

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

**STAPLES, INC.; and
OFFICE DEPOT, INC.,**

Defendants.

Civil Action No. 1:15-cv-02115-EGS

NOTICE OF FILING REDACTED DOCUMENT

Plaintiff Federal Trade Commission (“FTC”) respectfully files a public version of the FTC’s Opening PowerPoint Presentation. The public version includes redactions, as required to comply with Court Orders regarding confidentiality of party and non-party material.

Dated: March 21, 2016

Respectfully Submitted,

/s/ Peter Colwell

Peter Colwell (D.C. Bar No. 1002877)

Bureau of Competition

Federal Trade Commission

400 Seventh Street, S.W.

Washington, D.C. 20024

Attorney for Plaintiff Federal Trade Commission

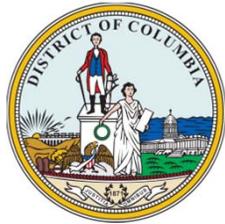
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21th day of March, 2016, I filed the foregoing with the Clerk of the Court via the CM/ECF system, which will automatically send electronic mail notification of such filing to the CM/ECF registered participants as identified on the Notice of Electronic Filing.

/s/ Peter Colwell
Attorney for Plaintiff Federal Trade Commission

FTC, et al. v. Staples, Inc., et al.

Opening Statement

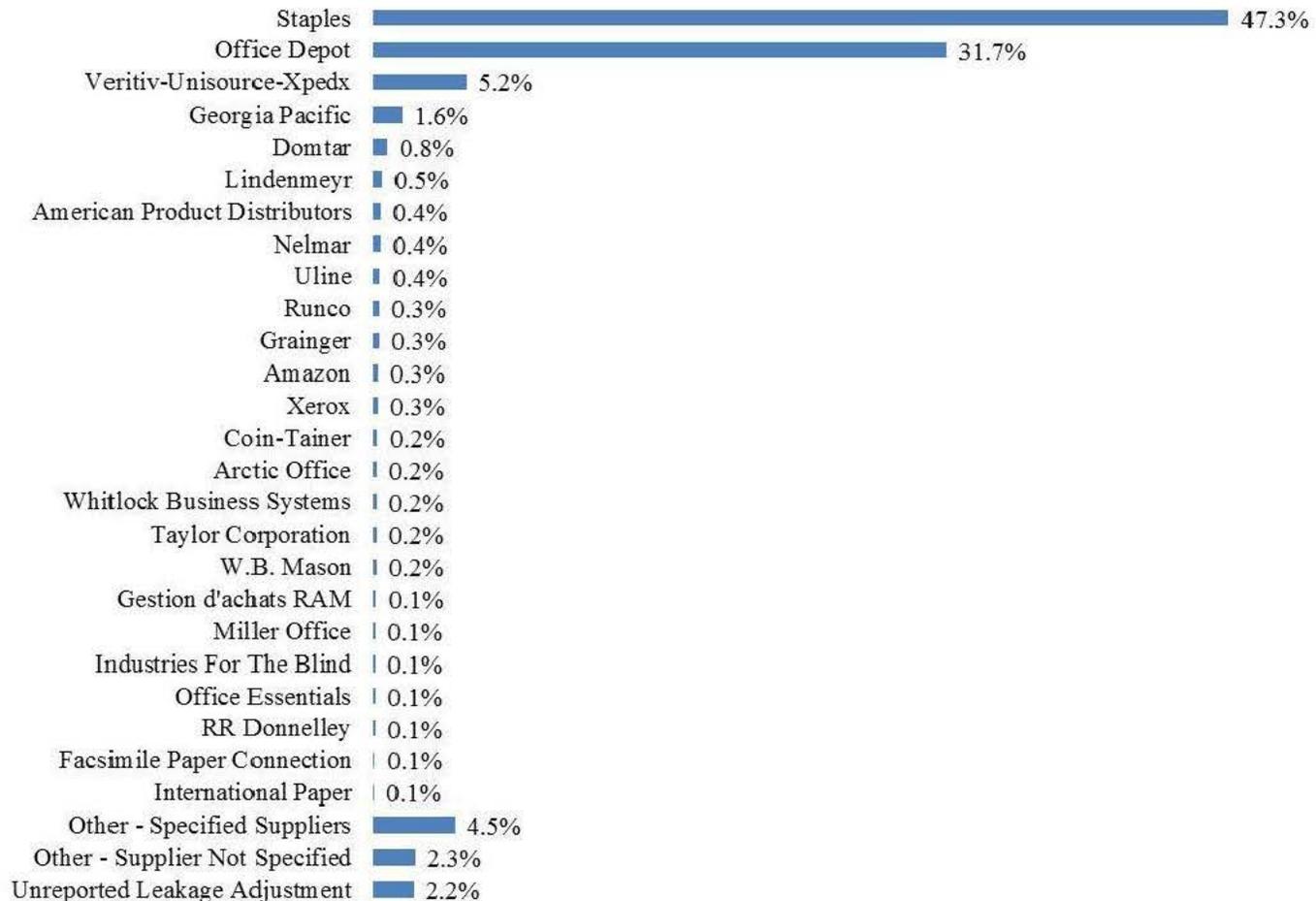


March 21, 2016



Staples and Office Depot Dominate Sales of Consumable Office Supplies to Large Businesses

Consumable Office Supplies Market Shares
Fortune 100 Customers, 2014



Sources: Exhibit R1B, Shapiro Reply Report.

Staples Advantage -Fortune 100 Overview-

Staples Advantage
-Fortune 100 Overview-

Rank	Name	OP Incumbent	FY12 Sales	Core Office Supplies	Facilities & Breakroom	Print & Promo
1	Exxon Mobil Corporation	Staples/ODP (dual Award 50/50)	7,987,748	\$ 6,795,425	\$ 811,032	\$ 381,292
2	Wal-Mart Stores, Inc.	American Product Distributors	8,171,765	\$ 7,288	\$ 3,319	\$ 8,161,157
3	Chevron Corporation	Office Depot	167,032	\$ -	\$ -	\$ 167,032
4	ConocoPhillips	Staples	4,728,110	\$ 2,872,850	\$ 212,908	\$ 1,642,353
5	General Motors Company	Local Suppliers	614,267	\$ -	\$ -	\$ 614,267
6	General Electric Company	Staples	14,680,157	\$ 13,357,540	\$ 1,211,931	\$ 110,687
7	Berkshire Hathaway Inc.	Staples	10,618,701	\$ 9,431,374	\$ 1,056,935	\$ 130,392
8	Federal National Mortgage Association	Office Max	-	\$ -	\$ -	\$ -
9	Ford Motor Company	Local Suppliers	-	\$ -	\$ -	\$ -
10	Hewlett-Packard Company	Staples	10,857,608	\$ 5,860,164	\$ 89,406	\$ 4,908,038
11	AT&T Inc.	Staples/OMX (dual Award 80/20)	16,586,531	\$ 12,125,629	\$ 900,444	\$ 3,560,458
12	Valero Energy Corporation	Staples	537,045	\$ 498,575	\$ 38,399	\$ 70
13	Bank of America Corporation	Staples	31,807,835	\$ 24,789,753	\$ 4,260,830	\$ 2,757,252
42	Johnson & Johnson	Office Depot	-	\$ -	\$ -	\$ -
43	State Farm Mutual Automobile Insurance Company	Office Max	1,126,353	\$ -	\$ -	\$ 1,126,353
44	Dell Inc.	Staples	1,267,874	\$ 1,205,369	\$ 59,825	\$ 2,681
45	WellPoint, Inc.	Staples	1,821,331	\$ 1,625,652	\$ 192,752	\$ 2,927
46	Caterpillar Inc.	Office Max	423,968	\$ 1,393	\$ -	\$ 422,575
47	The Dow Chemical Company	Staples	4,690,168	\$ 3,315,006	\$ 381,673	\$ 993,490
48	United Technologies Corporation	Staples	9,686,790	\$ 9,168,070	\$ 557,934	\$ (39,214)
49	Comcast Corporation	Office Max	116,383	\$ 96,381	\$ 18,790	\$ 1,212
50	Kraft Foods Inc.	Staples	3,267,450	\$ 3,019,224	\$ 231,558	\$ 16,667
51	Intel Corporation	Staples	5,683,106	\$ 5,392,199	\$ 286,714	\$ 4,192
52	United Parcel Service, Inc.	Staples/ODP (dual Award 60/40)	13,613,048	\$ 7,176,331	\$ 801,644	\$ 5,635,073
53	Best Buy Co., Inc.	Office Depot	125,662	\$ -	\$ -	\$ 125,662
54	Lowe's Companies, Inc.	Staples	10,937,698	\$ 9,579,370	\$ 779,392	\$ 578,936
55	Prudential Financial, Inc.	Staples	5,931,281	\$ 5,732,358	\$ 194,628	\$ 4,295
56	Amazon.com, Inc.	Staples	13,869,422	\$ 9,552,433	\$ 392,141	\$ 3,924,847
57	Merck & Co., Inc.	Staples	1,306,337	\$ 1,194,368	\$ 40,379	\$ 71,590
58	Lockheed Martin Corporation	Staples	18,611,675	\$ 17,540,574	\$ 1,020,812	\$ 50,289
59	The Coca-Cola Company	Staples	5,886,895	\$ 1,449,547	\$ 83,667	\$ 4,353,680
90	Sprint Nextel Corporation	Staples	777,477	\$ 585,501	\$ 190,195	\$ 1,781
91	News Corporation	Office Depot	237,636	\$ 214,719	\$ 22,181	\$ 736
92	General Dynamics Corporation	Staples	1,852,857	\$ 1,735,668	\$ 86,436	\$ 30,753
93	The Allstate Corporation	Office Max	-	\$ -	\$ -	\$ -
94	HCA Holdings, Inc.	Staples	38,797,050	\$ 35,714,158	\$ 2,766,370	\$ 316,522
95	American Express Company	Staples	4,329,049	\$ 3,985,546	\$ 180,310	\$ 163,193
96	Tyson Foods, Inc.	Office Max	-	\$ -	\$ -	\$ -
97	Deere & Company	Office Max	-	\$ -	\$ -	\$ -
98	Murphy Oil Corporation	Multiple Award	144,701	\$ 81,	\$ -	\$ -
99	Philip Morris International Inc.	Protech	2,539	\$ 2,	\$ -	\$ -
100	Nationwide Mutual Insurance Company	Staples	12,591,930	\$ 6,752,	\$ -	\$ -

Internal SPLS Email
Requesting F100 Poster,
Jul. 2013 (PX04499-002)



Staples and Office Depot Warned Customers the Merger Would Eliminate the Benefits of Competition

REDACTED

From: Kimberli Cutler <kimberli.cutler@officedepot.com>
Sent: Wednesday, February 04, 2015 4:29 PM

I thought it was odd after the Max/Depot merger that global and large national organizations had basically only two options for office supplies. If this deal is approved that will dwindle to one.

-communication regarding today's announcement

I thought it was odd after the Max/Depot merger that global and large national organizations had basically only two options for office supplies. If this deal is approved that will dwindle to one.

For companies wanting savings, new terms, or additional incentives now is the time to ink those details in a long term contract. with Depot.

Kimberli Cutler
Global Business Development | Office Depot, Inc.
Tel: 818.816.4810 | Kimberli.Cutler@officedepot.com

For companies wanting savings, new terms, or additional incentives now is the time to ink those details in a long term contract. with Depot.

Office Essentials | Copy & Print | Cleaning | Furniture | Breakroom | Technology | Paper

To learn more about our indirect supply chain solutions please click on this link:
<http://officedepotnow.com/view/mail?ID=Y7SE93BK4PXTSFNL973C>

PX0717

Email to ODP Customer, Feb. 2015
(PX07175-001)



Staples and Office Depot Warned Customers the Merger Would Eliminate the Benefits of Competition

Office Depot Final RFP Offer

From:
Hugh McKean <hugh.mckean@officedepot.com>
To:
[REDACTED]
Bcc:
stephen.cmilluca@officedepot.com
Date:
Tue, 21 Apr 2015 10:43:12 -0400

Hi Rich,

Office Depot is willing to make a best and final offer to secure the Global RFP

Office Depot has been the vendor of choice for the past 8 years for [REDACTED] and we hope that we have earned this opportunity to present this offer.

In return for a three year agreement, Office Depot offers [REDACTED] a \$500,000 signing bonus. This will be made in two payments, \$325,000 at the contract signing and \$175,000 on the first anniversary date.

This offer is based on and is conditional to adding the [REDACTED] spend to the program.

Here are a few things for you to consider in evaluating this offer:

- **TIMING** - This offer is time sensitive. If and when the purchase of Office Depot is approved, Staples will have no reason to make this offer.
- **FINANCIAL** - Publicize US will save 30% of the spend.

In return for a three year agreement, Office Depot offers [REDACTED] a \$500,000 signing bonus. This will be made in two payments, \$325,000 at the contract signing and \$175,000 on the first anniversary date.

This offer is based on and is conditional to adding the [REDACTED] spend to the program.

Here are a few things for you to consider in evaluating this offer:

- **TIMING** - This offer is time sensitive. If and when the purchase of Office Depot is approved, Staples will have no reason to make this offer.

STAPLES CONFIDENTIAL

CONFIDENTIAL - 00000001

PX05236-001

ODP Email, Apr. 2015
(PX05236-001)



Staples and Office Depot Warned Customers the Merger Would Eliminate the Benefits of Competition

From: "Jeffrey C. Atley" <jeffrey@staples.com>
To: [REDACTED]
Date: [REDACTED]
Subject: Please cloud talk

Good morning, Helene.

[The week of Dec 8th, the FTC is expected to approve the Staples acquisition of Office Depot/Max and I'll be...](#)

Good morning, Helene.

The week of Dec 8th, the FTC is expected to approve the Staples acquisition of Office Depot/Max, and it is my strong suggestion that [REDACTED] consider any and all program offerings from Staples beforehand.

[REDACTED] will never get a more competitive offer than right now, and you will receive our undivided attention on transitioning a customized program onto the Staples platform well before thousands of other Depot/Max customers are placed into the queue over the next 12-18 months.

Over the last 90 days, I've presented five Fortune 300 organizations a program that offered an average of 18% YOY savings. Can we investigate our options for you and [REDACTED] today before time runs out on obtaining the most competitive offering available? Let's chat when you have a moment. Thanks.

Warmest regards,

Jeff

Office Depot (Max)

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SPLS_4882334

PX04567-002

SPLS Email, Nov. 2015
(PX04567-002)



Large Business Customers Consider Staples and Office Depot as their Two Best Choices

- Only One National B2B Would Remain if Staples - Depot Merger Allowed
 - Staples – \$24B revenue
 - Office Depot – \$12B revenue
 - WB Mason - \$1.3B rev. / Northeast, FL, IL
 - HiTouch/MyOfficeProducts - \$290M rev. / multiple states
 - 12 others with \$50-100M rev., limited service areas

- Only One National B2B Would Remain if Staples - Depot Merger Allowed
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 - HiTouch/MyOfficeProducts - \$290M rev. / multiple states
 - 12 others with \$50-100M rev., limited service areas

- Largest Wholesale Distributors Could Also Suffer Under Merger
 - United Stationers - \$5B+ rev. ~ Aligned with Staples
 - SP Richards - \$2B rev. / a division of Genuine Parts ~ Aligned with Depot

HPG 035895
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HealthTrust Presentation,
2015 (PX 07071-004)



Large Business Customers Consider Staples and Office Depot as their Two Best Choices

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Supplier Selection & Contract Authorization (SSCA) Form

DEAL OVERVIEW	A1. Supplier Name:	Staples National	A2. Transaction Name:	MSA Remediation and Extension and Office Supply Purchase SOW
	A3. Accountable Executive:	Scott Blackley	A4. AE Delegate:	Tamara Jones
	A5. Primary LOB and Category:	Finance	A6. ESM Lead and VP:	John Wladar, Category Manager and Susan Fenner, VP
	A7. Product/Service Description and Transaction Purpose: Renewal agreement with Staples to provide office supplies (paper, toner and various office products) to Capital One, enterprise wide, via contract compliant online punchout catalog and retail outlets.			

A8. Sourcing and Negotiation Process Recap: Negotiated renewal agreement with Staples benchmarking against proposal from procurement consortium Corporate United (Office Depot). Note: **Only two B2B providers, Staples and Office Depot, are left in the Office Supplies space** since the merger of Office Depot and OfficeMax. In Dec 2014, Staples announced plans to acquire Office Depot.

A9. Key Deal Priorities Review and Results: Deal priorities include cost reduction and business continuity.

SAVINGS	B6. Annual Savings:	B7. Total Deal Savings:
	Hard Savings	Hard Savings
	Cost Avoidance	Cost Avoidance
	<input type="checkbox"/> 0	<input type="checkbox"/> 0

B8. If Annual Savings is \$100K or above, has the calculation been validated by the Analyst Team? Yes No N/A

B9. Notes for Spend/Savings: Process improvement opportunities of \$500K not included in the savings calculation. Total Deal savings based on 7 year commitment assuming PC expenditures of \$11M/year. Annual Hard Savings based on seven year average savings.

B10. Allow for Deal Spend: In exchange for [redacted] As such, Deal Spend is the estimated spend for the first two years of the SOW.

Capital One Confidential Enterprise Supplier Management (v 03.03.15) Page 1

HIGHLY CONFIDENTIAL PX07008-001

Large Customer Supplier Selection & Authorization Form, Jun. 2015 (PX07008-001)



Large Business Customers Consider Staples and Office Depot as their Two Best Choices

Message

From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]

Subject: OP Distributors

Attachments: AOPD Dealers US.docx

John -- As you know, Staples' primary "competitor" is Office Depot/Max although this is in flux with the announcement of the acquisition of Depot/Max by Staples. It is our opinion that this merger will not go through, although there has been some suggestion it may pass this time. Our concern is that the single company would eliminate any and all true competition in the business-to-business distribution market. That said, there are alternatives but they would be very cumbersome to manage.

John -- As you know, Staples' primary "competitor" is Office Depot/Max although this is in flux with the announcement of the acquisition of Depot/Max by Staples. It is our opinion that this merger will not go through, although there has been some suggestion it may pass this time. Our concern is that the single company would eliminate any and all true competition in the business-to-business distribution market. That said, there are alternatives but they would be very cumbersome to manage.

Office Product Distributors (OPD) are a group of independent dealers who (along with separate document) primarily foster small business initiatives and provide some group purchasing options for its members. OPD's primary sales channels have been the distribution of products other than through the

The B2B Office Products landscape takes the following form:

Stand-alone distributors that buy direct from manufacturer and ship to multiple corporate locations next business day –
1.) Staples 2.) Office Depot/Max

Regards,

[REDACTED]
Vice President, Operations

CONFIDENTIAL – FTC v. Staples, Inc. and Office Depot, Inc.,
Case No. 1:15-cv-02115-EGS (D.D.C.)

[REDACTED]
PX7301-001

Large Customer Email,
Jun. 2015 (PX07301-001)



Large Business Customers Consider Staples and Office Depot as their Two Best Choices

Program: Indirect Spend Assigned 2015 Target: TBD Updated: 2/19/15 Updated by: PwC

On track On track but monitoring Off track

Status Update – Office Supplies

Overall	Milestones	Issues	Risks	Budget
Sponsor	Scott Bamhart			
Accountable	Jose Turkienicz			
Project Lead(s)	Norm Santos & Arleneette Bocutto			
Scope Statement	Achieve overall annualized run-rate savings by targeting five initial indirect sourcing categories. This will include a combination of "quick hits" and longer term sourcing activities.			
Accomplishments Last Week				
Upcoming Activities – Next 2 Weeks				

Milestones/Deliverables	Status	Plan Date	Rev. Date
Baseline Analysis / Sourcing Strategies	G	10/21/14	
Develop RFPs	G	11/7/14	11/14/14
Receive Proposals	Y	11/23/14	2/27/15
Start Negotiations	Y	12/15/14	2/27/15
Present Award Scenario	Y	1/16/15	2/27/15
Approve Business Case	Y	1/30/15	3/8/15

Issues / Decisions	Owner	Due Date	Status
Office Depot / Staples proposed merger significantly decreases the likelihood of a positive target pricing response since it limits the threat of a RFP	Santos	2/27/15	Y

Risks	Status
	Managed
	Managed

Issues / Decisions	Owner	Due Date	Status
Office Depot / Staples proposed merger significantly decreases the likelihood of a positive target pricing response since it limits the threat of a RFP	Santos	2/27/15	Y

Large Customer Indirect Sourcing Update, Feb. 2015 (PX07002-010)



Staples and Office Depot Compete Fiercely Against Each Other

Subject: [REDACTED]
To: Chad West <chad.west@office depot.com>, Mark Procter <mark.procter@office depot.com>

Chad, Per our discussion here is the breakdown of the discussion I had with [REDACTED] about the RFP decision. [REDACTED] informed me that [REDACTED] presented and recommended to the executive committee to stay with Office Depot, but due to the time gap impacting [REDACTED] accounts about the pending merger, executive management made the decision to do business with Staples. [REDACTED] informed me that we were one of their best vendors and we performed well compared to others.

1. [REDACTED] informed me that on the total offering Staples was [REDACTED] lower in pricing and this was a key factor.
2. I informed [REDACTED] that we handles the MPS for them at a very low cost and Staples did not want the business in the past.
3. I asked [REDACTED] to consider splitting the business and making sure we were still listed as a partner. It was clear to her that only two vendors were large enough to handle the business.
4. I reassured [REDACTED] that the merger would have little impact to them regarding systems and the management of the account. She informed me that the executive committee, [REDACTED] her reading all the merger information was not seem about the future with regards to the functionality of systems etc. Who's system and what system would be used.
5. I was very candid with [REDACTED] and explained that Staples bought the business and would make it up in the long run. She informed me they were holding pricing for two years.
6. I told [REDACTED] that I wanted to make sure [REDACTED] sent an official email and requested another call with them to discuss the overall business decision.

This is a hard loss as we have been working on the rfp for 12 months now. We have in place a [REDACTED] year contract and in the [REDACTED] year of the contract Staples offered a larger amount of money to [REDACTED] which forced an RFP. After the RFP was completed in [REDACTED] we were awarded the contracts once again for [REDACTED] years. In [REDACTED] we were told a second time that Staples came back with more money and we were un-awarded the contract a second time. I am struggling with the concept that Staples could be [REDACTED] lower then Office Depot.

Thanks

Mark Procter
Office Depot
Strategic Sales
mark.procter@office depot.com
904-303-5111

Thank You

John T. Lander
Vice President, North American Field Sales
19400 Trinity Boulevard, Suite 300
Fort Worth, TX 76155
T + 888.438.8598 x 4408
F + 888.438.8990
C + 972.816.4661
john.lander@office depot.com

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ODP-OMX-FTC-01074108

PX05155-002

This is a hard loss as we have been working on the rfp for 12 months now. We have in place a [REDACTED] year contract and in the [REDACTED] year of the contract Staples offered a larger amount of money to [REDACTED] which forced an RFP. After the RFP was completed in [REDACTED] we were awarded the contracts once again for [REDACTED] years. In [REDACTED] we were told a second time that Staples came back with more money and we were un-awarded the contract a second time. I am struggling with the concept that Staples could be [REDACTED] lower then Office Depot.

Internal ODP Email, Oct. 2013 (PX05155-002)



Staples and Office Depot Compete Fiercely Against Each Other

Challenges

- Staples Merger

- ~ Aggressive \$\$ Offers From Staples – Creating Losses

- ~ Customers Capitalizing On Opportunity Pre-Merger

- ~ [REDACTED] of Annual Volume Initiated a Contract Pricing Review

~ Aggressive \$\$ Offers From Staples – Creating Losses

- Punch out Customers Hosted Catalog- Business Rules Matching Item #, Price and Invoice Issue

- Loss of Sales

- ODN Resources Limited / Team Looking to Migrate Accounts

- Team Concerned About [REDACTED] & Replacement Options

Office DEPOT OfficeMax

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PX05437-008

ODP Business Review, Aug.
2015 (PX05437-008)



Staples and Office Depot Compete Fiercely Against Each Other

From: Russell, Gregory <Gregory.Russell@Staples.com>
Sent: Wednesday, May 06, 2015 7:07 PM
To: Heisroth, Tom
Subject: RE: [REDACTED] offer.

Will do. Thanks.

-----Original Message-----
From: Heisroth, Tom
Sent: Wednesday, May 06, 2015 4:05 PM
To: Russell, Gregory
Subject: Re: [REDACTED] Offer

OK - update Ed for audit trail

Sent from my iPad

> On May 5, 2015, at 4:07 PM, Russell, Gregory <Gregory.Russell@Staples.com> wrote:

> Tom:

> A few weeks ago, we presented [REDACTED] the Deals Council. Our plan was to stay margin neutral by offering a \$200K signing incentive but raising some prices to offset it, along with a \$50 Hard Stop.

> In the meantime, a new Sourcing Director named [REDACTED] has taken over the negotiation. We found out that she was the previous contract manager for [REDACTED] we had a conference call with Sharyn Byrne, the Staples SAI that worked with her at [REDACTED] it turns out that she moved the [REDACTED] J/M contract to Office Max, away from Staples. In dialogue the team has had with her this week, she is coming across expecting significant savings and a signing incentive.

> In order to keep this away from Office Depot, I believe we should invest [REDACTED] basis points of margin to be used to sharpen our pencil on some high visibility items. This will take us from a [REDACTED] A.P. to a [REDACTED] A.P. I know it's a significant investment but if it goes to a formal RFP involving Depot, it could end up costing us a lot more.

> Let me know if you agree and approve.

> In order to keep this away from Office Depot, I believe we should invest [REDACTED] basis points of margin to be used to sharpen our pencil on some high visibility items. This will take us from a [REDACTED] A.P. to a [REDACTED] A.P. I know it's a significant investment but if it goes to a formal RFP involving Depot, it could end up costing us a lot more.

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SPLS_0476532

PX04294-001

Internal SPLS Email, May 2015 (PX04294-001)



Staples and Office Depot Compete Fiercely Against Each Other

Re: Phone call discussion request

From: Steve Dvorchak <steven.dvorchak@officedepot.com>
To: john.lander@officedepot.com
Date: Wed, 01 Jul 2015 07:40:33 -0400

Talked to Harry yesterday - [redacted] will be moving their supplies over to Staples. They will be giving notice to get out of the extension they just signed. I asked for as much time as possible and delay to at least Q4 - he said that would be a [redacted] and [redacted] call.

Talked to Harry yesterday - [redacted] will be moving their supplies over to Staples. They will be giving notice to get out of the extension they just signed. I asked for as much time as possible and delay to at least Q4 - he said that would be a [redacted] and [redacted] call.
Top 3 reasons why they are moving:

- 1. We are being received
- 2. Proximate integration
- 3. Better offer from Staples

This is not a shock - just that they want to move faster... We took a ton of business from Staples over last couple of weeks, so this could be a little retaliation...

Heads up [redacted] to be reaching out for transition plan - try to sell and push this to Q4

This is not a shock - just that they want to move faster... We took a ton of business from Staples over last couple of weeks, so this could be a little retaliation...

From: [redacted]
Date: [redacted]
Subject: Phone call discussion request
To: john.lander@officedepot.com
Cc: [redacted]

John,

I have left voice messages at the start of the past two days to try to catch up with you, yet have not received a call back yet.

Could you reply to me in email letting me know when you might be available for a quick call to catch up on [redacted] sourcing event for office products?

Thank you,

Harry Smith
VP - Senior Manager
Supply Chain Management
Harold.W.Smith@pnc.com

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ODP-OMX-FTC-02477254

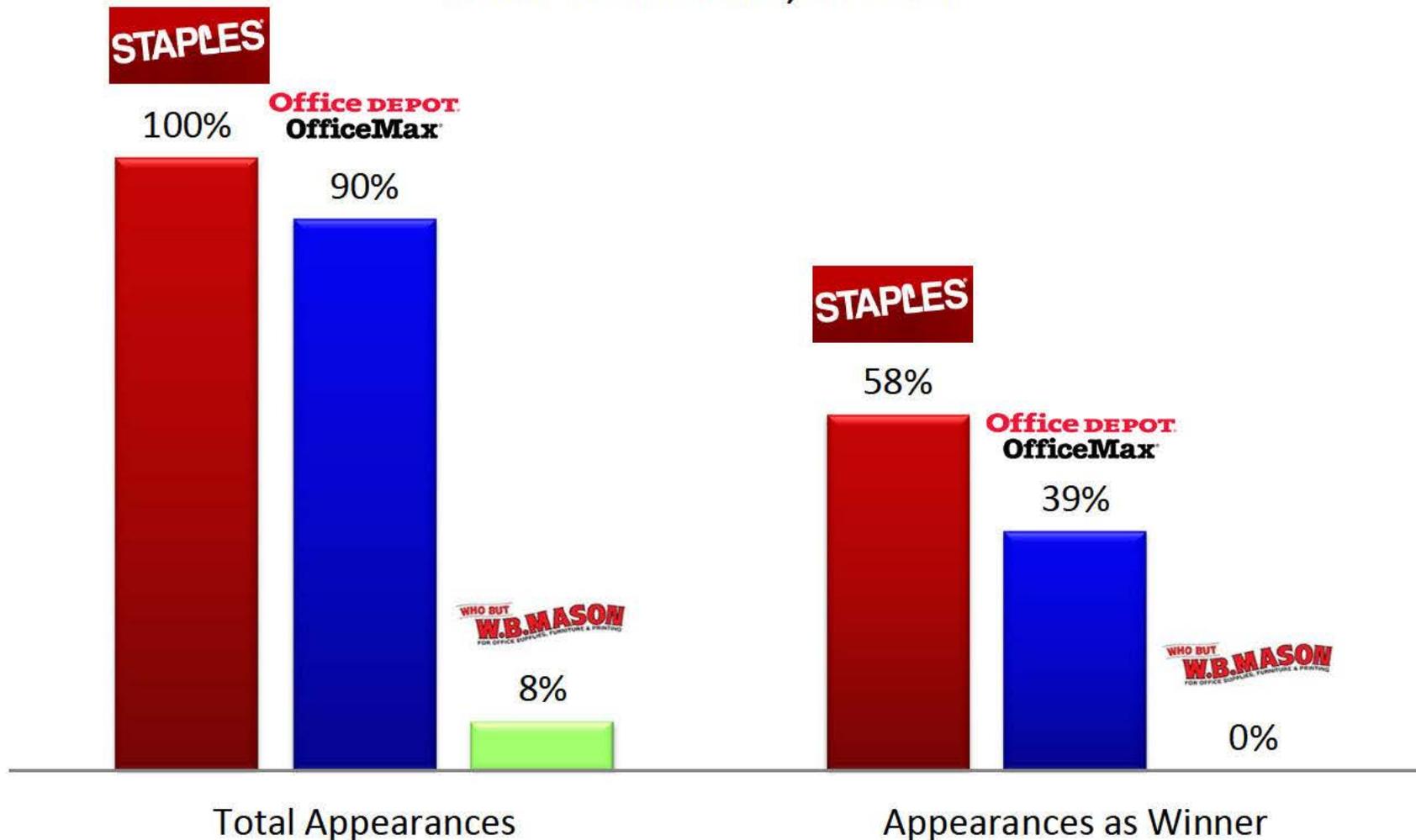
PX05258-001

Internal ODP Email, Jul. 2015 (PX05258-001)



Staples and Office Depot Closest Competitors in Bidding Events

Bidder Appearances: Consumable Office Supplies Opportunities
Fortune 100 Customers, 2012-2015

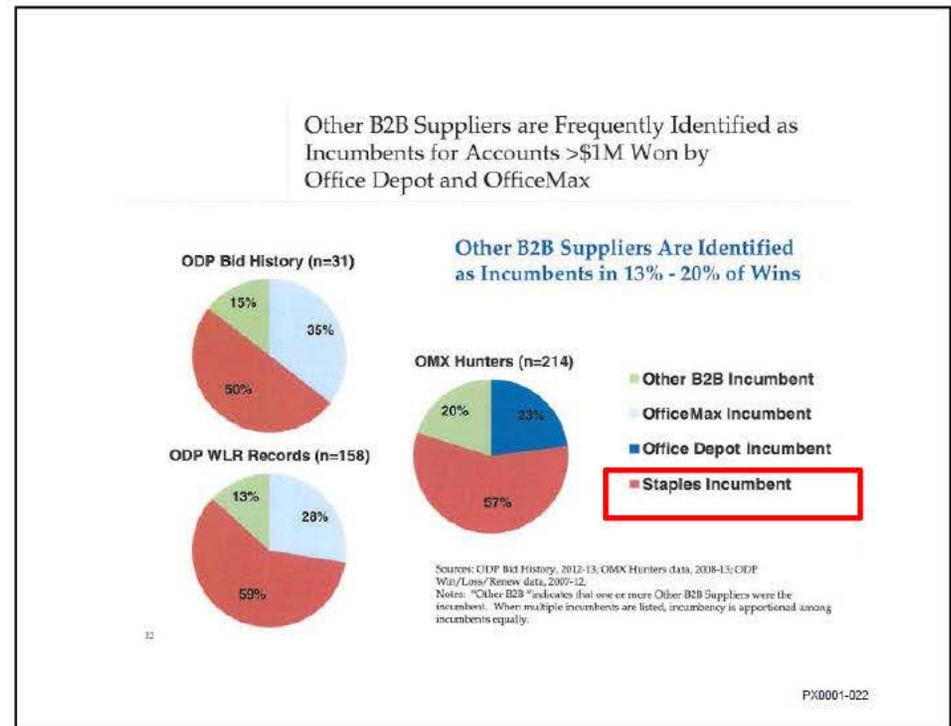
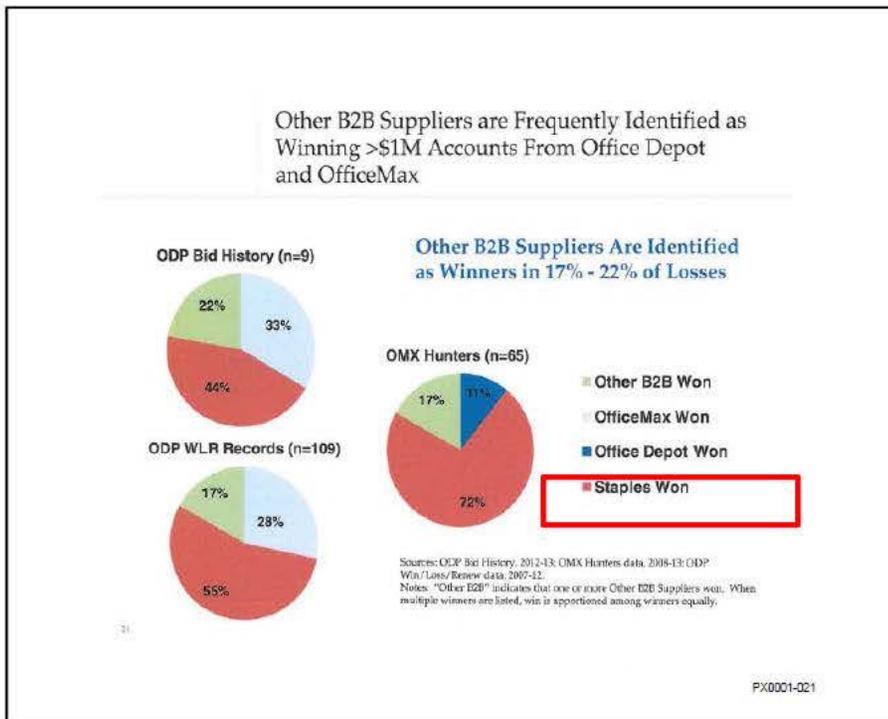


Source: Shapiro Reply Rpt. at Ex. R7A



Staples Was Office Depot's and OfficeMax's Closest Competitor Before the 2013 Merger

Office Depot and OfficeMax represented to the FTC that they were NOT each other's closest competitor



ODP & OMX Presentation to FTC, Sep. 2013 (PX0001-021-022)



The FTC Has a High Likelihood of Succeeding on the Merits

1. Plaintiffs' Prima Facie Case

- The Relevant Product Market is the Sale and Distribution of Consumable Office Supplies to Large Business Customers
- The Relevant Geographic Market is the United States
- The Merger Would Create Extraordinarily High Market Shares and Concentration
- Extensive Evidence Corroborates the Presumption

2. Defendants Fail to Rebut the Presumption

- Purported “Leakage” Does Not Rebut the Presumption
- The Commission’s 2013 Statement Does Not Rebut the Presumption
- Entry and Expansion Would Not Be Timely, Likely, or Sufficient
- The Proposed “Fix” Is an Insufficient Remedy
- The Claimed Efficiencies Are Not Verifiable or Merger Specific



Plaintiffs Will Prove Their Prima Facie Case

- **The Relevant Product Market is the Sale and Distribution of Consumable Office Supplies to Large Business Customers in the United States**
 - **Cluster Market: group of products with largely the same competitive conditions, clustered together for analytical convenience**
 - **Targeted Customers: large business customers would be vulnerable to prices increases post-merger**
- **Geographic Market is the United States**
 - **Defendants' economic expert agrees**



Large Business Customers Are Distinct and Negotiate Individualized Pricing and Terms

Customer Profiles and Behaviors (Private Sector)

<\$24K	Low sophistication, responds to promotions/gifts. SMB
\$24 - 75K	Price conscious, focuses on small core with overall value. SMB
\$75 - 150K	Centralized decisions, de-centralized purchasing (disconnect of perceived value). SMB
\$150 - 250K	Fairly sophisticated buying process, expectations for cost savings. SMB
\$250 - 500K	More sophisticated processes, centralized purchasing, approval processes, vendor consolidation, rebates and some contractual obligations. Large: [REDACTED]
\$500K - 1M	Formal RFPs, centralized purchasing, approval processes, awareness and desire for up front money/conversion incentives & rebates. Large: [REDACTED]
>\$1M	Sophisticated sourcing and buying with formal RFIs/RFPs, sensitive to cost of change, expectation of conversion incentives and rebates. Global: [REDACTED]
GPOs	Aggregate group purchasing defined by end-user memberships, revenue-share rebates. GPO= [REDACTED] Buying Group = [REDACTED]

Private Sector Segments

Confidential



Large Business Customers Require Online, Customized Catalogs, Integration with Customer's IT System

Procurement of Office Supplies RFP 2015

[REDACTED]

**PROCUREMENT OF OFFICE SUPPLIES
REQUEST FOR PROPOSAL (RFP)**

Dated: August 26, 2015

Responses Must Be Received By
September 18, 2015

Send to:
[REDACTED]

[REDACTED]

Page 1 of 32
Confidential Information

HIGHLY CONFIDENTIAL

SPLS_4946148

a. **e-Commerce Web Site:**

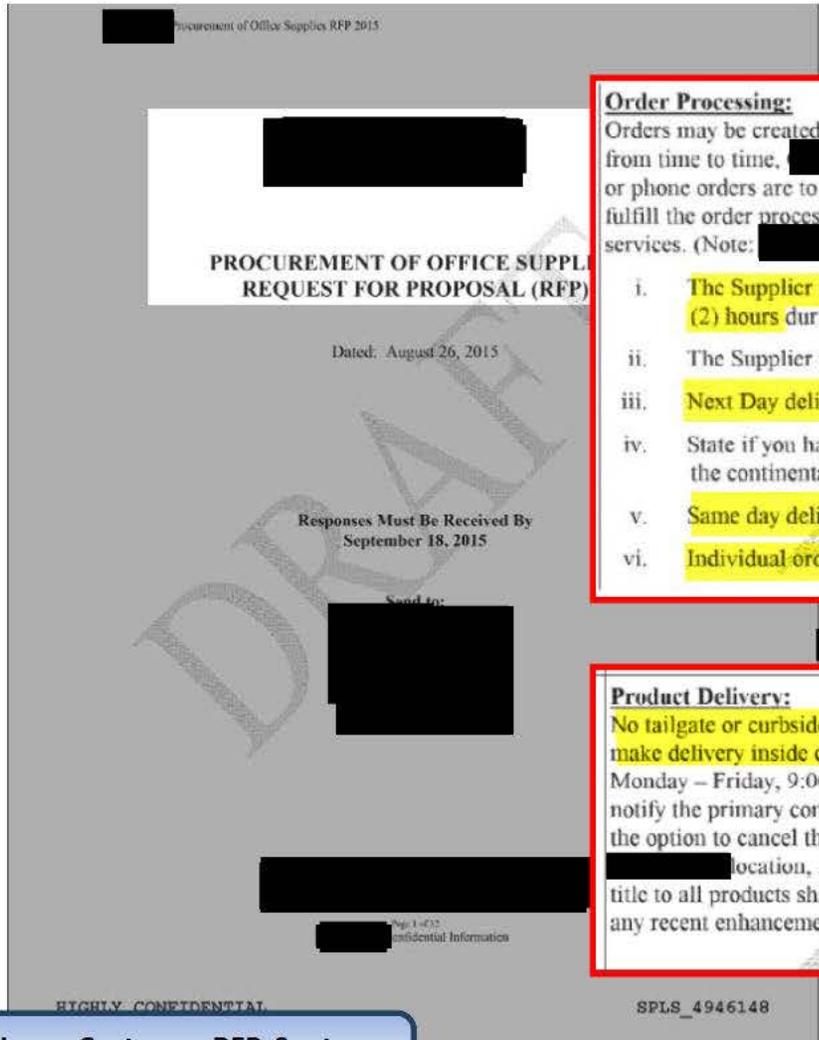
Supplier must have an existing, fully operational Internet-based e-Commerce website (the "Website") capable of accepting and processing orders placed by designated [REDACTED] users. The Website shall be hosted, operated and maintained by the Supplier and at Suppliers sole cost and expense. Additional requirements regarding the Website are:

- i. The Website must contain only [REDACTED] approved manufacturers products including, but not limited to, those contained in Exhibit A.
- ii. All [REDACTED] designated non-approved product categories and/or specific items within a specific category, must be able to be blocked from viewing and purchase on the Website.
- iii. Supplier is expected to make updates to the Website requested by [REDACTED] within one (1) business day to the extent practical. Any Supplier-initiated changes (i.e. functionality updates or scheduled maintenance intervals) to the e-commerce site must be communicated to the [REDACTED] Purchasing Administrator.
- iv. The [REDACTED] Purchasing Administrator must be able to completely manage the [REDACTED] user base and have the capability to add/delete users, update user account information including, but not limited to, editing user information, approval limits, ship-to addresses, additional approvers, charge codes, etc.
- v. Validated users shall have the ability to create, modify and save orders that are electronically routed for approval.
- vi. The Website shall provide for individual order routing and an approval hierarchy for each user as determined by [REDACTED] and such approval hierarchy shall provide for a minimum of three (3) order

Large Customer RFP, Sept.
2015 (PX04783-010)



Large Business Customers Have Demanding Delivery Requirements



Order Processing:
 Orders may be created and submitted by designated users from each [redacted] affiliate via Suppliers Website or from time to time. [redacted] may submit Purchase Orders via email or fax for fulfillment by Supplier. No verbal or phone orders are to be permitted. Each [redacted] affiliate may have separate and distinct requirements to fulfill the order process. Detail your company's ability to facilitate the ordering process by providing the following services. (Note: [redacted] will not accept extra charges for orders designated as "rush").

- i. The Supplier must be able to process order status updates, shipment information and new orders within two (2) hours during normal business hours.
- ii. The Supplier is expected to provide toll free phone support during normal business hours.
- iii. Next Day delivery is required for orders placed by 5pm in the time zone of the affiliate placing the order.
- iv. State if you have any limitation (geographical or otherwise) on your ability to meet this SLA anywhere in the continental United States.
- v. Same day delivery capabilities for emergency requirements.
- vi. Individual orders must be packaged and addressed for delivery to a specific person.

Product Delivery:
 No tailgate or curbside deliveries will be permitted. Shipment must arrive at destination with proper equipment to make delivery inside customers building. Unless other arrangements have been made, deliveries will be accepted Monday – Friday, 9:00 a.m. – 4:00 p.m. (in the time zone of the affiliate placing the order) only. Supplier shall notify the primary contact at [redacted] should any delays occur. The [redacted] user placing the order will have the option to cancel the order if they are unable to accept the delay. All deliveries shall be FOB Destination [redacted] location, freight Paid. Except for items with hidden defects or items that do not meet specifications, title to all products shall pass to [redacted] upon acceptance and delivery at the designated delivery point. Describe any recent enhancements to your delivery service.

Large Customer RFP, Sept. 2015 (PX04783-011-012)



Plaintiffs Will Prove Their Prima Facie Case

- **The Merger Would Create Extraordinarily High Market Shares and Concentration**
 - **Staples and Office Depot combined would control 79% of the relevant market**
 - **Post-merger market would be highly concentrated**



Courts Have Routinely Enjoined Mergers with Shares Far Lower Than Those in the Present Case

Case	Combined Share	HHI Increase	Post-Merger HHI	Holding
Phila. Nat'l Bank (S. Ct. 1963)	30%	N/A	N/A	<u>Enjoined</u>
PPG Industries (D.D.C. 1986)	53%	1,352	3,295	<u>Enjoined</u>
Cardinal Health (D.D.C. 1998)	37.2% 39.9%	1,431	3,079	<u>Enjoined</u>
Swedish Match (D.D.C. 2000)	60%	1,514	4,733	<u>Enjoined</u>
Heinz (D.C. Cir. 2001)	32.8%	510	5,285	<u>Enjoined</u>
CCC Holdings (D.D.C. 2009)	70% 65%	2,035 545	5,685 5,460	<u>Enjoined</u>
H&R Block (D.D.C. 2011)	28.4%	400	4,691	<u>Enjoined</u>
Sysco/US Foods (D.D.C. 2015)	75%	2,800	5,836	<u>Enjoined</u>
Combined Staples/Office Depot	79%	2,994	6,265	TBD



The Defendants Cannot Rebut the Presumption

- **Purported “Leakage” Does Not Rebut the Presumption**
- **The Commission’s 2013 Statement Does Not Rebut the Presumption**
- **Entry and Expansion Would Not Be Timely, Likely, or Sufficient**
 - Existing alternative vendors are not meaningful competitors for large business customers
 - Entry or expansion by regional and local suppliers or consortia is unlikely
 - Expansion by Amazon is unlikely anytime soon
- **The Proposed “Fix” Is an Insufficient Remedy**
- **The Claimed Efficiencies Are Not Verifiable or Merger Specific**

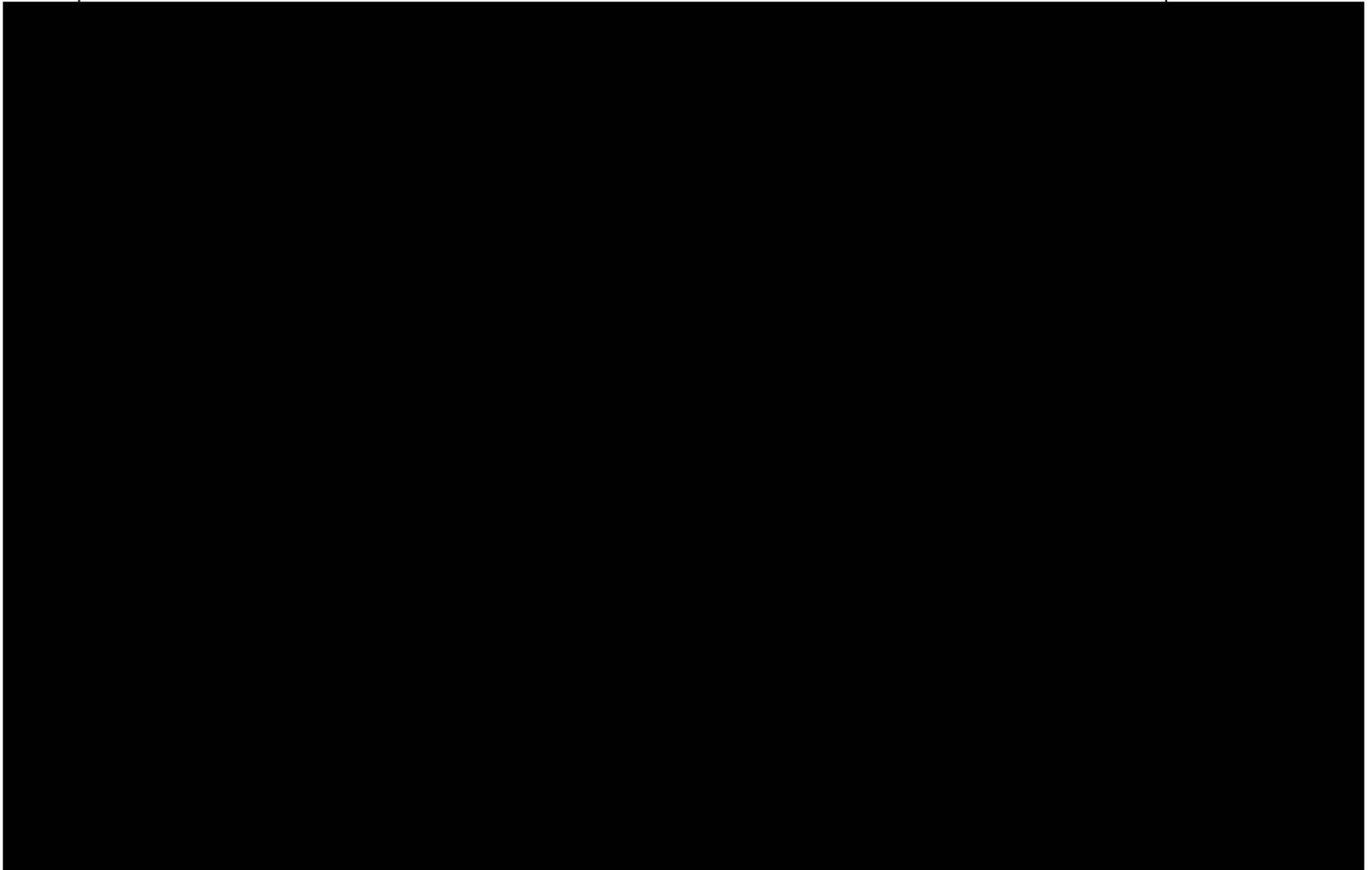


Purported “Leakage” Does Not Rebut the Presumption

- **Contracts are important to customers**
 - **Customers invest significant resources**
 - **Office supplies vendors invest significant resources**
- **Contracts include monetary incentives to incent customers to buy on the contract**



Purported "Leakage" Does Not Rebut the Presumption





The Commission's 2013 Statement Does Not Rebut the Presumption

- **Staples was Office Depot's and OfficeMax's closest competitor before the 2013 merger**
- **In 2013, large business customers were neutral or even in favor of the Office Depot/OfficeMax merger**
 - **“ . . . there was little concern from contract customers about the proposed merger, and even the largest customers believe the merger would be either pro competitive or competitively neutral.”**
- **Competitive alternatives today cannot replace the competition lost in this deal**
 - **In 2013, the Commission found “ . . . the parties will continue to face strong competition for [large contract] customers from Staples and a host of non-OSS competitors, such as W.B. Mason Co., Inc.”**
 - **The presence of Staples was critical. The Commission did not consider whether other alternatives could restrain a combined Staples/Office Depot**

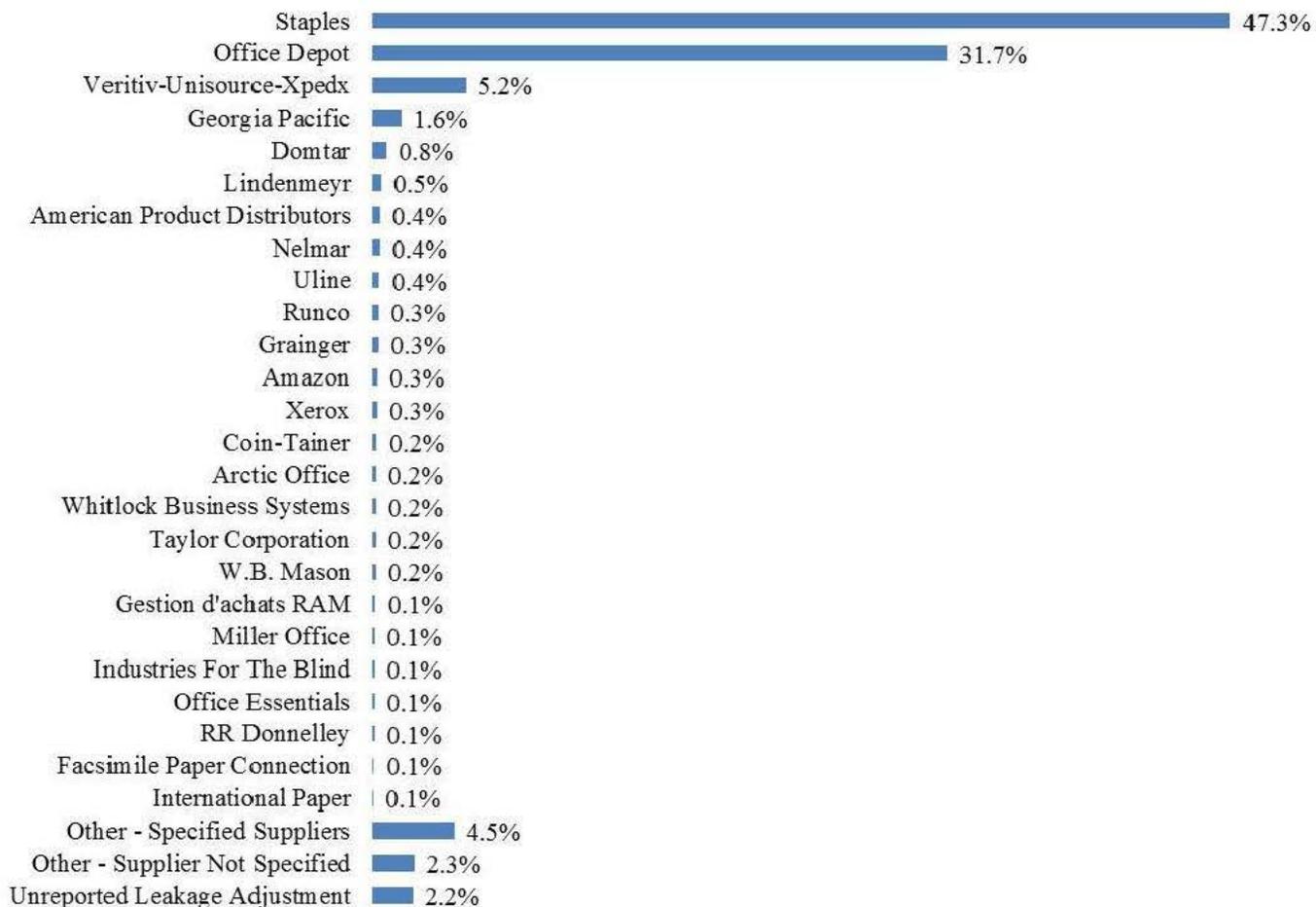
Source: Statement of the Fed. Trade Comm'n Concerning the Proposed Merger of Office Depot, Inc. and OfficeMax, Inc. FTC File No. 131-0104 (Nov. 1, 2013)



Entry and Expansion Would Not Be Timely, Likely, or Sufficient

Consumable Office Supplies Market Shares

Fortune 100 Customers, 2014



Sources: Exhibit R1B, Shapiro Reply Report.



Expansion by Amazon Will Not Be Timely, Likely, or Sufficient

Business Customer

amazonbusiness All : Go David's Account for Business Wish List

Departments Sell on Amazon Business Help

Industrial & Scientific Lab Test & Measurement Safety Janitorial & Facilities Food Service Education Material Handling Materials Fabrication Fasteners Filtration

Industrial & Scientific Power Transmission Products Belts V-Belts

by Browning

Browning BX100 Gripnatch Belt, BX Belt Section, 101.8 Pitch Length

Be the first to review this item

List Price: \$106.80
Price: \$38.70
Business Price: **\$37.18 & Free Two-Day Shipping on orders over \$49.** Details

Qty: 1

Add to Cart

Add to Wish List

Other Sellers on Amazon

\$31.51 + \$5.10 shipping
Sold by: vanguardwholesale
Add to Cart

\$38.70 + Free Shipping
Sold by: YouRemodel
Add to Cart

4 new from \$21.51

Have one to sell? Sell on Amazon

Want it tomorrow, April 14? Order within 4 hrs 33 mins and choose One-Day Shipping at checkout. Details

4 new from \$31.51

Specifications for this item

Brand Name	Browning	Overall Length	101.8 inches
EAN	0662289245314	Part Number	BX100
Item Weight	0.06 pounds	Size Name	BX Belt Section
Number of Items	1	UNSPSC Code	26111801
Outside Diameter	103 inches	UPC	062289245314

Oil and heat resistant. Static conducting. [Read full product description](#)

Amazon for Business
Enroll multiple users. Set spending limits.
Improve purchase reporting. [Sign up now](#)



Large Business Customers Do Not View Amazon as a Viable Option

Amazon Business to Business:

Summary:

There are no assigned account managers or personnel for business accounts, the clients obtain service by call a 1-800 # for customer service. (1.866-486-2360)

The client is solely responsible for Profile Management; creating, changing, establishing different depts., assigning purchasing roles, payment methods, and establishing "shared accounts" for use with up to 300 buyers

Payments are made through credit card assigned to each account or a credit line established with Amazon.

There are current quantity limits placed on products that cannot be overridden, the amount ordered cannot exceed the limit during a rolling 7 day period.

Delivery is through: Amazon courier, UPS, or USPS

Ordering tracking: for items ordered that are fulfilled by Amazon -- they can be tracked via the Amazon platform. For items purchased through Amazon but, are supplied by a 3rd party, the ordering person will need to contact the 3rd party supplier for tracking information, returns, and any product issues.

Summary:

The Amazon business to Business program is continuing to change; **its current form does not provide efficiencies for large corporate accounts. The current program requires the customer to manage all facets of the program; user profiles, payments, deliveries, etc...**

The current program is strictly an online service with no customer contact, unless there is an issue.

The Amazon Business to Business program is continuing to change; its current form does not provide efficiencies for large corporate accounts. The current program requires the customer to manage all facets of the program; user profiles, payments, deliveries, etc...

The current program is strictly an online service with no customer contact, unless there is an issue.

CONFIDENTIAL- FTC v. Staples Inc. and Office Depot, Inc., Case No. 15-cv-2115

FTB0000517

PX07155-001

**Fifth Third Bank Internal Report
(PX07155-001)**



The Proposed "Fix" Is Insufficient as a Remedy

Capabilities Assessment: Summary

With this transaction, Essendant will have all the necessary elements to Fully Develop a World Class Enterprise Account Solution

<u>Capability</u>	Current Capability	Capability Enabled by Transaction	Future Steady State
Fulfillment Platform	●	○	●
Inventory	●	○	●
Marketing	●	○	●
Merchandising/COGS	◐	◐	●
Last Mile (Courier)	◐	◐	●
Sales, Care & Shared Services	◐	◐	●
eCommerce	◐	◐	●

ESSENDANT™

● = Full Capability

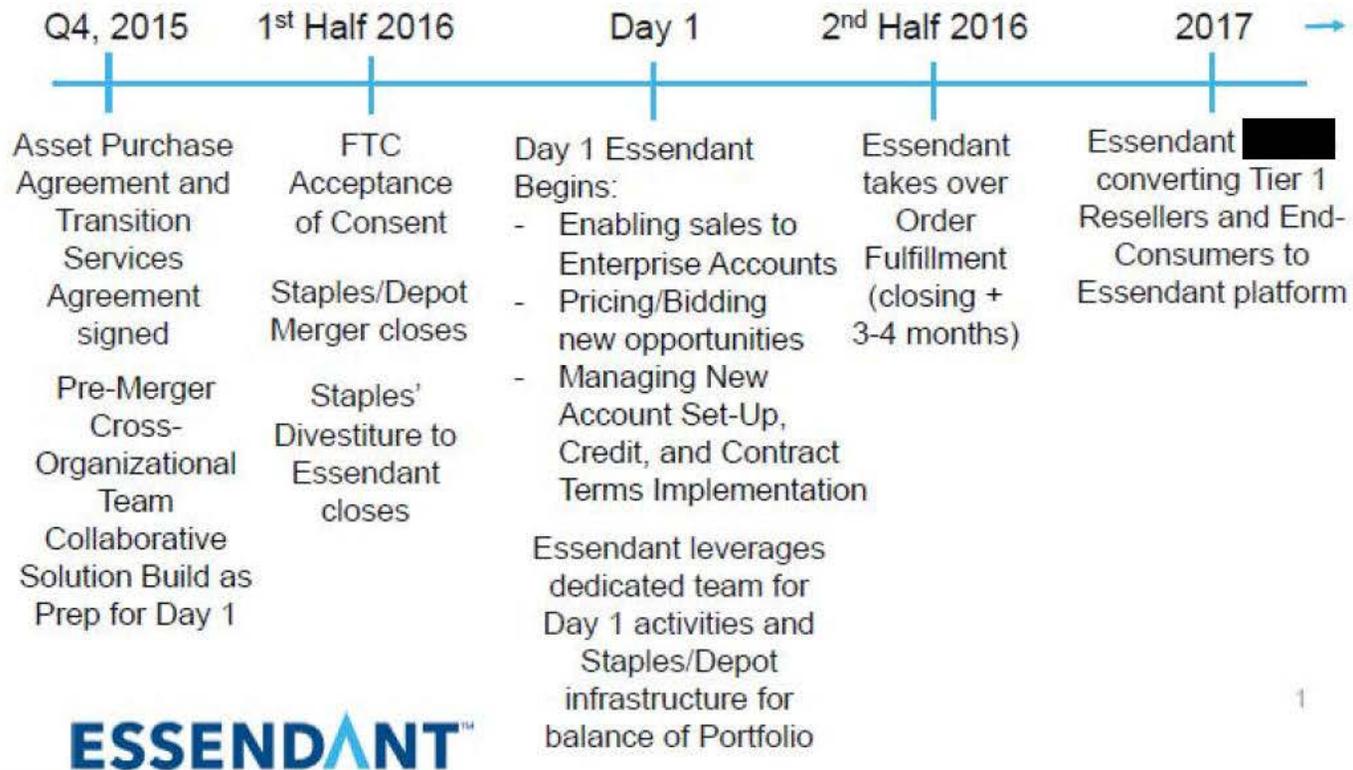
PX07017-022

Essendant Presentation to FTC (PX07017-022)



The Proposed "Fix" Is Insufficient as a Remedy

Timeline: Transition Plan



ESSENDANT™

Essendant Presentation to FTC (PX07068-002)



Significant Portions of Claimed Efficiencies Are Not Cognizable, Because Not Merger-Specific and Not Verifiable

- **“Extraordinary efficiencies” would be required to salvage an otherwise anticompetitive merger.** *FTC v. HJ Heinz Co.*, 246 F.3d 708, 720 (D.C. Cir. 2001)
- **To be credited, efficiencies must be merger-specific and verifiable.**
 - Savings would not be realized without the merger.
 - Specifics verifiable by independent source.
- **Defendants’ efficiencies expert failed to assess merger specificity or verifiability of nearly 60% of the claimed \$1 billion in efficiencies.**



Significant Portions of Claimed Efficiencies Are Not Cognizable, Because Not Merger-Specific and Not Verifiable

*“I think we announced a billion of net synergies, and those are divided into four or five different bucketed areas. Those are **guesstimates**...”*

– IH Testimony of Staples CEO, Ron Sargent



Plaintiffs Will Prove Their Prima Facie Case

- **The Relevant Product Market is the Sale and Distribution of Consumable Office Supplies to Large Business Customers in the United States**
- **Geographic Market is the United States**
- **The Merger Would Create Extraordinarily High Market Shares and Concentration**
- **Extensive Evidence Corroborates the Presumption**

STAPLES Advantage
Leadership Summit
●●●●●●●●●●
MAKE MORE HAPPEN

officially Official
MAKE MORE HAPPEN

- The merger is complete
- Opportunity we've worked so hard for
- **There are only two real choices for customers. US or Them.** (list reasons)
- Don't let this opportunity pass
- Recent events remind us how hard their work will be

• **There are only two real choices for customers. US or Them.**

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PX04082-029

SPLS Leadership Summit
Presentation, Nov. 2013
(PX04082-029)