

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of)	
)	
Staples, Inc.)	Docket No. 9367
a corporation;)	
)	
and)	PUBLIC
)	
Office Depot, Inc.)	
a corporation.)	

ORDER CONTINUING ADMINISTRATIVE PROCEEDINGS FOR 21 DAYS

On December 7, 2015, the Commission issued an administrative complaint alleging that a merger agreement between Respondents Staples, Inc. and Office Depot, Inc. violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that if the merger were consummated, it would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, as well as Section 5 of the FTC Act. In accordance with Commission Rule 3.11(b)(4), the administrative complaint provides that the evidentiary hearing is scheduled to begin on May 10, 2016.

On April 22, 2016, Complaint Counsel and Respondents filed a Joint Expedited Motion (“Joint Motion”) seeking a 21-day continuance of the evidentiary hearing and related pre-hearing deadlines.¹ The parties represent that the district court recently concluded its hearing on the Commission’s motion for preliminary injunction under 15 U.S.C. § 53(b) in *FTC v. Staples, Inc.*, No. 1:15-cv-02115 (EGS) (D.D.C.) and that the court has committed to issue its order on the motion by May 10. Respondents further represent that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction. If the district court denies the motion, Respondents assert they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission.

¹ Although the parties have styled their Joint Motion as one seeking a 21-day *stay* of administrative proceedings, the substance of their request makes clear they seek a 21-day continuance of the evidentiary hearing, which we have the authority to grant under Commission Rule 3.41(b). 16 C.F.R. § 3.41(b) (“The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . .”).

In light of the foregoing, the parties argue there is good cause for the Commission to continue the administrative proceedings for 21 days. Specifically, they contend that, should the evidentiary hearing become moot, the requested continuance could relieve third parties of the burden and cost associated with preparing witnesses to testify and filing motions for *in camera* treatment of their confidential materials, which would need to start happening soon under the current schedule. The parties also argue that a continuance would not prejudice the Commission, even if the adjudication of this matter were to proceed.

Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings,² we find there is good cause here to grant the requested continuance given the possibility that the evidentiary hearing may be rendered moot. We also find that a modest delay in the start of the hearing would not harm the Commission or the public interest, should it be necessary for the adjudication to go forward. Accordingly, we hereby grant the parties' request to continue the evidentiary hearing and all related pre-hearing deadlines by 21 days.

IT IS HEREBY ORDERED that the evidentiary hearing shall commence on May 31, 2016 and all related pre-hearing deadlines shall be extended by 21 days.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: April 29, 2016

² See Commission Rule 3.1, 16 C.F.R. § 3.1 (“[T]he Commission’s policy is to conduct [adjudicative] proceedings expeditiously.”); Commission Rule 3.41(b), 16 C.F.R. § 3.41(b) (“Hearings shall proceed with all reasonable expedition . . .”).