LAW 1469
Georgetown University Law Center
Fall 2025

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
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Class 16 (Octoer 21): Staples/Office Depot (Unit 8)[1]

On deck s 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) 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 the proposed merger of two of the three office superstores would likely substantially lessen competition in the sale of consumable office supplies through office superstores. 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 revive their merger, relying on these same changes in the marketplace. It did not work.

The FTC's 2013 statement regarding the closing of the Office Depot/Office Max merger investigation is a good place to start and 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). However, 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.

Finally, take a quick look at the press releases where the companies announced that they were terminating their transaction (pp. 161-63) and the stock charts (p. 164).

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[1] A reasonably complete set of the most important filings in the litigation may be found here on AppliedAntitrust.com (if necessary, search for Staples/Office Depot).

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

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

There are no class notes for this class, although you should review the Market Definition, Anticompetitive Effects, and Downward-Pricing Pressure Defenses decks as needed.

Be sure to spend some time on the Class 20 assignment. You will find the investment of time invaluable.

Enjoy the reading! Email me if you have any questions.