

The merger of Staples and Essendant is unprecedented and not beneficial to the independent dealer community that Essendant serves:

As one of the of independent office supply dealers that are the core customer base of Essendant, it is of my opinion that the purchase of Essendant by Staples is not going to benefit the Essendant's independent dealer community in either the short or long term.

It is of my opinion that it is actually a long term strategy to disrupt, hurt and or significantly dismantle the independent dealer community, not help it since Staple's has no broad history of helping this important segment of the market and supply chain. If any of those outcomes were to occur to occur, Staple's would clearly be a benefactor. Acquiring Essendant is actually a brilliant strategy to disrupt, hurt and or significantly dismantle the independent dealer community to their benefit if they so choose.

It appears that the Commission recognized that this merger could be detrimental to these dealers which is evidenced by the fact that the Commission has required the need for a firewall to be put in place to protect the dealers commercially sensitive information (CSI). Unfortunately, the firewall alone will not fully protect all the commercially sensitive information to the extent the consenting Commissioners believe.

In the joint statement from the consenting Commissioners it is stated, *"To resolve this issue, the Commission's proposed order imposes firewalls and other safeguards to protect the competitively sensitive information of Essendant's dealer customers, as well as the sensitive information of the customers of those dealers."* This is a partial solution, but what about other ancillary data and information that doesn't directly relate to the dealer's CSI or sensitive information of the customers of the dealers?

Essendant's dealer's customer data is not the only type of data that could be used to give staples an advantage over the independent dealer community. It appears that the consenting Commissioners failed to recognize that there is other sensitive operational information not currently available to Staples that may not be covered by the firewall agreement that could be reverse engineered to give Staples some kind of advantage in specific areas that fall outside of a dealer's CSI or sensitive information of the dealer's customer base.

No significant communication from Essendant and Staples:

Staples has been a fierce competitor to these dealers for decades and there is no reason to believe that will change. There has been no communication from either Essendant or Staples that the level of competition will change, nor how the acquisition will significantly benefit Essendant's dealer customers.

In fact, there has been little to no communication at all about a transition plan, the details of the "firewall" and specifically what information will be protected by the firewall. And equally as important, it has not been disclosed or explained to the dealers that there is not going to be any **non-discrimination provisions** alongside it.

The lack of communication with the independent dealer community can only raise the level of concern about the true nature and motive of Sycamore wanting to purchase Essendant and combine it with Staples.

There are many questions that need to be asked, yet the dealers are not being given the opportunity to ask these questions nor are we being told anything of beneficial substance.

I personally would like to know all of the details of the firewall such as but not limited to:

- A. How long will it be in place?
- B. What is every piece and type of data that will be protected?
- C. What information will not be protected?
- D. Is my information still protected if I switch to S.P. Richards?
- E. What happens if there is a breach of the firewall whether intentional or not?
- F. What is the remedy plan in the event a dealer is damaged by a breach in the Firewall?
- G. Who is managing the firewall and what protocols are in place to protect the dealers CSI?

The absence of a plan or proper transition communications by Staples and Essendant is not a new behavior on their part. The Commission only needs to look back to the 2016 Staples/Office Depot temporary injunction hearing where the merging entities wanted to divest the Tier 1 business they engaged in with Tier 1 Diverse Supplier Partners to Essendant, who at the time had no significant experience in servicing the space.

At the temporary injunction hearing, sworn testimony was presented that no communication occurred with the Tier 1 Office Supply partners that were managing the proposed portion of business to be divested as to how the divestiture would proceed with Essendant, how the transition would work or what the transition plan even was. In my opinion this did not occur by accident and it appears to be happening again. At least in my case in the current situation, history has repeated itself as I have sought out this information to no avail. If this is such a great deal for the independent dealer community, why are we receiving no significant information at this at this crucial time?

Scores of Independent Dealers switching from Essendant to S.P. Richards is not a feasible remedy if the merged Essendant/Staples entity raises prices:

The consenting Commissioners mistakenly claim in their joint statement that if the independent dealers do not want to absorb any potential Essendant/Staples price increases, that they could easily switch to Essendant's competitor S.P. Richards to remedy that situation.

"First, the evidence showed that rather than absorbing price increases from Essendant, many independent dealers would switch to Essendant's largest competitor, S.P. Richards."

"Although there are some transaction costs to switching wholesalers, the evidence showed that a substantial number of independent dealers have switched their wholesaler in the past, use both wholesalers today, and reported that they would be willing to shift their business in the face of a price increase from Staples."

Further, the evidence showed that many independent dealers could take other actions to counter any attempt by Staples to increase prices or degrade services, including buying directly from office supply manufacturers or from other sources.

Staff's investigation, involving hundreds of interviews, also showed that switching wholesalers was not an insurmountable hurdle for independent resellers; in fact, many of them can and do switch or credibly leverage one wholesaler off the other in negotiations.

Believing the notion that dealers could easily and completely resolve and overcome an increase in prices by switching “to Essendant’s largest competitor, S.P. Richards” and/or “buying directly from office supply manufacturers or from other sources, including buying directly from office supply manufacturers or from other sources” is simply untenable and clearly indicates that in reality, the Commission actually is relying on an “insufficiently developed record”.

Yes, dealers including myself have switched wholesalers, but not when hundreds of others of dealers where trying to do it at the same time. This would create chaos in the market, chaos for the switching dealers and S.P. Richards. This type of mass exodus from one wholesaler to another has not occurred in the current generation of independent dealers and assuming that it would be easy and successful is not realistic. And no data or dialogue has been presented to support such a notion.

Switching wholesalers is not an easy implementation process. It is not as easy as a family changing which grocery store they shop. There are many complicated steps and procedures that need to take place. There is talk within our industry already that S.P. Richards does not have the capacity to take on hundreds of new dealers in a short period of time. In reality, neither wholesaler could probably do that without significant disruptions occurring in the marketplace unless the two wholesalers where to merge.

Yes, disenchanted dealers absolutely could buy “some” products directly from the manufacturers, but since most dealers are for the most part “stockless” dealers, buying all their products directly from the manufacturer is impossible and not an acceptable option. Not even Staples or Office Depot engage in a business model where they buy all their products directly from the manufacturers.

Did the Commission’s staff’s investigation include an in depth operational and economic analysis into the following?

- A. S.P. Richards’ capacity and ability to successfully and rapidly bring on hundreds of new dealers in a short period of time?
- B. What they thought the outcome would be if S.P. Richards had to implement hundreds of dealers at the same time?
- C. How many dealers S.P. Richards could successfully bring on in a one year period?
- D. Assess the impact on S.P. Richards and the Independent Dealer community in the event that hundreds of dealers where to choose to move to S.P. Richards within small period of time?
- E. What potential marketplace disruptions could occur if S.P. Richards had to implement hundreds of dealers at the same time?
- F. What is the adequate remedy for the dealers if a disruption occurs in the marketplace to Staple’s advantage and which was detrimental to those dealers?

If so, one would assume that the consenting Commissioners joint statement would have addressed these issues. It does not and if possible, a more in-depth analysis should be performed to see the potential negative impact of hundreds of dealers changing from Essendant over to S.P. Richards.

In fact, it is possible that there could be such a disruption in the independent dealer marketplace that could allow Staples to potentially pick up a lot of business from the dealers that may be faltering because of the market disruption that Staples could implement by raising prices. Again, this could be

part of an overall brilliant strategy to disrupt, hurt and or significantly dismantle the independent dealer community or at least a large part of it.

Staples does participate in the downstream market and has made significant acquisitions to do so:

The Commissioners joint statement also made the following statements that do not seem to be congruent with the recent independent dealer acquisitions Staples has made in the past year.

“As we also discuss above, this concern only would rise to the level of an antitrust problem if the customers of Essendant’s dealers were likely to switch to Staples to a sufficient degree to provide Staples with an incentive to raise prices to Essendant’s customers. But the evidence did not support this hypothesis; rather, it showed that sufficient switching to Staples is unlikely because of Staples’ low share in this particular downstream market, and the differentiation between the services Staples and the wholesalers provide.”

“The evidence indicated that Staples’ niche of this market is focused on customers who are less reliant on high-touch services.”

With all due respect to the consenting Commissioners, again it would appear that the Commission actually is relying on an “insufficiently developed record” as Staples actually purchased a company last year called **HiTouch Business Services** to better serve clients who are reliant on high-touch services. They also purchased another similar, but not identical company called CPI that specializes in servicing customers in what the Commission would term as reliant on high-touch services.

Below is an excerpt from an article posted on digitalcommerce360.com regarding Staples’ acquisition of HiTouch Business Services with emphasis added that indicates that they do now operate in the downstream markets that are reliant on high-tough services and plan to continue with these types of acquisitions if allowed to do so.

*When Staples Inc. was acquired last August by investment firm Sycamore Partners, it laid out a plan to separate from its retail operations and focus the **Staples brand on business customers.***

*It took a big step further into that strategy yesterday with the announcement that it had acquired **HiTouch Business Services**, a large U.S. independent office products dealer network. HiTouch—comprised of three operating divisions that sell office products, workspace design services and information technology products and services—**will operate as part of Staples Business Advantage, the Staples division that caters to mid-size and large businesses through StaplesAdvantage.com.***

“HiTouch will now be a part of the Staples Business Advantage delivery organization, and its customers will have access to a greatly expanded assortment of products, the latest e-commerce tools and a world-class supply chain,” Staples said in a statement announcing the deal. Staples didn’t say what it agreed to pay for HiTouch

HiTouch will continue to operate its e-commerce portal for its MyOfficeProducts at MyOfficeProducts.com, where it sells products ranging from paper towels and soap dispensers to computer hardware and office furniture, says HiTouch CEO John Frisk, who will continue to head the HiTouch business within Staples.

Frisk says HiTouch will continue to offer “one-on-one” service to customers, helping Staples to provide a broader range of personalized and online sales and service.

Staples CEO Sandy Douglas, noting that that HiTouch will help Staples offer a more comprehensive set of personal and online sales and service, adds that Staples will continue to seek out opportunities to expand how serves customers. “We will continue to look for strategic opportunities like this one where we feel we can help create better options for businesses,” he says.

In closing I would like to address three more statements made in the consenting Commissioners joint statement.

“In any event, our decision does not rest on efficiencies, but rather on the absence of evidence that this acquisition will result in anticompetitive harm outside of the specific area addressed in our order.”

I believe if thoroughly investigated and properly considered, the information that I have provided here could produce evidence of anticompetitive harm where there may be no current or future adequate remedy.

“As a law enforcement agency, our fidelity must be to the facts—not speculation.”

Without asking and analyzing the answers to the questions I have presented, the decision to continue with consenting on this merger would have to partially fall under speculation and not facts.

“Likewise, we fully agree with the dissent’s view that we should investigate all potential theories of harm in vertical mergers—just as the staff did in this matter.”

I believe I have presented enough information to conclude that all potential theories of harm have not been investigated. At minimum I would hope that the Commission’s staff would be allowed to further investigate and analyze the information that I have presented and hopefully other parties information too.

I also hope that the Commission realizes that if anticompetitive harm does occur that it will not hurt Essendant or Staples, but rather hundreds of family and privately owned businesses that have spent decades establishing themselves. And it is likely that if anticompetitive harm does occur, many if not hundreds of these businesses could go out of business forever.

Thank you for your time and consideration.