
DEFINING BOUNDARIES: UNTANGLING THE PUZZLE OF MARKET DEFINITION IN THE FASHION WORLD

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ABSTRACT

Increased antitrust scrutiny has become the fashion industry's latest trend, as regulators focus on the sector's competitive practices. Brands are fiercely competing for consumer loyalty, making the need for a fair and transparent marketplace more critical than ever. Competition law plays a key role in fostering innovation while protecting consumer interests in this rapidly evolving industry.

The intersection of antitrust and fashion law has placed the concept of the "relevant market" under scrutiny. This paper examines the complexities of market definition in fashion law, with particular emphasis on the recent case of *FTC v. Tapestry, Inc.*, which centers on the market for accessible luxury.

Accessible luxury occupies a unique position between high-end luxury and mass-market products. This distinctive positioning challenges traditional antitrust frameworks, which typically rely on product substitutability, geographic scope, and consumer behavior to define market boundaries.

The paper critiques current methodologies for market definition, highlighting their failure to account for intangible factors such as brand perception, emotional appeal, and cultural significance. Through an analysis of recent legal precedents, it identifies shortcomings in judicial interpretations and advocates for a more sophisticated framework that captures the intricate dynamics of the luxury fashion industry.

Keywords: Antitrust, Fashion Law, Relevant Market, Accessible Luxury, Fashion Industry

INTRODUCTION

Conventionally, luxury has been associated with power, exclusiveness, wealth and status, all of which are linked to satisfying consumer desires beyond their necessities. However, a rise in demand from the youth and an expanding middle-class consumer base has significantly changed the global luxury regime.¹ The rise of the 'affordable luxury' market has been one of the most significant changes in the luxury sector over the last decade. This area offers people high-quality, trendy products at a lower price point.² Social media platforms such as Instagram and YouTube have expedited this shift in consumer behaviour significantly. These platforms have transformed customers' perceptions of luxury, making it a more attainable dream. This cultural shift has had a considerable impact on middle-class purchasing habits, resulting in a spike in luxury consumption far beyond the traditional elite.³ The dynamic characteristics of the luxury industry necessitate a strategic adjustment, since catering solely to wealthy consumers is no longer enough.

The emergence of the 'affordable luxury' category has become a critical point of significance for brands. Mergers and acquisitions are an essential strategy for remaining competitive and relevant in the market. This option to work with or acquire an established affordable brand can help to diversify portfolios and expand brand reach. This not only allows these companies to preserve their reputation for quality and exclusivity in the market, but it also gives consumers a more affordable way to experience luxury at a lesser cost. When two well-known brands decide to merge, they become subject to the applicable regulations and compliance duties imposed by the regulatory authorities in their respective jurisdictions. In particular, when two or more established businesses merge, the antitrust authorities evaluate how the merger might affect market competition.

In 2024, the proposed merger between Tapestry and Capri was under debate. The proposed merger was sought to improve both companies' competitiveness against the other established

¹ Veronica Rosendo-Rios & Paurav Shukla, *When luxury democratizes: Exploring the effects of luxury democratization, hedonic value and instrumental self-presentation on traditional luxury consumers' behavioral intentions*, 155 Journal of Business Research (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0148296322009134>

² David Fuller, *The global affordable luxury fashion market is growing at compound annual growth rate (CAGR) of 5.0% from 2023 to 2030.*, Cognitive Market Research, (2024), https://www.cognitivemarketresearch.com/affordable-luxury-fashion-market-report#tab_report_details

³ Jill Ettinger, *Luxury comes for the middle class*, Ethos., (2024), <https://the-ethos.co/luxury-comes-for-the-middle>

luxury brands. However, the US Federal Trade Commission (FTC) intervened to say that the proposed merger may reduce competition within the accessible luxury handbag segment. The commission raised concerns regarding the fact that the merger could also lead to higher prices for consumers by limiting substitutes in the relevant market. This case is crucial as it explores the concept of 'affordable luxury' and its effects within the competitive landscape. The case sets an important precedent for companies aiming to enter this rapidly growing sector.

This paper delves into the intersection of antitrust law and the luxury sector within the fashion industry. It critically examines the concept of the 'relevant market' in antitrust law, evaluating current methods for defining markets in the fashion industry. The paper then examines the *Tapestry* case, which highlights the complexities of defining 'affordable luxury'. It identifies the limitations of the traditional market definition framework when dealing with a merger and acquisitions case in the fashion industry. Lastly, the paper proposes an approach that should be considered when looking at the concept of market definition in the fashion and luxury industry.

UNDERSTANDING THE ROLE OF ANTITRUST IN THE FASHION INDUSTRY

The main aim of antitrust legislation is to establish a healthy market environment by maintaining a fair balance between the interests of companies, consumers, and the economy as a whole. Over the last two years, the antitrust authorities of the European Union (EU) as well as the United States (US) have drawn attention to the fashion and luxury industry.

For Instance, the European Commission (EC) in 2022 conducted unannounced inspections at the premises of several undisclosed fashion corporations across multiple EU member states. The EC action stemmed from the concern that some corporations may be violating cartel rules under Article 53 and Article 101 of the Treaty of the Functioning of the European Union (TFEU).⁴ Further, it was stated that the companies that were found guilty of violating EU antitrust rules would face fines of up to 10 percent of their global revenue.⁵ In April 2024, this investigation into a group of fashion designers was scrapped off. The names of the companies

⁴ European Commission, *Antitrust: Commission carries out unannounced inspections in the fashion sector* (May 17, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3134

⁵ *EU antitrust watchdog raids fashion companies, suspects cartel*, Reuters (May 18, 2022, 2:55AM), <https://www.reuters.com/business/retail-consumer/eu-antitrust-watchdog-raids-fashion-companies-suspects-cartel-2022-05-17/>.

raided remain undisclosed.⁶ The identities of the raided fashion companies were not fully disclosed during the public announcements of dawn raids in June 2021, May 2022, and April 2023. However, Gucci and Pierre Cardin were covered in the news for being raided during that time.⁷

Following these investigations the EC announced a fine of €5.7 million on Pierre Cardin and its largest licensee, Ahlers in November 2024. These fines were imposed for breaching EU antitrust regulations by foreclosure of cross-border sales of Pierre Cardin branded clothing and limiting sales of these products to certain consumers.⁸ This is an example of how the fashion industry in Europe is currently under intense observation by the antitrust authorities.

Over the last decade, the scrutiny by the competition authorities has increased due to issues pertaining to restrictions on cross-border online sales, limitations on distributors' ability to advertise online and the information exchanges between the competitors. This heightened attention from both the national and EU bodies, alongside significant updates to the EC's distribution framework, particularly affects the retail-driven fashion sector. As regulations evolve, there is a need for the market players to ensure compliance with the antitrust regime.

The US Federal Trade Commission (FTC) is equally committed to scrutinizing competition practices within the fashion industry. The recent antitrust lawsuit highlighted the growing scrutiny in the US antitrust regime were *Tapestry INC.*⁹ and *Cavalleri*¹⁰, both these cases highlight the importance of defining the relevant market within the regulatory framework.

The concept of a 'market' and the associated notions of 'market power' are the fundamental principles that are the key aspects to the entire framework of antitrust law and its application. The question about what constitutes a relevant market has been a central focus of discussion in the US cases referred to above.

⁶ Foo Yun Chee, *EU antitrust regulators scrap probe into fashion designers*, Reuters, (Apr. 5, 2024, 8:46 PM) <https://www.reuters.com/sustainability/society-equity/eu-antitrust-regulators-scrap-probe-into-fashion-designers-2024-04-05/>

⁷ Emilio Parodi & Foo Yun Chee, *Exclusive: Gucci Milan site inspected in EU antitrust inquiry*, Reuters. (Apr. 19, 2023, 11:24 PM), <https://www.reuters.com/business/retail-consumer/gucci-milan-unit-inspected-eu-antitrust-inquiry-2023-04-19/>

⁸ European Commission, *Commission fines Pierre Cardin and its licensee Ahlers €5.7 million for restricting cross-border sales of clothing*, (Nov. 28, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6104

⁹ Federal Trade Commission v. Tapestry, Inc. et al, No. 1:2024cv03109

¹⁰ Cavalleri et al. v. Hermès International et al. - 3:24-cv-01707

In a mergers and acquisitions case, the legality of the proposed merger often revolves around on the market share of the parties involved, this makes the determination of the relevant market imperative.¹¹ Recently, one of the prominent cases of mergers and acquisitions in the US antitrust landscape was the *Tapestry INC* case, where the concept of ‘relevant market’ played a central role. In another case, it was alleged that Hermès International was unlawfully tying the sale of its luxury Birkin bag to the purchase of its high-priced clothing and accessories. In case of tying, the plaintiff must demonstrate not only that the defendant has tied two or more economically distinct products but also that the defendant holds a ‘significant’ market power in the tying product.¹² This shows how demonstrating market power often entails proving that the defendant has a dominating position in the relevant market, existence of considerable barriers to entry, and there is a lack of potential by the current competitors to grow their output in the short term. Therefore, accurately defining the relevant market is crucial as it serves the foundation for estimating market power.

The next section explores how the relevant market is defined and its significance in antitrust analysis.

WHY THE CONCEPT OF ‘RELEVANT MARKET’ MATTERS IN COMPETITION LAW?

As mentioned earlier, defining the market is often the starting point and one of the most critical steps in antitrust law. In many cases, the outcome of a case largely depends upon how the market is defined. This definition can determine whether a company is considered monopolistic or if a merger crosses the threshold for a prima facie violation of the law.¹³

To illustrate the challenge of defining a market, imagine the price of bananas increases. Would you switch to a substitute fruit, or would you continue buying bananas despite the increase in prices? The answer likely depends on who you ask and their preferences. This shows how subjective market boundaries can be and why defining a market is not straightforward. Thus, economists have not been of much help in this area. Economic theory does not offer clear and

¹¹ *Stanley Works v. FTC* 469 F.2d 498, 500 (2d Cir. 1972), *United States v. H&R Block* 833 F. Supp. 2d 36, 50 (D.D.C. 2011)

¹² *Cavalleri et al. v. Hermès International et al.* - 3:24-cv-01707

¹³ Robert A. Rogowsky & William F. Shughart, *Market definition in Antitrust Analysis: Comment*, (Federal Trade Commission, Working Paper No.77 1982), <https://www.ftc.gov/system/files/documents/reports/market-definition-antitrust-analysis-comment/wp077.pdf>

consistent criteria for deciding how factors like substitutability, distance, and time shape a market for legal purposes. As a result, relevant markets in antitrust investigations are typically determined on a case-to-case basis.¹⁴

However, the majority of the antitrust authorities make the assessment of a ‘relevant market’ based on two key dimensions- (1) the geographic market, which decides which regions to include while doing the assessment of a market, and (2) the product market, determining which products should be grouped together. By using these parameters, enforcers can assess factors like market share, market power, and concentration levels in their evaluation to identify any potential anticompetitive behaviour. While assessing the market definition we also consider factors from both demand and the supply side. On the demand side, products must be interchangeable/substitutable from the consumers perspective. On the supply side, it includes sellers who produce or can readily shift production to the relevant or its close substitutes.¹⁵

Now, what about in the case of a luxury item? The concept of market definition becomes much more complex when applied to the luxury industry. This is because there has not been a universally accepted and clear definition of what is meant by the term ‘luxury’.¹⁶ It remains a slippery term, constantly evolving and is complex to be defined.¹⁷ Therefore, the recent block of the Tapestry merger becomes an imperative point of discussion, as it takes a step forward by attempting to define what constitutes the ‘affordable luxury’ market.

The next section of the paper will delve into the holding in detail, highlighting the key factors that defined the relevant market in this case and led to the merger block.

EXAMINING THE FTC’S DECISION TO BLOCK TAPESTRY’S MERGER

Section 7 of the Clayton Act prohibits mergers and acquisitions that diminish competition or establish monopolies. The legislative intent is to restrain anti-competitive activities even before they have actually taken place, thereby establishing a sufficiently pre-emptive regime from

¹⁴ *Id.*

¹⁵ OECD, *Market Definition: Key findings, summary and notes*, OECD Roundtables on Competition Policy Papers No. 130, (2012), <https://doi.org/10.1787/62f0f46c-en>.

¹⁶ Klaudia Plażyk, *The democratization of luxury – a new form of luxury*, Academia.edu., (2014) https://www.academia.edu/9557814/The_democratization_of_luxury_a_new_form_of_luxury

¹⁷ Jean-Noël Kapferer & Anne Michaut, *Pursuing the Concept of Luxury: A Cross-Country Comparison and Segmentation of Luxury Buyers’ Perception of Luxury*, 4(1) *Journal of International Marketing Strategy*, at 6–23, (2016), <https://www.mtmi.us/jims/img/1%20Pursuing%20the%20Concept%20of%20Luxury%20%20pg%206%20to%20pg23.pdf>

prospective mergers which pose a potential threat to competition within the market. To determine whether a merger can potentially violate Section 7 involves more than just assessing its immediate effects on the market competition. An assessment regarding the merger's future implications is to be made.¹⁸ Determining the relevant market becomes an important and foremost step to make assessment regarding whether or not a merger contravenes with the Act.¹⁹ Let's see how the relevant market was defined in the *Tapestry Inc.* case, which ultimately resulted in the merger being blocked.

In the case of *Tapestry Inc.*, the commission moved to block the proposed merger between Tapestry Inc.- the owner of Kate Spade and Coach with Capri Holdings Ltd., the parent company of Michael Kors. The relevant geographic market was agreed upon by the parties as the entire US. Thus, the primary focus of the dispute centered around the definition of the relevant product market.

The commission stated that both the companies are major players in the 'accessible luxury' handbags market. The Federal Trade Commission stated that the merger would significantly reduce market competition as well as raise prices. They argued that there was a distinct market for affordable luxury handbags, defined by distinctive client preferences and pricing structures that distinguished them from other luxury goods. The companies, on the other hand, disputed this assumption, claiming that no such product market existed and emphasized that accessible-luxury handbags were only a subset of the larger luxury bag market.

The US Southern District Court of New York decision was in support of the commission. It pointed out that the accessible luxury market was separate from the mass-market and high-end luxury handbag markets because it represents a consumer preference for reasonably priced prestige goods that strikes a balance between accessibility and exclusivity. It is a market niche that neither cheaper nor more expensive alternatives could fill.

The District Court while deciding upon the case referred to the landmark decision of *Brown Shoe Co. v. United States*.²⁰ This was to state that the relevant market must be sufficiently broad to encompass all competitive effects, including possible competition from other goods or services. By doing this, the Court rejects a merger based on its potential impact on

¹⁸ United States v. Philadelphia Nat'l Bank, 374 U.S. 321 (1963)

¹⁹ United States v. Marine Bancorporation, Inc., 418 U.S. 602, 618 (1974)

²⁰ Brown Shoe Co., Inc. v. United States, 370 U.S. 294 (1962)

competition within defined markets rather than just on overall market share or size. In the current decision, based significantly on the *Brown Shoe* case, the Court decided that the accessible luxury market for handbags differs from both the mass-market and the true-luxury markets in two ways. Firstly, affordable luxury handbags cost between \$100 and \$1,000. Furthermore, accessible luxury handbags rely heavily on discounts.²¹

The case was also one of the first to be decided following the announcement of the FTC and US Department of Justice's 2023 Merger Guidelines. The need to look into the 2023 Merger Guidelines stemmed from a perceived deficiency in prior enforcement methods. Prior to these rules, the FTC experienced multiple setbacks in merger challenges, forcing a reconsideration of how mergers should be evaluated. The updated guidelines merged with multiple previous versions and introduced a more coherent vision for merger evaluations, harmonizing with historical legal precedents that promote greater investigation of mergers, particularly those that considerably increase market concentration.

One of the most notable aspects of the Guidelines was the adoption of lower standards for judging when a merger is likely to harm competition.²² Specifically, a merger that results in a firm having more than 30% market share or causes an increase in the Herfindahl-Hirschman Index (HHI) by more than 100 points was likely to be judged anticompetitive.²³ Experts believe that the case aligns with the modern precedents and would have turned out to be the same if were to be decided under the 2010 Merger guidelines.²⁴ This is because the concentration levels in the Capri-Tapestry case exceeds the threshold present in both the Merger Guidelines.²⁵

In weighing the appropriateness of implementing the 2023 Merger Guidelines, which were cited in just three previous cases and were introduced less than a year ago ²⁶, Justice Rochon

²¹ Federal Trade Commission v. Tapestry, Inc. et al, No. 1:2024cv031091 at 39–43.

²² Jon B. Dubrow et al., *New FTC, DOJ Merger Guidelines Create Challenges and Opportunities*, McDermott Will & Emery (Dec. 21, 2023, 10:00 AM), <https://www.mwe.com/insights/new-ftc-doj-merger-guidelines-create-challenges-and-opportunities/>; U.S. Dep't of Justice & Federal Trade Comm'n, *Merger Guidelines* (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf

²³ U.S. Dep't of Justice & Federal Trade Comm'n, *Merger Guidelines* (2023), (citing *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321 (1963)).

https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf

²⁴ Beau Buffier et al., *Old-Fashioned Approach Still Wins It for the FTC in Luxury Goods Merger Challenge*, Wilson Sonsini Goodrich & Rosati (Oct. 30, 2024, 10:00 AM), <https://www.wsgr.com/en/insights/old-fashioned-approach-still-wins-it-for-the-ftc-in-luxury-goods-merger-challenge.html>

²⁵ Federal Trade Commission v. Tapestry at 99 (An HHI of 3,646 was "more than sufficient to create a strong presumption of anticompetitive effects.").

²⁶ Lee Berger & Travis West, *The New Merger Guidelines: Reflections After One Year*, Steptoe (Dec. 20, 2024, 11:00 PM), <https://www.stepto.com/en/news-publications/antitrust-and-competition-blog/the-new-merger-guidelines-reflections-after-one-year.html>

of the District Court stressed their persuasive significance while acknowledging their non-binding character. In her ruling, Justice Rochon determined that the merger would give Tapestry and Capri 59% of the accessible luxury handbag market, significantly above the 30% market share criteria. This led to serious worries about the merger's possible anticompetitive implications and created a presumption against its legality.²⁷ The reference made to the 2023 Merger Guidelines as a persuasive legal resource has set a precedence that the antitrust enforcers are likely to rely on in future merger cases.

Finally, the court's approval of the "accessible luxury" demonstrates the continued relevance of *Brown Shoe's* market definition principles in contemporary antitrust analysis, as well as the fact that different submarkets can exist even within a larger product category, depending on factors such as price, quality, and consumer perception. This flexibility in customer preferences highlights the significance of subtle strategies in antitrust proceedings, especially in industries like fashion where brand positioning is critical. Judge Rochon's recognition of a tightly defined market for affordably priced luxury handbags may set a precedent for future cases and influence how future fashion sector mergers are evaluated, urging regulators to focus on the distinguishing characteristics of submarkets rather than broad market definitions and adapt frameworks to market realities.

FAULTLINE IN MARKET DEFINITION: LESSONS FROM THE FTC V. TAPESTRY CASE

Now that Lina Khan has resigned as the Chair of the FTC, it is crucial to revisit the case given her substantial influence on the agency's enforcement strategies. During her tenure, she has undertaken initiatives to control the power of large corporations. One of her efforts was to block the \$8.5 billion Tapestry-Capri merger. This case is more of the effort that reflects her efforts to advance stricter enforcement policies through the courts. She has had a significant influence on judiciary during her tenure as the chair and has shaped the approach of antitrust enforcement.²⁸ Firstly, FTC's definition of the luxury handbag market in light of the merger of the two luxury fashion giants appears overly narrow and somewhat arbitrary. Handbags priced in the hundreds of dollars are classified by federal agencies as "accessible luxury" or

²⁷ Claude Szyfer et al., *Is antitrust back in fashion? Implications of the FTC's win in the Tapestry/Capri merger*, Hogan Lovells (Nov. 07, 2024, 10:00 AM), <https://www.hoganlovells.com/en/publications/is-antitrust-back-in-fashion-implications-of-the-ftcs-win-in-the-tapestry-capri-merger>

²⁸ David Dayen, *The End and Beginning of the Lina Khan Era*, The American Prospect (Dec. 12, 2024, 10:00 AM), <https://prospect.org/economy/2024-12-12-end-and-beginning-lina-khan-era-antitrust/>

"affordable," a classification that appears to be unconnected from consumer opinions. Many middle-class consumers would not consider these cheap, this demonstrates a gap between regulatory definitions and actual world market realities.²⁹ Additionally, FTC excludes from its market research brands that do not offer discounts or sell through various channels. Despite having a significant presence in the luxury market, high-end companies like Chanel and Hermes, who strictly regulate their pricing and distribution policies, were disregarded. This omission undermines the market study's thoroughness since it ignores the entire range of competition that shapes customer choices and how they could respond to price adjustments across several brands or categories.³⁰

The commission's primary concern was the potential loss of direct head-to-head competition between the merging parties' brands, such as Coach, Kate Spade, and Michael Kors, which it stated might result in higher prices, fewer discounts, less innovation, and fewer product options for consumers. However, the court failed to assess the specific harm that this arrangement could create to consumers. For instance, a merger of the parent companies of two major grocery chains would undoubtedly have a greater impact on customers, as raising grocery prices hamper with a basic necessity and would directly affect a larger demographic. Could the same level of harm be realistically expected for users of luxury handbags, which are discretionary, high-end products rather than necessities?³¹

Further, the issue was regarding selective use of the 2023 Merger Guidelines. The standards in the new guidelines continue to rely heavily on structural presumptions, such as on classic antitrust tools like the Herfindahl-Hirschman Index (HHI), to determine market concentration. While administratively efficient, this statistic oversimplifies the realities of modern markets, particularly in luxury products, where brand loyalty and non-price competition (such as exclusivity and workmanship) have a substantial impact on market results. For example, brands frequently adjust their pricing strategies, and consumers may cross these artificial boundaries due to factors such as trends, personal preferences, or economic conditions. Rigid segmentation

²⁹ Lina Khan *Wears Prada*, The Wall Street Journal (Apr. 28, 2024, 11:48 AM), <https://www.wsj.com/articles/lina-khan-ftc-capri-tapestry-merger-antitrust-5a3627c1>

³⁰ *Id.*

³¹ Jenna Greene, *In Michael Kors, Coach merger challenge, FTC's case is not in the bag*, Reuters (Apr. 26, 2024, 02:07 AM), <https://www.reuters.com/legal/government/column-michael-kors-coach-merger-challenge-ftcs-case-is-not-bag-2024-04-25/>

might oversimplify the competitive landscape, sacrificing market realities based on customer behaviour and preferences.³²

It is critical here to also highlight the court's heavy reliance on Tapestry-Capri's internal documentation, which identified the enterprises as key competitors in the "accessible luxury" area and classified the relevant market accordingly.³³ While internal terminology can provide useful insights, it does not always reflect broader market realities. Companies frequently use specific language for internal strategic goals, which may not exactly represent consumer views or behaviors. Relying primarily on such internal documents increases the risk of adopting a restricted market definition that ignores external competition forces. A more balanced strategy that combines qualitative analysis—such as studying "ordinary-course documents" and consumer behavior—with quantitative approaches may result in a more full and accurate market description.³⁴

In conclusion, even though the court's definition of the "accessible luxury handbag" market was based on accepted antitrust laws, it might have failed to consider the fashion industry's complexity and dynamic nature, underscoring the need for more adaptable and thorough market research that could paint a more accurate picture of the competitive environment.

A CALL TO ADDRESS THE GAPS IN FASHION ANTITRUST

The Trump administration is likely to take note of this case because it follows a more traditional approach and does not address the new theories of harm outlined in the 2023 merger guidelines.³⁵ Therefore, it becomes important to understand need for new instruments and tests to more accurately define markets in order to handle the complexity of the fashion sector.

In this case, the FTC overestimated the harm to consumers and competition. For example,

³² Directorate for Financial and Enterprise Affairs Competition Committee, *The Use of Structural Presumptions in Antitrust- Note by the United States*, OECD, DAF/COMP/WP3/WD(2024)34, (2012), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2024\)34/en/PDF](https://one.oecd.org/document/DAF/COMP/WP3/WD(2024)34/en/PDF)

³³ Brian Cocnklin et al., "Antitrust has come into fashion" – U.S. Federal trade commission wins preliminary injunction against tapestry's acquisition of capri, Clifford Chance (Oct., 2024), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/10/antitrust-has-come-into-fashion-us-federal-trade-commission-wins-preliminary-injunction-against-tapestrys-acquisition-of-capri.pdf>

³⁴ Press Release, Federal Trade Comm'n, Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter & Commissioner Alvaro M. Bedoya in the Matter of Tapestry, Inc. & Capri Holdings Limited (Dec. 5, 2024) https://www.ftc.gov/system/files/ftc_gov/pdf/khan-bedoya-slaughter-statement-tapestry-capri.pdf

³⁵ Robert R. Baldwin et al., *Trump 2.0: What A new Trump Administration means for antitrust enforcement*, Hogan Lovells (Nov. 21, 2024), <https://www.hoganlovells.com/en/publications/trump-20-what-a-new-trump-administration-means-for-antitrust-enforcement>

labels such as Rebecca Minkoff, Longchamp, and Tory Burch sell identical products to the 'affordable luxury' brand in issue. This is to argue that consumers have choices. Second, second-hand luxury platforms such as Vestiaire Collective and The RealReal offer more economical ways to acquire high-quality things. The rise of direct-to-consumer businesses and internet platforms has paved the way for new competitors to enter industry. This has enhanced competition and fueled innovation, providing consumers with better products and services. Furthermore, the concept of accessible luxury is dynamic.³⁶ Nowadays, buyers seek products that achieve a balance between quality, affordability, and sustainability, redefining what luxury means in today's market.³⁷

In the present case, it is observed that one important feature of the merger that has been largely disregarded is its potential to promote sustainability in the fashion sector. The commission must examine the absence of Environmental, Social, and Governance (ESG) factors as a defense in merger reviews, which exposes a serious shortcoming in regulatory frameworks. During her tenure as Chair, Lina Khan specifically emphasized that merger laws preclude the agency from requiring a corporation to adopt specific ESG obligations in order to receive merger approval.³⁸ This viewpoint exemplifies a rigorous approach in which antitrust decisions are primarily focused on competition and consumer effect, ignoring larger environmental and ethical issues. In this situation, Tapestry has been at the forefront of developing traceability, aiming to track 95% of its raw materials by 2025. The company has also worked with platforms to improve supply chain transparency, enabling more accountability and ethical sourcing.³⁹

If authorized, the merger would allow Tapestry to extend similar sustainability standards to Capri's brands, thereby enhancing their shared commitment to environmental responsibility. In an industry frequently chastised for its environmental impact, this might be a significant step toward more sustainable methods.

³⁶ Aliana Cohen & Prachi Ajmera, *Accessible luxury under fire: the FTC challenges fashion mega-merger*, The Global Legal Post, (Oct. 18, 2024), <https://www.globallegalpost.com/news/accessible-luxury-under-fire-the-ftc-challenges-fashion-mega-merger-1707975623#:~:text=The%20FTC's%20lawsuit%20argues%20that,and%20fewer%20choices%20for%20consumers>

³⁷ Audrey Plzak et al., *The "Myth" of Accessible Luxury Handbags: Brand Heat vs. Antitrust Violations*, Santa Clara Business Law Chronicle (Oct. 30, 2024), <https://www.scbc-law.org/post/the-myth-of-accessible-luxury-handbags-brand-heat-vs-antitrust-violations>

³⁸ Logan M. Breed & Ilana Kattan, *ESG initiatives: no defense under U.S. Antitrust Laws*, Hogan Lovells (Sept. 23, 2022), <https://www.hoganlovells.com/en/publications/esg-initiatives-no-defense-under-us-antitrust-laws>

³⁹ Cohen & Ajmera, *supra* note 36.

The current market for handbags remains volatile, consumer behavior is changing, and new competitors are becoming more and more influential.⁴⁰ Unlike traditional commodities, fashion functions in a fluid and unpredictable environment. As Professor Scafidi correctly remarked, "*The court appears to believe that buying one brand is very much like buying another, similar to how you might choose one hammer over another.*"⁴¹ This viewpoint overlooks the distinct nature of fashion, which is influenced by creativity, trend shift, cultural relevance, and consumer opinion. Instead, a nuanced strategy is required, considering market flexibility, brand perception, and the growing relevance of sustainability in influencing customer choices.

CONCLUSION

In conclusion, the meeting of antitrust investigation and the fashion industry, particularly in the context of affordable luxury, emphasizes the vital need for a comprehensive understanding of market dynamics. The recent case of *Tapestry Inc.* demonstrates how typical antitrust frameworks fail to sufficiently define relevant markets in this specific sector. The court's decision to halt the merger of Tapestry and Capri Holdings highlights the complexity of analyzing competition in a sector that includes both high-end luxury and mass-market products.

The analysis presented in this paper uncovers serious flaws in current market definition approaches, which frequently miss intangible aspects like brand perception, cultural relevance and sustainability. These factors are critical for understanding customer behavior and market dynamics, especially in an industry where emotional appeal drives purchasing decisions. As luxury companies consolidate power, the consequences for competition and consumer welfare become more apparent.

Furthermore, this research suggests a more comprehensive framework that combines these intangible characteristics into market definitions. By doing so, authorities can better assess the competitive landscape and defend consumer interests in a rapidly changing economy. To maintain a fair and transparent marketplace that stimulates innovation and protects consumer choice, present antitrust policies must be re-evaluated considering the problems faced by fashion conglomerates.

⁴⁰ Greene, *supra* note 31.

⁴¹ Cathaleen Chen, *The Blocking of the Tapestry-Capri Merger Spells Trouble for American Fashion*, The Business of Fashion (Oct. 25, 2024), <https://www.businessoffashion.com/briefings/retail/the-blocking-of-the-tapestry-capri-merger-spells-trouble-for-american-fashion/>

As the fashion sector adapts to shifting customer preferences and economic realities, antitrust rules must develop as well. This progression will not only improve regulatory effectiveness but will also foster a competitive climate that encourages creativity and diversity in the fashion industry. Finally, tackling these issues will be critical to protect consumer interests and keeping the fashion business alive and competitive in the face of increasing mergers.