February 27, 2019

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Public Comment Re: Merger of Staples/Essendant, Inc., File No. 1810180

The Center for Popular Democracy is submitting these public comments in the matter of Staples/Essendant, Inc., File No. 1810180. The Center for Popular Democracy is a national network of 53 grassroots community organizations in 131 cities across 34 states, Puerto Rico, and Washington, DC.

Staples, Inc., which is owned by the private equity firm Sycamore Partners must not be permitted to acquire all outstanding shares of Essendant common stock. We call on the Federal Trade Commission (FTC) to more fully scrutinize this merger, as well as and the rapid growth in private-equity backed mergers and acquisitions.[1]

This proposed merger has resulted in a wave of public criticism. We are opposed to this proposed merger for several reasons:

1) This transaction breaks the law, violating both the Federal Trade Commission Act and the Clayton Act.

According to Staples it is "now the world's largest office products company and second largest internet retailer."[2] Essendant, Inc is the largest (and only one of two) office products wholesale distributors in the U.S with over $5 billion in sales in 2017 and over 60 U.S. distribution centers.[3] In acquiring one of its wholesalers, the Sycamore-owned Staples company will have an unfair market advantage.

We agree with allegations this merger would eliminate "direct and substantial competition between Staples' and Essendant's reseller customers in the market for the sale and distribution of office products to midmarket business-to-business customers. The elimination of this competition could result in higher prices for midmarket end customers."[4]

The FTC must not only address mergers between direct competitors. This type of vertical merger, between trading partners like Staples and Essendant, also demands strong regulatory oversight.

2) The proposed consent agreement, which places certain conditions on the merger, is insufficient.

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[1] Our public comments draw heavily on the data analysis and publications of Eileen Appelbaum, the Co-Director and Senior Economist at the Center for Economic and Policy Research, who is a leading national expert on private equity.
[2] Staples, Inc website "Our Story," Accessed 2/26/2019, https://news.staples.com/about/our_story.
[3] Federal Trade Commission, "Analysis of Agreement Containing Consent Order to Aid public Comment In the Matter of Sycamore Partners II, L.P., Staples, Inc., and Essendant Inc., File No. 181-0180, Docket No. C-4667" https://www.ftc.gov/system/files/documents/cases/1810180_staples_essendant_analysis_1-28-19.pdf.
[4] Ibid.

We believe Staples and Sycamore may still have access to commercially sensitive information that will hurt consumers. This has a high potential to hurt consumers if Staples exploits sensitive data on dealers and end customers. The proposed consent agreement would not adequately address the anticompetitive nature of this merger and the firewall may not be sufficient.

3) Mergers and acquisitions are not in the interest of the American public, consumers, or workers

A shrinking number of powerful companies are controlling large sectors of our economy. Corporate concentration poses a significant threat not only to consumers but also workers. We urge the FTC to more fully consider the implications of corporate concentration on working people. According to US Census Bureau data, in the past 20 years three-fourths of the business sectors in the US have become more concentrated.[5] In a recent paper by economists David Autor, David Dorn, Lawrence Katz, Christina Patterson and John Van Reenen, the authors find with the rise of large "superstar" firms, the aggregate labor share falls. The industries with the most corporate concentration see the largest decline in labor's share.[6] National data shows the average labor market is highly concentrated.[7] Monopsony power enables employers to collude to suppress wages and demand non-compete clauses which further hurts workers.[8]

The FTC must do further due diligence to assess the consequences of this merger. It is vital for the FTC to fully factor in the private equity business model when evaluating mergers and acquisitions.

In particular, the FTC must analyze Sycamore's past track record and future business incentives. We agree with Commissioner Chopra's assessment that the Commission may be jumping to conclusions and should further investigate buyer's plans, as well as potential harms to independent dealers in geographic areas where Essendant currently dominates market share.[9]

Sycamore, like all private equity firms, will have enormous incentives to make Staples and Essendant more profitable, in order to attract a buyer or increase the value of an eventual initial public offering. As Commissioner Chopra notes "Sycamore's investment approach and track record suggest that the fund

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[5] US Census Bureau, "Concentration Ratios: 2007, 2002 and 1997 Economic Censuses, by NAICS" https://www.census.gov/econ/concentration.html.

[6] David Autor, MIT and NBER David Dorn, University of Zurich Lawrence F. Katz, Harvard University and NBER Christina Patterson, MIT John Van Reenen, MIT and NBER, "The Fall of the Labor Share and the Rise of Superstar Firms," May 1, 2017, https://economics.mit.edu/files/12979.

[7] Marshall Steinbaum, "How Widespread Is Labor Monopsony? Some New Results Suggest It's Pervasive," Roosevelt Institute, December 18, 2017, http://rooseveltinstitute.org/how-widespread-labor-monopsony-some-new-results-suggest-its-pervasive/.

[8] Jason Furman and Alan B. Krueger, "Why Aren't Americans Getting Raises? Blame the Monopsony," Wall Street Journal, November 3, 2016, https://www.wsj.com/articles/why-arent-americans-getting-raises-blame-the-monopsony-1478215983.

[9] Federal Trade Commission, "Statement of Commissioner Rohit Chopra In the Matter of Sycamore Partners, Staples, and Essendant Commission File No. 181-0180 January 28, 2019," https://www.ftc.gov/system/files/documents/public_statements/1448335/181_0180_staples_essendant_chopra_statement_1-28-19_0.pdf, 1.

will operate assets much differently than a typical buyer, in ways that lead to higher margins, without any guarantee of greater output and service offerings. This is not the first time Sycamore Partners has come before the FTC. In 2015, the agency approved the fund as a divestiture buyer in the dollar store market. But Sycamore quickly resold the assets. The majority seems to believe we should wear blindfolds when it comes to this type of buyer evidence."[10] In light of this, we call on the FTC to more fully consider the private equity business model, future plans, and motivations of the Sycamore-owned Staples.

This Staples deal is part of a rapid acceleration of private equity-backed mergers and acquisitions. Since the 2008 financial crisis, private equity (PE) firms have used acquisitions to increase revenue in order to prepare for a profitable exit from their original investments. As Eileen Appelbaum noted in her public comments on this proposed Staples/Essendant merger, while PE firms sponsored 25.6 percent of mergers and acquisitions in 2010, in 2018 private equity accounts for a significantly higher 34.2 percent. In fact, in 2018 the median size of private equity M&A deals was $140.0 million (nearly triple the overall median deal size).[11]

We believe this type of M&A activity requires close attention from the FTC given private equity's business model differs significantly from publicly traded companies. Private equity firms use "debt financing" to take control of businesses through deals called leveraged buyouts. The only money that private equity firms have at stake is their initial equity investment used as a downpayment (this is often only a third or less of the total cost to acquire the company).[12] In fact, many private equity firms often only contribute 1 to 2 percent of the equity that's required for the leveraged buyout.[13] This means the acquired company bears the bulk of the cost of the acquisition. While public companies usually get about 30% of their capital from debt, PE-owned businesses operate with about 70% debt.[14]

[10] Ibid, 4.

[11] Eileen Appelbaum, "Comment by Eileen Appelbaum to FTC on Proposed Consent Agreement in the Matter of Staples/Essendant, Inc.," Center for Economic and Policy Research, http://cepr.net/publications/briefings/testimony/comment-to-ftc-by-eileen-appelbaum-on-proposed-consent-agreement-in-the-matter-of-staples-essendant-inc; PitchBook 2018 Annual M&A Report, https://files.pitchbook.com/website/files/pdf/PitchBook_2018_Annual_MA_Report.pdf, 7.

[12] Eileen Appelbaum, "Comment by Eileen Appelbaum to FTC on Proposed Consent Agreement in the Matter of Staples/Essendant, Inc.," Center for Economic and Policy Research, http://cepr.net/publications/briefings/testimony/comment-to-ftc-by-eileen-appelbaum-on-proposed-consent-agreement-in-the-matter-of-staples-essendant-inc

[13] Bryce Covert, "The Demise of Toys 'R' Us Is a Warning," The Atlantic, July/August 2018 Issue, https://www.theatlantic.com/magazine/archive/2018/07/toys-r-us-bankruptcy-private-equity/561758/.

[14] Lauren Weber, "Fact Check: Does Private Equity Kill Jobs?" Wall Street Journal, April 25, 2014, https://blogs.wsj.com/atwork/2014/04/25/fact-check-does-private-equity-kill-jobs/.

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PE conventional wisdom is that these unusually high debts will impose discipline on managers and force accountability on companies that will benefit from PE close monitoring and oversight.[15] In practice, this debt arrangement is a low-risk and high-reward setup that incentivizes excessive risk-taking by private equity firms. If the firm does well they can sell the company for huge profits. If the company goes under, PE will often exit unscathed. That's because they incur none of the risks and more of the potential rewards--more debt increases private equity firm's returns when the investments are successful and minimizes private equity's losses when its unsuccessful.[16]

On the other hand, a struggling or bankrupt companies' workers, vendors, and creditors face unemployment, insolvency, and low to no returns on investments. Despite the risks posed to workers, creditors, and the economy by this shadow banking system, private equity and hedge funds are exempt from many regulations governing Wall Street.[17] Within publicly-traded companies, CEOs are hired by independent boards and are supposed to be accountable to shareholders. Few if any public shareholders would choose to invest in a company that is loaded with debts equal to 70% of its overall value.

Mergers may increase the risk of bankruptcy and that threat may lead Sycamore to mine assets for the failing company. The private equity model creates a moral hazard which leads to excessive risk-taking by private equity firms and high rates of bankruptcy.[18] When businesses falter, private equity does everything it can to extract value at the expense of creditors. This can violate firewalls and lead to anti-competitive practices in markets where the business operates.

In light of these considerations, the Center for Popular Democracy calls on the Federal Trade Commission to use the full extent of its regulatory powers to prevent this merger and protect the interests of the American public.

Thank you for your consideration.

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[15] Bryce Covert, "The Demise of Toys 'R' Us Is a Warning," The Atlantic, July/August 2018 Issue, https://www.theatlantic.com/magazine/archive/2018/07/toys-r-us-bankruptcy-private-equity/561758/.

[16] Eileen Appelbaum and Rosemary Batt, "A Primer on Private Equity at Work: Management, Employment, and Sustainability," Center for Economic and Policy Research, February 2012, http://cepr.net/documents/publications/private-equity-2012-02.pdf, 2.

[17] Eileen Appelbaum, "Private Equity and the SEC after Dodd-Frank," Center for Economic and Policy Research, January 2015, http://cepr.net/documents/pe-dodd-frank-2015-01.pdf, 1-2.

[18] For a detailed discussion on the bankruptcy of the Mervyn's department store chain see Eileen Appelbaum and Rosemary Batt, Private Equity at Work: When Wall Street Manages Main Street, NY: Russell Sage Press, 2014. https://www.russellsage.org/publications/private-equity-work. See also examples of bankruptcies of private equity-owned supermarket chains in the last three years in Rosemary Batt and Eileen Appelbaum, "Private Equity Pillage: Grocery Stores and Workers at Risk," The American Prospect, October 26, 2018. https://prospect.org/article/private-equity-pillage-grocery-stores-and-workers-risk.