

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an Order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF the proposed acquisition of Office Depot Inc. by Staples, Inc.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT December 7, 2015 CT-2015-012	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 1

COMMISSIONER OF COMPETITION

Applicant

-AND-

STAPLES, INC., STAPLES AMS, INC., AND OFFICE DEPOT INC.

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the "**Commissioner**") will make an application (the "**Application**") to the Competition Tribunal (the "**Tribunal**"), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "**Act**") for an Order or Orders:

- (a) that Staples, Inc. ("**Staples**") not proceed with its acquisition of Office Depot Inc. ("**Office Depot**") (the "**Acquisition**");
- (b) or, in the alternative, that Staples not proceed with a part of the Acquisition

necessary to ensure that the Acquisition does not lessen competition substantially in Canada or any part thereof;

- (c) requiring the Respondents to pay the costs of this proceeding; and
- (d) granting such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such Order or Orders as it may consider just, including the Orders sought in this Application.

AND TAKE FURTHER NOTICE that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application.

AND TAKE FURTHER NOTICE that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

THE ADDRESSES FOR SERVICE ARE:

For Staples, Inc. and Staples AMS, Inc.

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West, 40th Floor
Toronto, ON M5V 3J7

Attention: Adam Fanaki

For Office Depot, Inc.

Blakes, Cassels & Graydon LLP
190 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention: Julie Soloway

The Applicant proposes that the hearing of this matter be held in Ottawa, Ontario and heard in English.

For the purposes of this Application, all documents on the Commissioner may be served upon:

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

Tel: 819.994.7714

Fax: 819.953.9267

Attention: Jonathan Chaplan
Jonathan Hood

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW

1. Staples and Office Depot do not just deliver office products to Canadian organizations; they also provide sophisticated services allowing Canadian organizations to manage their office product needs in a customized way. The Acquisition will almost double Staples' share of sales in this market to about 80%, significantly enhancing its market power. Staples will be able to wield this market power at the expense of Canadian customers.
2. Staples and Office Depot are unique: they provide high levels of customer service and have the infrastructure necessary to provide just-in-time delivery of a wide variety of office products, including office supplies and paper, to organizations across Canada for their end use (the "**Business**").
3. Staples and Office Depot – by a wide margin – are the two largest players in the Business. Now, Staples wishes to acquire its closest and only significant competitor in Canada, Office Depot. This would eliminate the vigorous competition between these two large rivals and give the merged entity the ability to raise prices on the bundle of office products it sells and to lower the quality of services it offers to organizations in Canada.
4. The remaining competitors collectively account for less than a 20% share of the Business. Lyreco and independent dealers, most of which are affiliated with the buying group Basics Office Products, are unlikely to constrain an exercise of market power by Staples. The loss of Office Depot's competitive presence will not be replaced by existing suppliers expanding or by new suppliers entering, because barriers to entry and expansion are high.
5. Accordingly, the Commissioner brings this application to remedy the likely substantial lessening of competition caused by this Acquisition.

II. THE PARTIES

6. The Commissioner, appointed under section 7 of the Act, is charged with the administration and enforcement of the Act.

7. The Respondent, Staples, is a supplier of office products, including office supplies, paper, ink and toner, computers and accessories, janitorial products, facility and breakroom supplies, and office furniture ("**Office Products**"). Staples is headquartered in Farmingham, Massachusetts, and operates throughout the world. In Canada, Staples operates through four subsidiaries.

8. This application is concerned with the business carried on by one of Staples' subsidiaries, Corporate Express Canada, Inc. Staples acquired Corporate Express Canada, Inc. in July 2008, and integrated it into Staples' Canadian business-to-business segment, rebranding it as Staples Advantage Canada ("**Staples Advantage**").

9. Staples Advantage delivers Office Products and provides supporting services to a wide range of organizations, including for-profit and not-for-profit businesses, governments, healthcare organizations, and educational institutions. Staples Advantage is not a brick-and-mortar retailer; rather, it delivers Office Products directly to organizations whose employees use the Office Products during operations.

10. The Respondent, Office Depot, also delivers Office Products and provides supporting services globally. Office Depot is headquartered in Boca Raton, Florida. In Canada, Office Depot conducts business through its Canadian subsidiary, Grand & Toy Limited ("**Grand & Toy**"). Through its 2013 merger with Office Max, Office Depot acquired Grand & Toy and closed all but one of its brick-and-mortar retail stores in Canada to focus on the Business at issue in this Application.

III. THE PROPOSED ACQUISITION

11. Pursuant to the terms and conditions of an Agreement and Plan of Merger by the Respondents dated February 4, 2015, Staples AMS, Inc., a wholly-owned subsidiary of Staples, proposes to merge with and into Office Depot, with Office Depot surviving as a wholly-owned subsidiary of Staples. Staples is paying approximately US \$6.3 billion to acquire Office Depot's global business, including Grand & Toy in Canada.

IV. BACKGROUND

12. Staples and Office Depot do not produce goods. They purchase Office Products in bulk from manufacturers and wholesalers and break them down into smaller quantities. Their customers can order a variety of Office Products in quantities that are appropriate for their needs and get them delivered to their door within one to two days.

13. Along with Office Products, Staples and Office Depot provide organizations with superior service, including frequent and flexible just-in-time delivery, knowledgeable support staff, sophisticated e-commerce platforms, consistency of pricing, and order tracking and reporting. Staples and Office Depot deliver Office Products to their customers through a comprehensive network of warehouses, customer sales representatives, and fleets of delivery trucks. These services represent an important component of the Business, offering customers a one-stop shop to manage all of their Office Product needs.

14. After the Acquisition, Staples will likely be able to exercise market power over its customers, including for-profit and not-for-profit businesses, governments, health care organizations or educational institutions ("**Affected Customers**"). Most Affected Customers own or operate multiple locations across several regions in Canada. Affected Customers also include, for example, buying groups that purchase Office Products on behalf of multiple hospitals or schools.

15. In 2014, Affected Customers in Canada purchased more than \$1 billion in Office Products, including more than \$500 million in office supplies and paper. Public entities accounted for a significant share of the office supplies and paper sold by Staples and Office Depot to Affected Customers that year.

16. Affected Customers typically purchase Office Products pursuant to contracts awarded through requests for proposals or negotiated agreements. These agreements allow customers to buy Office Products at discounted prices based on purchase volume. Competition between Staples and Office Depot is based largely on price and service.

17. Prices are usually negotiated on a "core" product bundle where the Affected Customers select the most important and frequently ordered Office Products for its needs. The core bundle for most Affected Customers includes office supplies and paper, and often also includes products from other Office Product categories. Most Affected Customers purchase from at least four different categories of Office Products. As the core bundle may not include all products purchased by the Affected Customer, the contract will often offer smaller discounts on those items not in the core bundle.

18. The discount the Affected Customers obtain for the core and non-core products is generally tied to the volume of purchases, which provides an incentive for Affected Customers to aggregate purchases across all their locations or to add product categories to the bundle of products purchased.

19. Affected Customers also consider service to be important when considering where to source Office Products. Affected Customers usually require Office Products to be delivered to their locations within one to two days. These can be large regularly scheduled deliveries or they can be unexpected and small orders to deal with an unanticipated increase in demand. In order to provide service in a timely manner to Affected Customers, a competitor in the Business must maintain an extensive distribution infrastructure strategically located throughout Canada. As set out in Appendix A, Staples and Office Depot have thirteen and seven distribution centers located throughout Canada, respectively.

20. By sourcing Office Products from a single competitor in the Business, Affected Customers are able to achieve administrative and cost efficiencies through the convenience of one-stop shopping and just-in-time delivery. This allows Affected Customers to avoid, for example, costs that they would otherwise have to incur to stockpile Office Products.

21. The employees of Affected Customers usually order from a sophisticated e-commerce platform. As a result, the Affected Customer receives consistency of pricing, service, and ordering across all of its locations. The Affected Customer has centralized billing and reporting that allows for the efficient administration of the contract.

V. THE RELEVANT MARKET

22. For this application, the relevant market is the delivery of the bundle of Office Products, including at least office supplies and paper, and supporting services to Affected Customers in Canada (the "**Relevant Market**").

A. Relevant Product Market

23. The relevant product market for this application is the supply and delivery of a bundle of Office Products, including at least office supplies and paper, as well as the supporting services that allow Affected Customers to manage their Office Product needs. Office supplies include supplies such as pens, pencils, highlighters, staples, and sticky notes. Paper includes primarily the different types of paper used in printers and photocopiers.

24. As described above, a significant number of Affected Customers choose their supplier based on its ability to provide the best price across a bundle of office supplies, paper, and other Office Products, as well as centralized billing and consistent terms of service, such as just-in-time delivery, an e-commerce platform, and reporting capabilities.

25. For these Affected Customers, a hypothetical monopolist for the supply and delivery of Office Products and supporting services could profitably impose and sustain a small but significant non-transitory increase in price ("**SSNIP**") on at least the office supplies and paper portion of the Office Products purchased.

26. A hypothetical monopolist could profitably impose a SSNIP because most Affected Customers would not substitute to sourcing at least their office supplies and paper from either multiple regional competitors or disaggregating their purchase of office supplies and paper (i.e. buying pens from one supplier and pencils from another). The costs associated with trying to source office supplies and paper from multiple suppliers with limited geographic footprints, including higher product costs due to lower volumes of purchase and logistical challenges, are greater than paying a SSNIP.

27. While the relevant product market includes at least the delivery of office supplies and paper, Affected Customers who purchase from other Office Product categories will also likely experience a price increase, on products in those other categories, or a decline in service as a result of the Acquisition.

B. Relevant Geographic Market

28. Staples and Office Depot compete to deliver Office Products to Affected Customers through a network of distribution centres strategically located throughout Canada to serve Affected Customers.

29. Affected Customers often operate or manage a number of locations in Canada. As a result, Affected Customers require a geographically dispersed network of distribution centres to serve their locations.

30. Without a Canadian presence, foreign or regional competitors are unable to provide service to Affected Customers in a timely fashion. A foreign competitor trying to import Office Products from warehouses located in other countries directly to organizations in Canada or regional players with gaps in their geographic footprints could not provide the same level of service as competitors with a comprehensive Canadian network. Therefore, the relevant geographic market is likely Canada.

VI. THE ACQUISITION IS LIKELY TO SUBSTANTIALLY LESSEN COMPETITION

31. Prior to the Acquisition, Staples and Office Depot accounted for an estimated 45% and 38%, respectively, of sales by revenue in the Relevant Market. The Acquisition will leave Staples with over 80% of sales in the Relevant Market.

32. The market shares of Staples and Office Depot reflect that they are the two most often used options for Affected Customers. Both Staples and Office Depot possess networks of distribution facilities across Canada, large sales forces, large fleets of delivery trucks and other competitive advantages. In fact, many Affected Customers consider Staples and Office Depot to be their only options. Thus, the Acquisition would eliminate competition between the two largest and most significant alternatives for Affected Customers. Staples is removing Office Depot, its vigorous and effective competitor, from the Relevant Market.

33. The likely substantial lessening of competition will not be adequately remedied by either remaining competitors, an expansion by these competitors, or other potential competitors entering the Relevant Market. The likely substantial lessening of competition will also not be mitigated by other factors listed in section 93 of the Act or otherwise.

A. Remaining Competition

34. After the Acquisition, the competition that Staples will face in the Relevant Market will mainly come from Novexco Inc., carrying on its business-to-business operations as Lyreco ("**Lyreco**"), and independent dealers affiliated with the buying group Basics Office Products ("**Basics**"). Competition from these suppliers will not be sufficient to constrain an exercise of market power by Staples following the Acquisition.

35. Lyreco is an Office Product supply company owned by Novexco, headquartered in Laval, Quebec. While Lyreco is able to offer, among other Office Products, office supplies and paper, it is unable to offer the same levels of service as Staples and Office Depot mainly because it only has three distribution centres across Canada. Lyreco's relatively small market share and limited distribution infrastructure limits its competitive significance.

36. Basics is a buying group headquartered in Cambridge, Ontario. Basics sources Office Products for approximately 150 independent office supply dealers located across Canada. The dealers affiliated with Basics offer a complete portfolio of Office Products. Because Basics is a purchasing group, it does not set prices or other terms for its members. The members vary in size, but are usually confined to servicing a specific region. Like Lyreco, its minimal market share in the Relevant Market and the fact that many Affected Customers have not heard of or do not consider Basics as a viable alternative to the Respondents limits its competitive significance. Basics cannot offer the same level of service as Staples and Office Depot.

37. These regional competitors have significant disadvantages to Staples and Office Depot, including limited geographic footprints, higher costs, and logistical and coordination challenges. It is unlikely that either of these competitors or any other competitor would be able to constrain an exercise of market power by Staples after it completes the Acquisition.

B. Entry is Unlikely to Occur in a Timely and Sufficient Manner

38. Because barriers to entry and expansion are high, Staples' ability to exercise market power is unlikely to be constrained by the expansion of existing Office Product suppliers or the entry of new Office Product suppliers.

39. The barriers to entry into the Relevant Market faced by a potential entrant include the requirement to establish the infrastructure necessary to support sales and service to Affected Customers. An entrant must then win customers away from the incumbents.

40. To achieve the same scale and scope as Staples and Office Depot, a potential entrant requires multiple distribution centres strategically placed throughout Canada to accommodate just-in-time delivery, as well as the salesforce, sales offices, and transportation and information technology infrastructure to support doing business with Affected Customers. Establishing or expanding this costly infrastructure without any customer base is financially risky.

41. It would take a potential entrant significant time and resources to establish the necessary reputation and relationships with customers. To achieve its current size, Staples, for example, has approximately 19,000 business customers in Canada. When deciding whether to enter, the potential entrant would also consider that sales of office supplies and paper are mature.

42. Expansion by Lyreco so that it could provide a similar level of service as Staples and Office Depot would require it to acquire or build additional warehouses, establish transportation networks, and increase staffing. For Basics, which is a buying group, it would need to make similar investments and, importantly, would also have to integrate its members into a coherent network with rules, obligations, pricing and service requirements on a sufficient scale that it could provide the same level of service as Staples and Office Depot.

43. Expansion by these existing Office Product suppliers or entry by new Office Product suppliers will not be timely, likely or sufficient to counteract the likely substantial lessening of competition in the Relevant Market caused by the Acquisition.

VII. CONCLUSION

44. Following the Acquisition, Affected Customers will likely pay higher prices on the bundle of Office Products, including at least office supplies and paper, that they purchase from Staples and Office Depot. In addition, the quality of services provided by Staples and Office Depot that allow Affected Customers to effectively manage their office product needs will decrease. Therefore, Staples' Acquisition of Office Depot will likely substantially lessen competition in the Relevant Market.

VIII. RELIEF SOUGHT

45. The Commissioner requests an Order or Orders:

- (a) that Staples not proceed with the Acquisition;
- (b) or, in the alternative, that Staples not proceed with a part of the Acquisition necessary to ensure that the Acquisition does not lessen competition substantially in Canada or any part thereof;
- (c) requiring the Respondents to pay the costs of this proceeding; and

- (d) granting such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

DATED AT GATINEAU, QUEBEC, this 7th day of December, 2015.



John Pecman
Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Schedule "A"

CONCISE STATEMENT OF ECONOMIC THEORY

1. Staples and Office Depot are the two largest distributors of Office Products to organizations in Canada. Affected Customers typically purchase Office Products pursuant to contracts awarded through requests for proposals or negotiated agreements. Staples and Office Depot compete to provide a bundle of Office Products, including office supplies and paper, to Affected Customers in Canada. In addition, Affected Customers usually require high levels of service, including a sophisticated e-commerce platform, knowledgeable customer service representatives, and delivery within one to two days.

2. The relevant product market is likely to be at least the provision of office supplies and paper to Affected Customers, along with the supporting services that allow Affected Customers to manage their Office Product needs. A hypothetical monopolist in the provision of office supplies and paper and supporting services could profitably impose a SSNIP.

3. Affected Customers are organizations that usually operate a number of locations that can be dispersed throughout Canada. Affected Customers do not consider local or regional Office Product suppliers to be substitutes because they cannot provide the same level of services across Canada, such as providing just-in-time delivery to most locations. Without a Canadian presence, foreign Office Product suppliers are similarly unable to provide service to Affected Customers in a timely fashion. The relevant geographic market is therefore Canada.

4. Staples acquisition of Office Depot, its closest and most significant competitor, would eliminate the vigorous competition between these two large rivals. Following the Acquisition, Staples will control over 80% of sales of Office Products to Affected Customers in Canada, significantly enhancing its market power. This would eliminate the vigorous competition between these two large rivals and give the merged entity the ability to raise prices on the bundle of Office Products it sells and to lower the quality of services it offers to Affected Customers in Canada.

5. The remaining competition after the Acquisition would come primarily from Lyreco and Basics. Together or individually, the remaining competitors do not have the ability to constrain an exercise of market power by Staples after the Acquisition.

6. Barriers to entry and expansion are high. Entry or expansion requires significant time and resources in order to establish the infrastructure necessary to support sales and win customers from the established incumbents. Moreover, the sale of Office Products, including office supplies and paper, to Canadian organizations is mature, making it unlikely that expansion by an existing Office Product supplier or entry by a new Office Product supplier would provide significant competition after the Acquisition.

7. Staple's Acquisition of Office Depot will likely substantially lessen competition for the sale of a bundle of Office Products that includes at least office supplies and paper, as well as the provision of supporting services, to Affected Customers in Canada.

Appendix A – Staples and Office Depot Distribution Centers in Canada

Staples Distribution Centres

	Location	Address
1	Vancouver, British Columbia	1125 Vernon Drive, Vancouver, BC, V6A 3P5
2	Richmond, British Columbia	14260 Knox Way, Richmond, BC, V6V 2Z7
3	Edmonton, Alberta	4990 92 Avenue, Edmonton, AB, T6B 2W1
4	Calgary, Alberta	25 Aero Drive NE, Calgary, AB, T2E 8Z9
5	Calgary, Alberta	2333 22nd Street NE, Calgary, AB, T2E 8K8
6	Winnipeg, Manitoba	200 Discovery Place, Winnipeg, MB, R3C 2E6
7	Mississauga, Ontario	6275 Northwest Drive, Mississauga, ON, L4V 1P6
8	Mississauga, Ontario	550 Pendant Drive, Mississauga, ON, L5T 2W6
9	Laval, Québec	4141 Auto Route 440, Laval, QC, H7P 4W6
10	Boucherville, Québec	1616 Eiffel Street, Boucherville, QC, J4B 8N3
11	St. John's, Newfoundland and Labrador	465 East White Hills Road, St. John's, NL, A1A 5V6
12	Amherst, Nova Scotia	9 Tantramarc Crescent, Amherst, NS, B4H 0A1
13	Dartmouth, Nova Scotia	2 Royles Avenue, Dartmouth, NS, B3B 2E5

Office Depot Distribution Centres

	Location	Address
1	Burnaby, British Columbia	4560 Tillicum Street, Burnaby, BC, V5J 5L4
2	Calgary, Alberta	37 Aero Drive NE, Calgary, AB, T2E 8Z9
3	Winnipeg, Manitoba	1641 Seel Avenue, Winnipeg, MB, R3T 5J1
4	Vaughan, Ontario	200 Aviva Park Drive, Vaughan, ON, L4L 9C7
5	Lachine, Québec	2275 52nd Avenue, Lachine, QC, H8T 2Y8
6	Mount Pearl, Newfoundland and Labrador	1126 Topsail, Mount Pearl, NL, A1N 5E8
7	Moncton, New Brunswick	146 Dieppe Boulevard, Moncton, NB, E1A 6P8

CT-2015-

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c.C-34, as amended;

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Jonathan Chaplan
Jonathan Hood

Counsel to the Commissioner of Competition