the presence and substantiality of direct competition between the merging firms. For example, the Agencies may examine the competitive impact of **recent relevant mergers**, entry, expansion, or exit events.”

FTC and DOJ, Merger Guidelines (Dec. 18, 2023) at 36

“When it comes to evaluating the antitrust implications of proposed mergers . . . **similar transactions can be convincing evidence.**

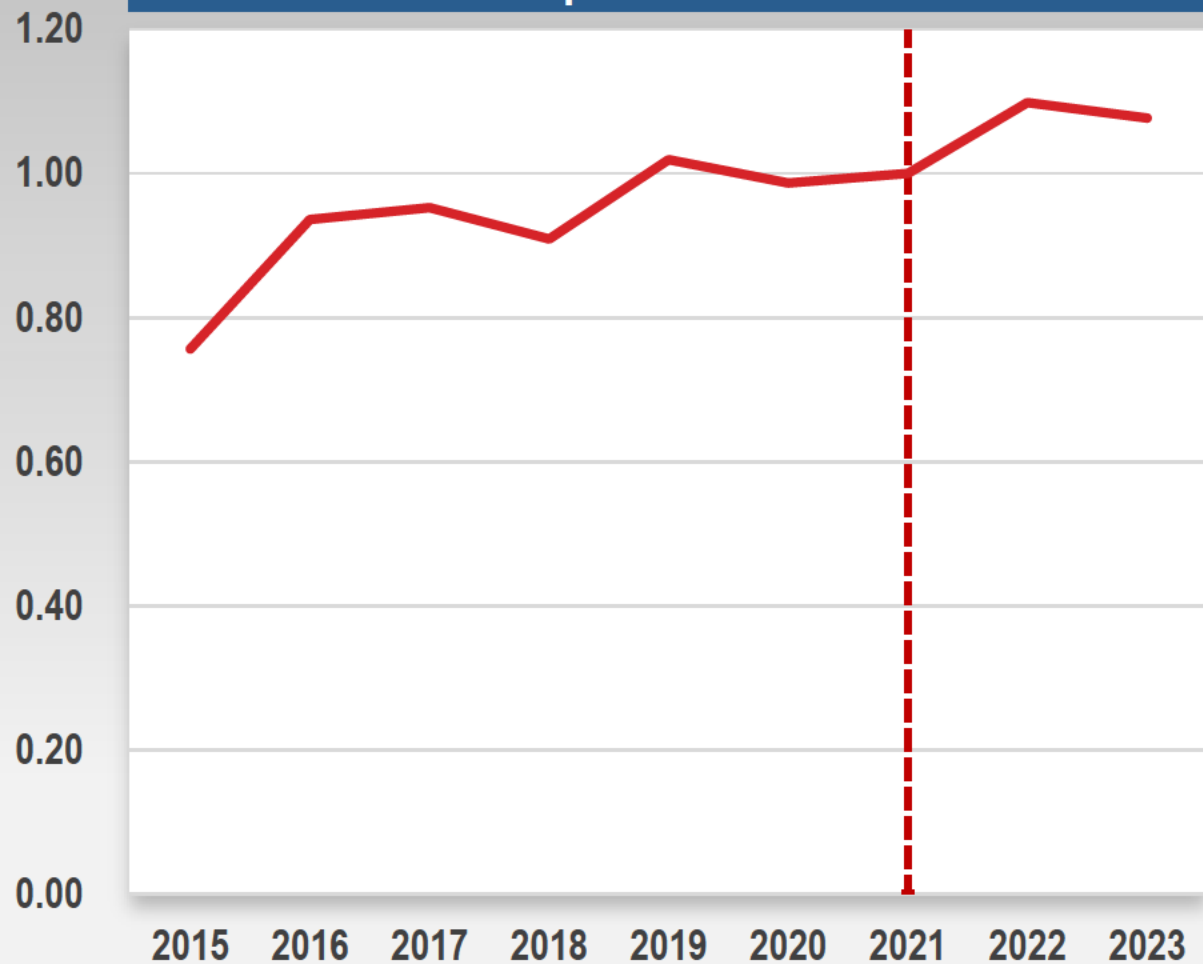
\* \* \*

And that analysis . . . definitively shows that prior instances of vertical integration in the video programming and distribution industry have had no statistically significant effect on content prices.”

*United States v. AT&T Inc.*, 310 F. Supp. 3d 161, 215, 218 (D.D.C. 2018) (cleaned up)

# Dreams Acquisition Was Procompetitive

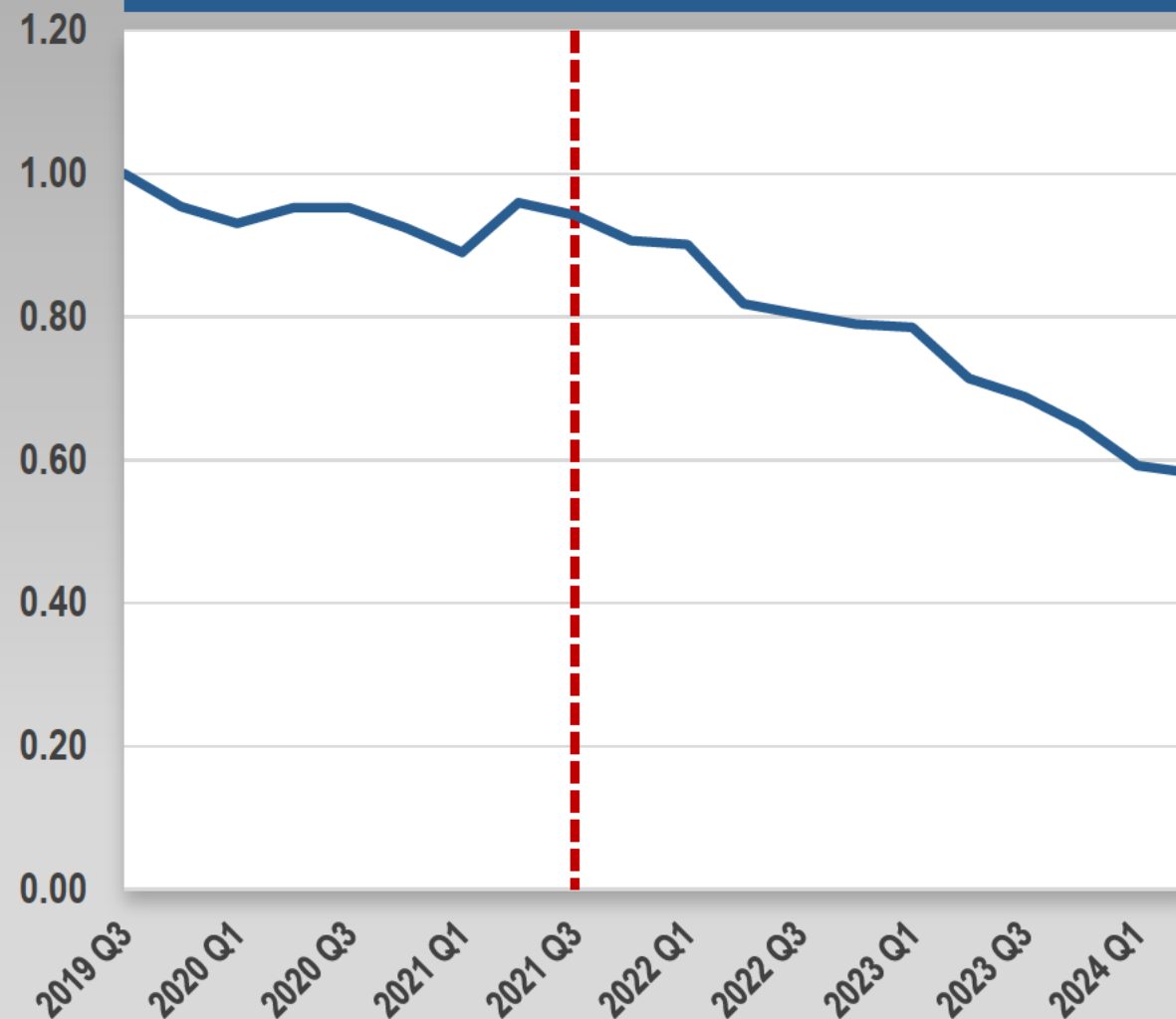
## Output Increased



Dreams Units (Indexed: 100 in 2021) / Industry Units (Indexed: 100 in 2021)

Exs. 5988, 5990

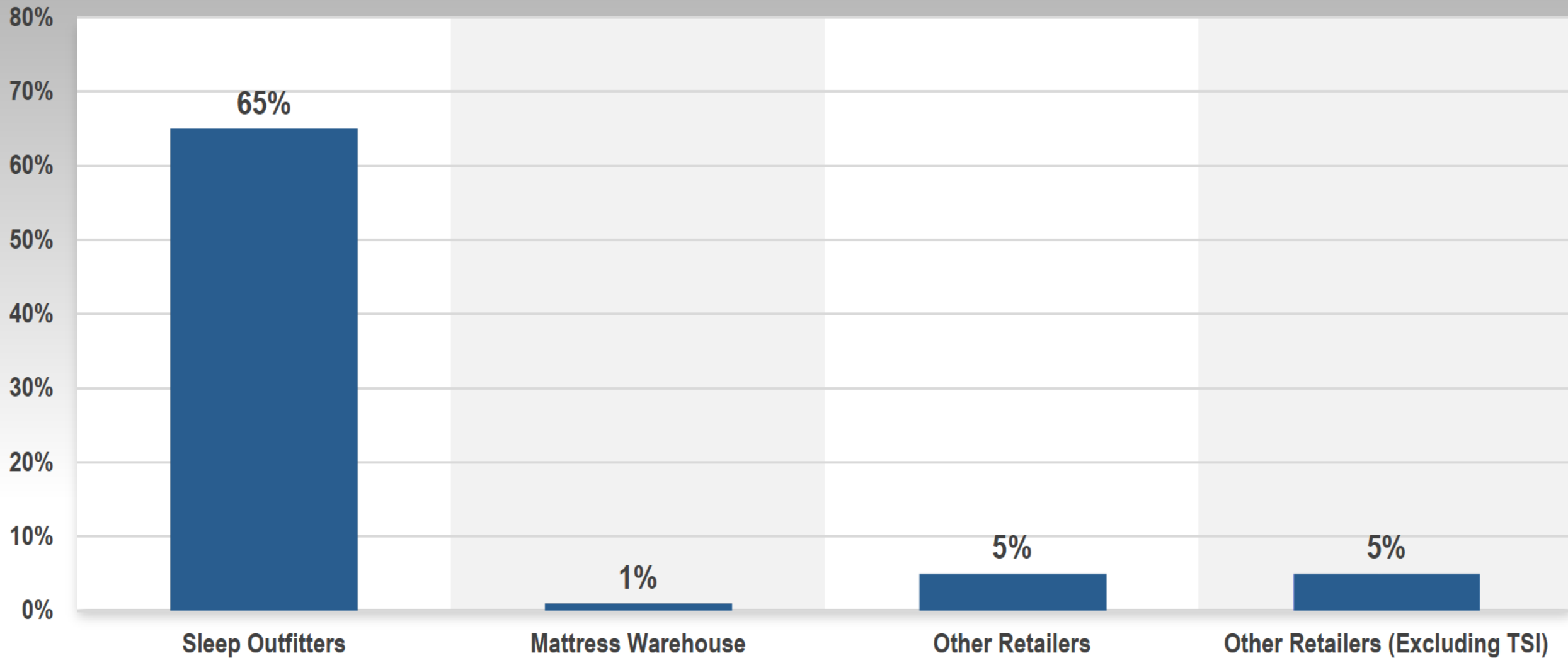
## Prices Decreased



Fisher Price Index of Dreams Mattress Prices



# Sleep Outfitters's Output Expanded Post Acquisition Compared to Benchmark



# Das Varma Did Not Find Harm From Prior Acquisitions



**Dr. Das Varma**

FTC Expert

CRA Charles River  
Associates

**Dreams**

**Q.** Okay. But you're not, just to be clear, you're not finding any decrease of output at Dreams?

**A.** I have not found it.

\* \* \*

**Q.** But you did not do an analysis that found increased prices at Dreams, correct?

**A.** Yeah.

**Q.** Okay. And you're not opining that there was any reduction in third-party brand presence at Dreams following the Tempur Sealy acquisition, right?

**A.** That is correct.

Day Five Hearing Tr. (Das Varma) 217:7-9, 16-22

**SLEEP  
OUTFITTERS**

**Q.** So you were just talking about Tempur Sealy's acquisition of Sleep Outfitters --

**A.** Correct.

**Q.** -- just a few minutes ago. You've not done an analysis that finds that Tempur Sealy's acquisition of Sleep Outfitters harmed competition, correct?

**A.** I did not find any evidence that it harmed competition.

Day Five Hearing Tr. (Das Varma) 215:10-16

**sova**

**Q.** And you've not analyzed SOVA at all, correct?

**A.** Yeah, SOVA I have not analyzed.

Day Five Hearing Tr. (Das Varma) 216:23-24

# Divorce Proves No Harm to Competition



**Scott Thompson**, Chief Executive Officer  
TEMPUR+SEALY

“[W]e got together, rethought our business plan in the U.S. and we drove back sales. . . . we offered [retailers] promotional money to help drive our product. We offered up money to open up stores to compete against Mattress Firm. We opened our own stores . . . . We beefed up our Internet team and started selling beds direct to customers through the Internet. And, quite frankly, we also leaned in on product development and made, you know, dang sure that we -- the next few products were going to be spot on because they needed to be really good as we competed to rebuild the sales.”

Day Four Hearing Tr. (Thompson) 160:2–13



**Steve Rusing**, EVP, President of U.S. Sales  
TEMPUR+SEALY

“You know, coming out of our separation from Mattress Firm, and based on research we had done about the consumer purchase journey, we developed a program called Retail Edge, which really is a program that has seven solution areas. We take an inventory of the retailer’s capabilities in these different areas and then we work on a plan to help drive their business. And it ranges from analytics to advertising to digital to assortment, you know, basically your merchandising, to in-store experience, you know, RSA training. It’s really the full gamut. And we put a lot of blood, sweat, and tears into it.”

Day One Hearing Tr. (Rusing) 226:8–17

**Q.** What was the overall effect of this breakup on the company?

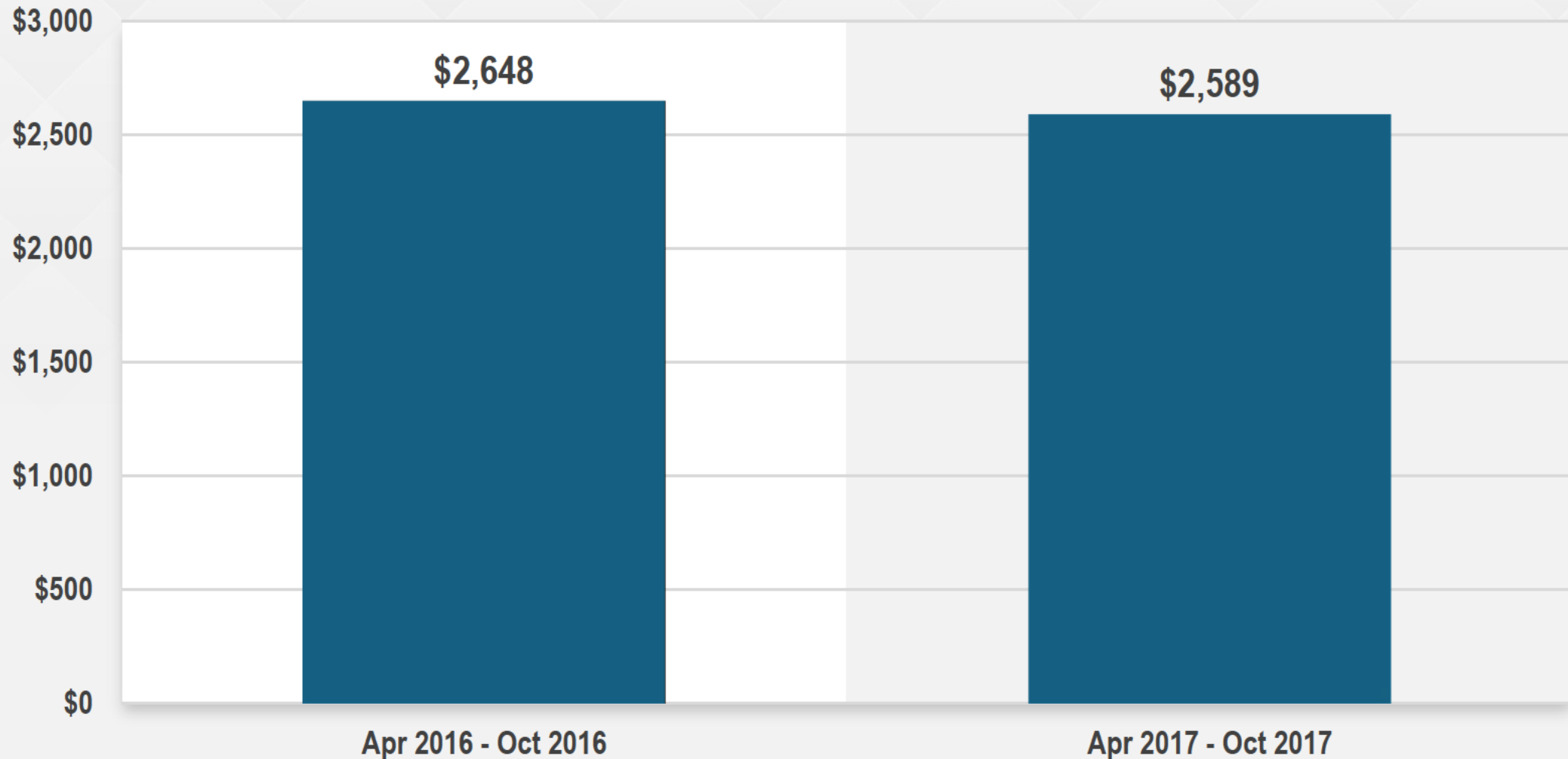
**A.** . . . [T]o be shaken like that, you know, we really became much closer to our retailers, much -- a much better partner. . . . We were more consumer-empowered or more consumer-focused, so to speak, because the world was changing. . . .

Day One Hearing Tr. (Rusing) 244:5–18

# No Consumer Harm From the Divorce

## SSB Premium Mattress Prices Fell After the Divorce

Average of Monthly Average SSB Premium Mattress Prices



# **Commitments Ensure No Substantial Lessening of Competition**



# Divestiture Further Shows No Substantial Risk to Competition



**Bill Papettas**

Chief Executive  
Officer

**MATTRESS  
Warehouse™**

“So post-divestiture, we’re going to have access to about 60 to 65 percent of the population, so we’re very excited about being able to service that much of the country.”

Day Three Hearing Tr. SEALED (Papettas) 37:13–16

“This accelerates that goal and then gives us a launching pad to get to 1,000 stores and really a bridge to become a national retailer.”

Day Three Hearing Tr. SEALED (Papettas) 46:17–19

# TSI's Slot Commitment Further Shows No Substantial Risk to Competition

At least

**20%**

**Committed  
to 3<sup>rd</sup> Parties**

(5% Can Be in Vertical Stacks)

**15%**

**Above \$1,500**

“Microsoft has committed in writing, in public, and in court to keep *Call of Duty* on PlayStation for 10 years on parity with Xbox.”

*FTC v. Microsoft Corp.*, 681 F. Supp. 3d 1069, 1101 (N.D. Cal. 2023)


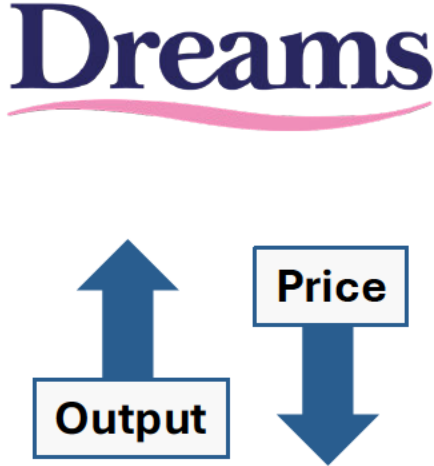

# Commitments Need Not Negate Every Competitive Concern

“To rebut Complaint Counsel’s prima facie case, Illumina was only required to show that the Open Offer sufficiently *mitigated* the merger’s effect such that it was no longer likely to substantially lessen competition. Illumina was not required to show that the Open Offer would negate the anticompetitive effects of the merger entirely.”

*Illumina, Inc. v. FTC*, 88 F.4th 1036, 1059 (5th Cir. 2023)

# Conclusion

# No Likelihood of Success on the Merits

| No Valid Market                  | No Possibility Competition Will Be Substantially Lessened | No Likelihood Competition Will Be Substantially Lessened                             | Natural Experiments Confirm No Harm  | Commitments Preclude Any Concern   |
|----------------------------------|---|--|--|--|
| Premium<br>=<br>Sliding<br>Scale | 8.8%  |  |  | 20%+<br>for other<br>manufacturers<br><br> |



# Equities Disfavor Injunction

## Significant Harm to Merging Parties

“[T]he federal court preliminary injunction almost always obviates the need for further administrative proceedings.”

Complaint Counsel's Response to Respondents' Motion to Continue Evidentiary Hearing (Oct. 15, 2024) at 2 (cleaned up)

## No Harm to the Public Interest

“It is a vertical acquisition. Microsoft and Activision will act as parent and subsidiary. There is no planned dismantling of operations, as in *Warner*. What exactly about the merger would make it difficult to order an effective divestiture? The FTC does not say.”

*FTC v. Microsoft Corp.*, 681 F. Supp. 3d 1069, 1100–01 (N.D. Cal. 2023)

