**Statement of the Federal Trade Commission**

**Although**
**erger between Staples, Inc. and Office**
**ation has shown that the market for the**
**ntly in the intervening years.  For the**
**and OfficeMax should be permitted to**
**ng this conclusion, we assessed the**
**es of commerce: the sale of office**
**in turn.**

[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 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.