Statement of the Federal Trade Commission
Concerning the Proposed Merger of Office Depot, Inc. and OfficeMax, Inc.
FTC File No. 131-0104
November 1, 2013

The Commission has unanimously decided to close its seven-month investigation of Office Depot, Inc.'s proposed merger with OfficeMax, Inc., a transaction that aims to combine the country's second and third largest chains of office supply superstores (OSS).[1] Although sixteen years ago the Commission blocked a proposed merger between Staples, Inc. and Office Depot, the nation's two largest OSS, our current investigation has shown that the market for the sale of consumable office supplies has changed significantly in the intervening years. For the reasons discussed below, we conclude that Office Depot and OfficeMax should be permitted to move forward with their proposed transaction. In reaching this conclusion, we assessed the proposed merger's competitive effects in two distinct lines of commerce: the sale of office supplies to retail and contract customers. We discuss each in turn.

I. Retail Channel

In the 1997 *Staples* case,[2] the Commission successfully argued that the relevant product market was the sale of consumable office supplies through OSS and that the proposed merger of two of the three OSS would lead to competitive harm.[3] In finding an OSS-only market, the *Staples* court relied principally on qualitative and empirical evidence that OSS prices were set according to the number of competing OSS in a local area. Company documents revealed the merging parties' intense competitive focus on other OSS and general lack of concern with non-OSS rivals. The evidence also showed that the defendants grouped their stores into price zones specifically based on the number of nearby OSS, resulting in higher prices in local markets with fewer OSS, even if non-OSS competitors were present.

The current competitive dynamics are very different. The Commission's investigation shows that today's market for the sale of consumable office supplies is broader, due mainly to two significant developments. One is that customers now look beyond OSS for office supply products and rely more heavily on non-OSS brick-and-mortar retailers. Mass merchants like Wal-Mart and Target and club stores like Costco and Sam's Club have proliferated and expanded their product offerings and sales of office supplies. The result is that fewer consumers today shop OSS as a destination. Instead, consumers place a greater premium on convenience, preferring in many cases to purchase supplies at retailers that also offer other products that office supply customers purchase.

The other is the explosive growth of online commerce, which has had a major impact on this market. Online retailers stock a vast array of office supply products and can deliver them quickly anywhere in the country at nominal cost. Company documents show that OSS are

[1] The Attorneys General of several states joined in the Commission's investigation.

[2] *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997).

[3] "Consumable office supplies" refers to non-durable products that consumers use up, discard, and purchase on a recurrent basis. Examples included pens, paper, file folders, Post-it notes, and ink and toner cartridges. *Id.* at 1080.

acutely aware of, and feel threatened by, the continued growth of online competitors, most notably Amazon. OSS have lost, and continue to lose, substantial in-store sales to online competitors. This increased competition from online retailers has caused OSS to respond with new pricing practices and other strategies. For example, because online prices are often lower than in-store prices, and because many customers comparison shop in-store prices against online prices, OSS are often pressured to match these lower online prices in their stores. And, in-store and online channel boundaries are blurring as OSS seek to create a seamless customer experience by offering in-store pickup for online orders and using in-store Internet kiosks to order products online.

The merging parties' pricing policies and practices reflect these changes in customer behavior and now specifically factor in non-OSS competition. Price zones and retail pricing are no longer dictated by the number of local OSS. In fact, a majority of products sold by the merging parties are priced nationally, and the products priced locally take into account competition from non-OSS retailers. OSS closely monitor, and respond competitively to, other non-OSS retailers. This competitive interaction includes price-checking, price matching, and advertising and promotion designed specifically to compete effectively with non-OSS retailers.

The econometric analysis reflects the new competitive dynamics in the industry and shows that the proposed merger is unlikely to result in anticompetitive price effects. Commission staff replicated the type of econometric work performed in *Staples* and conducted an extensive amount of additional econometric analysis, including comparisons of prices in markets with varying numbers of OSS and "events studies" analyzing the impact of OSS store closings on the prices charged by remaining OSS in local areas. All of the econometrics, none of which assumed or depended on any particular definition of a relevant product or geographic market, indicate that the merger is unlikely to lead to anticompetitive price increases.

Altogether, the overwhelming evidence supports the conclusion that OSS today face significant competition and demonstrates that the proposed merger is unlikely to substantially lessen competition in the retail sale of consumable office supplies.

II. Contracting Channel

The Commission also examined the potential for competitive harm in the sale of consumable office supplies to businesses and other customers on a contract basis, a channel not at issue in *Staples*. Many businesses and public entities purchase office supplies under a contract. Unlike retail purchasers, contract customers typically receive discounted pricing based on actual or anticipated purchase volume. These contracts allow customers to order office products at previously negotiated prices. Because there are dozens, if not hundreds, of office suppliers that compete effectively to serve small and medium-sized businesses, the investigation focused on contracts for large multi-regional or national customers, which typically have the most demanding purchasing requirements and, as a result, fewer potential suppliers capable of meeting their needs.

A substantial body of evidence indicates that the merger is unlikely to substantially lessen competition or harm large contract customers. First, large customers use a variety of tools to ensure that they receive competitive pricing such as ordering certain products (like ink and toner) directly from manufacturers and sourcing (or threatening to source) certain categories of office supply products from multiple firms. Second, the merging parties' documents show that they are rarely each other's closest competitor for most large customers and that non-OSS competitors take business from the parties in a substantial number of contracting opportunities. Third, the parties will continue to face strong competition for such customers from Staples and a host of non-OSS competitors, such as W.B. Mason Co., Inc. Non-OSS competitors are growing in number and strength and have demonstrated the ability to win large multi-regional and national customer contracts. In particular, regional office supply competitors have developed and utilized various strategies to compete successfully for large national accounts, including working with office supply wholesalers and joining cooperatives of independent office supply dealers to create a distribution network capable of meeting the needs of large multi-regional and national customers. Finally, potential competitors in adjacent product categories, such as janitorial and industrial products, have existing contractual relationships with large office supply customers and can leverage those relationships to enter the office supply distribution market.

In light of the foregoing, there was little concern from contract customers about the proposed merger, and even the largest customers believe the merger would be either pro-competitive or competitively neutral. We therefore find that the proposed merger is unlikely to result in competitive harm in the contract channel.[4]

III. Conclusion

Analyzing the likely competitive effects of a proposed transaction is always a fact-specific exercise that must take into account the evolving nature of markets. Our decision highlights that yesterday's market dynamics may be very different from the market dynamics of today. In this case, significant developments in the market for consumable office supplies have led us to approve a merger when we had blocked a similar merger sixteen years ago. In so finding, we emphasize that our decision, including our view of the competitive interaction between brick-and-mortar retailers and Internet sellers, is limited to the facts before us in this particular matter.

[4] We also assessed the potential for coordinated effects, but found that market conditions, including the number and diversity of competing firms, the complexity of contract terms, and the lack of transparency into the identity of bidders and terms of contracts and bids, would render post-merger coordination or market allocation difficult.