

MERGER ANTITRUST LAW

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Georgetown University Law Center
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Tuesdays and Thursdays, 3:30-5:30 pm
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Class 21 (November 14): Staples/Office Depot (Unit 12)¹

On deck for Thursday is the Staples/Office Depot case study. This case is interesting for a variety of reasons, not the least being that Staples and Office Depot, then the first and second largest office superstores (OSSs), respectively, in the country, abandoned a merger in 1997 after the FTC obtained a preliminary injunction blocking the deal.² In the 1997 case, the Commission successfully argued that the relevant product market was the sale of consumable office supplies through office superstores and that the proposed merger of two of the three office superstores would lead to competitive harm. In 2013, however, the FTC allowed Office Depot and Office Max, the number two and number three office superstores, to merge without taking any enforcement action.³ The Commission found that retail customers now look beyond office superstores for office supply products and rely more heavily on non-OSS, brick-and-mortar retailers such as Costco and Sam's Club. The Commission also found that there had been an explosive growth of online commerce in office supplies, and that online retailers, such as Amazon, stock a vast array of office supply products and can deliver them quickly anywhere in the country at nominal cost. Two years after the Office Depot/Office Max combination, Staples and Office Depot sought to merge relying on these same changes in the marketplace. It did not work.

The FTC's 2013 statement closing the investigation of the Office Depot/Office Max merger is a good place to start and is worth a careful read (pp. 3-5). If you like, you can skim the press release, the investor presentation, and the investor call in connection with the announcement of the Staples/Office Depot transaction (pp. 6-50), although if you are not familiar with investor calls this is a good one to read. Do a quick read of the FTC press release, the complaint, and the order of the court entering a temporary restraining order (pp. 54-82), to which the parties had stipulated.

The real action, of course, is in the memorandum opinion supporting the entry of a preliminary injunction against the consummation of the Staples/Office Depot transaction (pp. 83-160), and you should read it with some care. I suggest you brief the case to make sure you understand the precise grounds on which the FTC's grounds challenged the transaction, what evidence and arguments the FTC made in support of its petition for a preliminary injunction, how the merging parties responded to the FTC's case, and how the court justified the granting of the preliminary injunction.

¹ A reasonably complete set of the most important filings in the litigation may be found [here](http://AppliedAntitrust.com) on AppliedAntitrust.com.

² *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997). The filings in this litigation may be found [here](http://AppliedAntitrust.com).

³ See Fed. Trade Comm'n, [Statement Concerning the Proposed Merger of Office Depot, Inc. and OfficeMax, Inc.](http://www.ftc.gov/pressroom/2013/11/staples-office-depot-merger), FTC File No. 131-0104 (Nov. 1, 2013).

Finally, take a quick look at the press releases at the end where the companies announced that they were terminating their transaction (pp. 161-63) and the stock charts (p. 164).
Enjoy the reading! Email me if you have any questions.