1510065

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Staples, Inc. ("Staples") and Office Depot, Inc. ("Office Depot") have executed a merger agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Respondents are—by a wide margin—the two largest vendors of consumable office supplies to large "business-to-business" ("B-to-B") customers (i.e., business customers buying for their own end-use) in the United States.

2. Staples' and Office Depot's own documents state that they are [redacted]. Respondents are the best options for most large B-to-B customers—and the only meaningful options for some large B-to-B customers—particularly those with facilities in multiple regions of the country. And they are each

other's closest competitors for such customers. As Staples explained at an internal [redacted] Office Depot similarly made clear to a customer that [redacted]

3. Direct head-to-head competition between Staples and Office Depot yields substantial benefits to large B-to-B customers in the form of lower prices and better service. If consummated, the merger of Staples and Office Depot (the "Merger") would eliminate that competition. Office Depot acknowledged this in April 2015—two months after the Merger was announced—encouraging [redacted]

4. By eliminating direct competition between Staples and Office Depot, the Merger threatens significant harm to a wide range of large B-to-B customers.

5. Office supplies vendors, such as Respondents, sell and distribute consumable office supplies (*e.g.*, pens, staplers, notepads, folders, and copy paper) to all manner of businesses across the United States. Employees of these businesses use consumable office supplies in connection with their jobs. As a result, businesses depend on vendors to provide consistent and reliable delivery of consumable office supplies so that their employees have the products they need to work productively and on a cost-effective basis.

6. Large B-to-B customers typically require an office supplies vendor with experience and a strong reputation for providing consumable office supplies to large B-to-B customers. These requirements are especially important for customers seeking delivery on a multi-regional or national basis. Many large B-to-B customers require that their office supplies vendor provide a broad range of national-brand and private-label products, flexible and reliable delivery (including desktop delivery), high levels of customer service, customizable product catalogs, detailed utilization reporting, and sophisticated information technology ("IT") interfaces for procurement and billing. Moreover, large B-to-B customers require those features and services to be part of the transaction, along with consumable office supplies at competitive prices.

7. Large businesses typically purchase consumable office supplies pursuant to contracts awarded through requests for proposal ("RFPs"), auctions, or bilateral negotiations. Respondents generally compete head-to-head in such proceedings. They are often the two finalists in RFPs or other contests because they can obtain the lowest cost of goods from office supplies manufacturers and they possess similar networks of distribution centers, salesforces, and other services and features, such as strong reputations and experience, high levels of customer service, sophisticated IT, and product utilization monitoring and tracking. Large B-to-B customers often use those similar offerings to play one Respondent off the other to obtain lower pricing, other financial incentives, better service, and improved contract terms. Indeed, Staples and Office Depot frequently lower prices, increase discounts, and offer other financial incentives to take business

away from each other, and to avoid losing business to each other.

8. Many large B-to-B customers contract with a single office supplies vendor for consumable office supplies. Doing so allows these customers to consolidate their purchases and leverage the bigger purchasing volume to negotiate lower prices and higher discounts, rebates, or other pricing concessions. In addition, contracting with a single office supplies vendor allows large businesses to track and monitor usage of office supplies through one vendor, rather than several different vendors, thereby lowering their costs and improving operational efficiency. Using a single office supplies vendor also provides large B-to-B customers with a single point of contact for problems or concerns, a single IT interface for ordering, and a single payee for administrative purposes. These features are important to many large B-to-B customers because they enhance efficiency, ease of use, and administration, thereby lowering their costs of doing business.

9. For large B-to-B customers with locations across the United States or in multiple regions of the country, using a single office supplies vendor generally means choosing an office supplies vendor with national or multi-regional distribution capabilities. Staples and Office Depot are the only two office supplies vendors that can provide on their own the low prices, nationwide distribution, and combination of services and features that many large B-to-B customers require.

10. Once a large B-to-B customer contracts with an office supplies vendor, it attempts to ensure that the employees responsible for purchasing consumable office supplies purchase under the contract with its chosen office supplies vendor. Maximizing spend with its contracted office supplies vendor often allows a large B-to-B customer to earn the highest volume-based discounts, rebates, or other pricing incentives. It also minimizes the inefficiency of having to pay invoices from multiple vendors and accommodate multiple deliveries.

11. Other supply options have significant disadvantages for large B-to-B customers.

12. Local or regional vendors (including but not limited to W.B. Mason), local or regional consortia, and ad hoc region-by-region networks of suppliers have higher costs and thus higher prices, limited geographic footprints, and/or logistical and coordination challenges for large B-to-B customers. Because of these disadvantages, these other supply options have relatively small shares of sales to large B-to-B customers.

13. The Merger would combine the office supplies vendors that are—by far—the two top choices for a significant number of large B-to-B customers. It would eliminate beneficial competition between the two largest, most significant, and most attractive alternatives for many large B-to-B customers.

14. The Merger also would create a firm with a dominant share of the relevant market and significantly increase market concentration. Post-Merger, Staples would control more than 70% of the relevant market. The next-largest competitor would possess less than 5% of the relevant market. Under the 2010 U.S. Department of Justice and Federal Trade

Commission Horizontal Merger Guidelines ("Merger Guidelines"), a post-merger market-concentration level above 2,500 points, as measured by the Herfindahl-Hirschman Index ("HHI"), and an increase in market concentration of more than 200 points renders a merger presumptively unlawful. Post-Merger market concentration would be more than 4900, and would increase HHIs in an already concentrated market by well over 200 points. Thus, the Merger is presumptively unlawful.

15. Other office supplies vendors, including but not limited to Amazon Business, regional vendors such as W.B. Mason, distribution consortia, and vendors of adjacent products, such as janitorial/sanitation products or breakroom supplies, cannot meaningfully constrain a post-Merger Staples. As a result, Staples could charge higher prices and would have a diminished incentive to maintain or improve quality for large B-to-B customers if it were allowed to acquire Office Depot.

16. Similarly, manufacturers of "core" consumable office products, such as pens, folders, and notepads, generally do not sell core office supplies directly to large B-to-B customers, particularly in the quantities that such customers would want. They generally sell to wholesalers or vendors such as Respondents. Nor would it be practicable for large B-to-B customers to buy office supplies from a large number of manufacturers. Wholesalers do not generally sell consumable office supplies directly to large B-to-B customers. Rather, they generally sell to office supplies vendors, which then resell those products to large B-to-B customers.

17. Finally, buying at retail, whether from brick-and-mortar or online retailers, including Amazon Business, generally would be more expensive for large B-to-B customers than purchasing from an office supplies vendor, and generally would not provide the full combination of other benefits important to large B-to-B customers, such as desktop delivery, order tracking, electronic ordering, flexible payment terms, negotiated pricing, and consistency of product selection and availability.

18. Respondents cannot show that new entry or expansion by existing vendors would be timely, likely, or sufficient to counteract the anticompetitive effects of the Merger. Significant barriers to entry into office supplies distribution to large B-to-B customers—particularly national and multi-regional customers—exist, making entry or expansion difficult and incapable of constraining the merged entity.

19. Respondents cannot show cognizable efficiencies that would offset the likely and substantial competitive harm from the Merger.

II.

BACKGROUND

A.

Jurisdiction

20. Respondents, and each of their relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

21. The Merger constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

B.

Respondents

22. Respondent Staples is a publicly traded corporation organized under the laws of Delaware with headquarters in Framingham, Massachusetts. In fiscal year 2014, Staples generated $22.5 billion in sales, with 54.8% of that coming from office supplies. Staples operates three business segments: North American Stores & Online, North American Commercial, and International Operations. In fiscal year 2014, 36.8% of Staples' total sales came from the North American Commercial segment. Staples is the country's largest vendor of consumable office supplies to B-to-B customers.

23. Respondent Office Depot is a publicly traded corporation organized under the laws of Delaware with headquarters in Boca Raton, Florida. In fiscal year 2014, Office Depot had $16.1 billion in revenue, with 47.2% of that coming from sales of office supplies. Office Depot operates through three divisions: North American Retail Division, North American Business Solutions Division, and International Division. In fiscal year 2014, 37.4% of Office Depot's sales came from the North American Business Solutions Division. Office Depot is the country's second-largest vendor of consumable office supplies to B-to-B customers.

C.

The Merger

24. On February 4, 2015, Staples and Office Depot entered into an Agreement and Plan of Merger ("Merger Agreement"), pursuant to which each share of Office Depot stock

would be converted into the right to receive $7.25 in cash, plus approximately 0.2 shares of Staples' common stock. As of the market's close on February 3, 2015, these terms of the Merger Agreement equated to a value of Office Depot of $6.3 billion. Either party may terminate the Merger Agreement if it is not consummated by February 4, 2016.

III.

RELEVANT MARKET

25. The relevant market is the sale and distribution of consumable office supplies to large business-to business customers in the United States. Large B-to-B customers are particularly vulnerable to the proposed Merger because many have nationwide or multi-regional operations and require an office supplies vendor that can provide low pricing, high levels of service, and delivery across all of their operations. For such customers, Staples and Office Depot are the two best options.

A.

Relevant Product Market

26. Consumable office supplies consist of an assortment of office supplies, such as pens, paper clips, notepads, and copy paper, that are used and replenished frequently. It is appropriate to evaluate the Merger's likely effects through an analysis of the assortment of consumable office supplies because each of the products in the assortment is offered under similar competitive conditions. Thus, grouping the hundreds of individual consumable office supplies into an assortment for analytical convenience enables the efficient evaluation of competitive effects with no loss of analytic power.

27. B-to-B customers buy consumable office supplies for their own end-use (i.e., for their employees to use in the course of performing their job duties), rather than for resale.

28. Consumable office supplies do not include ink and toner for printers and copiers. Many B-to-B customers, particularly large B-to-B customers, buy ink and toner directly from ink and toner manufacturers, or as part of a package of "managed print services," in which vendors bundle ink and toner sales with leases of copier and printers, repair services, and/or copy and printer maintenance services. As a result, large B-to-B customers often purchase ink and toner from different vendors, under different contracts, than those from which they purchase consumable office supplies.

29. Consumable office supplies do not include other office-related products, such as janitorial or break-room products. Janitorial or break-room products are sold under substantially different competitive conditions than consumable offices supplies.

30. Large B-to-B customers include, but are not limited to, those that buy $1 million annually of consumable office supplies for their own end-use.

31. The sale and distribution of consumable office supplies to large B-to-B customers, many of whom have multi-regional or national operations, entails the warehousing, sale, and distribution of a wide range of such office supplies, along with high levels of customer service and value-added services.

32. The sale and distribution of consumable office supplies to large B-to-B customers is distinct from the sale and distribution of consumable office supplies to other customers, including individual consumers or small- and medium-sized businesses. Large B-to-B customers generally require, and the sale and distribution of consumable office supplies to large B-to-B customers is distinguished by, a number of key attributes, including but not limited to:

a. Procurement Processes: Large B-to-B customers generally procure consumable office supplies on contracts awarded through formal RFPs, auctions, or direct negotiations, often obtaining lower prices than other customers.

b. National or Multi-Regional Distribution: Many large B-to-B customers have operations in multiple regions of the United States. As a result, to increase efficiency and reduce transaction costs, large B-to-B customers often require a single vendor with a broad geographic footprint that can distribute consumable office supplies to all their locations in multiple regions of the country.

c. Next-Day Desktop Delivery: Many large B-to-B customers require next-day and desktop delivery—that is, delivery to one or more desks or drop-off points within an office building—to reduce storage costs.

d. High Levels of Service: Large B-to-B customers require that their office supplies vendors provide high levels of customer service, including dedicated account representatives and/or customer service representatives to address any customer concerns or issues in a timely manner.

e. Valued-Added Services: Large B-to-B customers often require detailed utilization reporting to allow them to track and monitor on a regular basis their employees' uses of and needs for office products. They also often require the creation of customizable product catalogs to encourage their employees to order and use products for which they have already negotiated the lowest prices.

f. Sophisticated IT Systems: Large B-to-B customers generally require their office supplies vendor to have sophisticated IT capabilities that interface directly with their e-procurement and billing systems.

g. Reputation and Financial Stability: Large B-to-B customers generally require an office supplies vendor with experience and a strong reputation for supplying large B-to-B customers with office supplies, as well as financial stability.

33. Respondents recognize the particular needs of large B-to-B customers and tailor their products and services to meet those needs. Both Respondents categorize B-to-B customers by size, with groups of employees dedicated to serving different groups of customers.

34. Thus, the sale and distribution of consumable office supplies to large B-to-B customers is the relevant product market in which to analyze the Merger's likely effects.

B.

Relevant Geographic Market

35. Respondents compete for the sale and distribution of consumable office supplies across the United States. Many large B-to-B customers operate nationally or in multiple regions of the country. Accordingly, it is appropriate to analyze the competitive effects of the Merger in the United States.

36. Respondents' own documents acknowledge the existence of a [redacted] referring to themselves as [redacted]

37. Respondents compete to provide the sale and distribution of consumable office supplies to large B-to-B customers through their respective networks of warehouses and distribution centers located around United States.

38. Many large businesses have a number of locations dispersed nationwide or across multiple regions of the United States. A substantial number of large B-to-B customers choose a single office supplies vendor with a geographically dispersed network of distribution centers to serve their facilities. These customers do so because consolidating their purchases with a single vendor gives them the ability to get lower prices, or increased discounts, rebates or other pricing incentives, from that vendor. In addition, choosing a single nationwide office supplies vendor provides large B-to-B customers with centralized and consistent services and terms across their facilities, including: (1) centralized contracting, (2) a single point of contact, (3) a single reporting/auditing function, (4) a single IT interface for users, and (5) ease of administration of the distribution contract.

39. Additionally, many large B-to-B customers enter into contracts for nationwide distribution, with nationwide pricing terms, and consider the vendor's ability to provide nationwide distribution and service in the selection process. Many large B-to-B customers with operations in multiple regions of the country, as opposed to nationwide, similarly want one vendor that can provide consistent pricing, service, and delivery across all their locations, and therefore often require a vendor with national capabilities.

40. Therefore, for consumable office supplies sold and distributed to large B-to-B customers, the United States is the relevant geographic market.

V.

MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY

41. Staples and Office Depot are by far the two largest vendors of consumable office supplies to large B-to-B customers. When large B-to-B customers issue RFPs for the sale and distribution of office supplies, Staples and Office Depot (including the legacy OfficeMax business) are usually the two finalists for the business. In fact, Respondents are often the only two companies that submit a proposal to supply a broad range of consumable office supplies on a nationwide basis.

42. The Merger Guidelines and courts measure concentration using the Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power—and is presumptively illegal—when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points.

43. The market for the sale and distribution of consumable office supplies to large B-to-B customers is highly concentrated, and the parties control the majority of sales. Post-Merger, the market would be substantially more highly concentrated than it is today. Post-Merger, Staples would control more than 70% of this relevant market. The next largest competitor would possess less than 5% of the relevant market. The Merger would result in a post-Merger HHI of well over 2500, and an increase in concentration of well over 200 points. Post-Merger market concentration would be more than 4900, and would increase HHIs in an already concentrated market by well over 200 points. Thus, the Merger would result in concentration above the amount necessary to establish a presumption of competitive harm.

44. The Merger is presumptively unlawful under relevant case law and the Merger Guidelines.

VI.

ANTICOMPETITIVE EFFECTS:

The Merger Would Eliminate Vital Head-To-Head Competition Between Staples And Office Depot

45. Respondents are each other's closest competitors. They are the two largest vendors of consumable office supplies to large B-to-B customers in the United States. The scale and capabilities of Staples and Office Depot are similarly matched, and are much larger and more robust than those of the next-largest vendor of consumable office supplies to large B-to-B customers (a regional office supplies vendor, W.B. Mason).

46. Staples' and Office Depot's size allows them to obtain products from manufacturers at lower prices than other vendors generally can. Both also offer a collection of distribution services that no other vendor of consumable office supplies can match: a national footprint with an extensive array of warehouses and distribution centers located across the country; correspondingly large salesforces; product breadth and depth, including private-label products; a single point of contact across all of a customer's locations; a single user interface that connects to a customer's procurement and billing systems; and other significant value-added offerings, such as order tracking, utilization reporting, and customizable catalogs.

47. Respondents acknowledge that [redacted]. One of Office Depot's own documents indicates that [redacted] Staples refers to itself as operating in a [redacted]

48. Respondents are often the first and second choices for large B-to-B customers of consumable office supplies. Respondents predominantly win large B-to-B customers from, and lose large B-to-B customers to, each other.

49. Respondents compete aggressively with each other on price and non-price terms to win and retain the business of large B-to-B customers. Staples and Office Depot frequently must compete with each other by lowering prices, increasing discounts or rebates, and providing significant cash incentives to win or keep large B-to-B customer accounts.

50. Large B-to-B customers benefit from the competition between Respondents. Among other things, that competition enables customers to pit Staples and Office Depot against each other to obtain lower prices and better contract terms. Large B-to-B customers switch, or threaten to switch, their business from Staples to Office Depot, and vice versa, to obtain better prices, discounts, cash incentives, and other beneficial terms.

51. The following are examples of direct price competition between Staples and Office Depot for large B-to-B customers:

- In November 2014, Office Depot offered a [redacted] payment [redacted] to secure the business of [redacted]. It lost out to Staples, who offered [redacted].
- In March 2014, [redacted], a Fortune 500 company, informed its current supplier, Office Depot, that it was putting its business out for bid. [redacted] and Office Depot discussed the fact that [redacted]
- In late 2013, [redacted], a Fortune 100 company, decided to benchmark Staples' prices against Office Depot's prices. To avoid losing [redacted] business to Office Depot, Staples [redacted]
- In the fall of 2013, [redacted], a Fortune 100 company, informed Office Depot that it was switching its business to Staples unless [redacted]. An internal Office Depot email explains that [redacted]
- In 2013, with its contract with Staples expiring, [redacted], a Fortune 500 company, informed Staples that it was considering Office Depot and OfficeMax as potential suppliers. Staples [redacted] to keep the business.
- In the fall of 2012, [redacted], a Fortune 100 healthcare services provider, ran a reverse auction for office products. Although Staples was the incumbent, [redacted] was prepared to switch to Office Depot if there was not [redacted]. To keep the business, Staples [redacted].

52. The Merger would eliminate this intense head-to-head price competition for large B-to-B customers. Post-Merger, Staples would face less meaningful competition than it does today. Consequently, Staples will not need to compete as aggressively on price to win the business of many large B-to-B customers, and it will be able to price at higher levels.

53. Staples and Office Depot also compete aggressively on non-price terms to win large B-to-B customers by offering high-quality services. Respondents currently risk losing business to each other if large B-to-B customers perceive one Respondent's service as inferior or lacking. After the Merger, Staples would face substantially less competition for large B-to-B customers, and would have less incentive to improve, or even maintain, its current level of service to win or keep business.

54. Retail stores and internet websites directed at retail consumers are not viable alternatives for most large B-to-B customers. Such retailers cannot provide the level of pricing or service that office supplies vendors such as Respondents provide and that large B-to-B customers require.

55. Wholesale suppliers of office supplies are not meaningful alternatives for most large B-to-B customers because wholesalers generally sell only for resale, not to businesses for their own use. Even when wholesalers work with independent vendors to distribute to customers, those wholesaler-vendor partnerships cannot provide the level of pricing or service that office supplies vendors like Respondents provide and that large B-to-B customers require.

56. Manufacturers of consumable office supplies are not a viable distribution option for most large B-to-B customers' consumable office supplies needs. Given the breadth of office supplies large B-to-B customers buy, such customers would have to purchase from a large number of different manufacturers to cover their employees' needs. Such purchasing would be highly inefficient, costly, and not practicable for most large customers. Moreover, manufacturers of consumable office supplies generally sell only in very large quantities, generally far larger than a B-to-B customer would purchase for its own use. As a result, manufacturers of consumable office supplies generally do not sell their products directly to customers buying for their own end-use and not for resale.

57. Other office supplies vendors, such as Amazon Business, regional vendors such as W.B. Mason, distribution consortia, and vendors of adjacent products, such as janitorial/sanitation products or breakroom supplies, generally have some combination of higher costs and thus higher prices, limited geographic footprints, and/or logistical and coordination challenges for large B-to-B customers. As a result, they would not meaningfully constrain Respondents' exercise of market power post-Merger.

VII.

LACK OF COUNTERVAILING FACTORS

A.

Barriers to Entry and Expansion

58. Respondents cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Merger.

59. A firm seeking to enter or expand in the market for the sale and distribution of consumable office supplies to large B-to-B customers, many of whom operate nationally or in multiple regions of the country, would face significant barriers to success.

60. One key obstacle to expansion by regional firms or consortia is having the geographic footprint to serve large B-to-B customers, many of which operate nationally or in multiple regions of the country. Creating a national distribution network anywhere close to that offered by Staples or Office Depot would be time and resource intensive.

61. The next-largest vendor of consumable office supplies after the Respondents, W.B. Mason, operates only in 13 states, primarily in the Northeast. [redacted]

62. Other vendors of consumable office supplies are many years and significant capital investments away from being in a position to replace the competition that Office Depot currently provides to Staples, even assuming those other vendors were likely to expand their geographic footprints.

63. Additionally, entrants must develop sophisticated IT systems that large B-to-B customers expect, to allow customized ordering systems that interface with the customer's procurement, billing, and utilization tracking systems. Such systems are costly to develop and maintain.

64. Large B-to-B customers also value having a relationship with an experienced sales representative that understands their particular needs. Thus, vendors seeking to enter or expand must recruit and hire a competent and experienced salesforce that can serve customers in multiple regions of the country. To hire enough sales representative to enter or expand on a sufficient scale to constrain the merged firm in multiple regions or nationally would take a significant amount of time and effort, particularly in light of non-competition and non-solicitation agreements that incumbent vendors have with their employees.

65. Entrants also must overcome reputational barriers to entry and Respondents' strong incumbency advantage. A significant percentage of RFPs are won by incumbent vendors—and often by one of the Respondents.

B.

Efficiencies

66. Respondents cannot demonstrate cognizable efficiencies that would be sufficient to rebut the strong presumption and evidence that the Merger likely would substantially lessen competition in the relevant market.

VIII.

VIOLATION

COUNT I—ILLEGAL AGREEMENT

67. The allegations of Paragraphs 1 through 66 above are incorporated by reference as though fully set forth.

68. The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II—ILLEGAL ACQUISITION

69. The allegations of Paragraphs 1 through 66 above are incorporated by reference as though fully set forth.

70. The Merger, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the tenth day of May, 2016, at 10 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Merger is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as Staples and Office Depot were offering and planning to offer prior to the Merger.

2. A prohibition against any transaction between Staples and Office Depot that combines their businesses in the relevant market, except as may be approved by the Commission.

3. A requirement that, for a period of time, Staples and Office Depot provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in the relevant markets.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Office Depot as a viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this seventh day of December, 2015.

By the Commission.

Donald S. Clark
Secretary

SEAL: