

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

12 23 2015
580424

In the Matter of

Staples, Inc.
a corporation,

and

Office Depot, Inc.
a corporation.

Docket No. 9367

ORIGINAL

ANSWER AND DEFENSES OF RESPONDENT
OFFICE DEPOT, INC.

Pursuant to Rule 3.12 of the Federal Trade Commission's ("Commission") Rules of Practice for Adjudicative Proceedings, Respondent Office Depot, Inc., by and through its attorneys, admits, denies, and avers as follows with respect to the Administrative Complaint ("Complaint") filed by the Commission as follows:

other concessions, by purchasing office supplies in volume from Office Depot, although Office Depot still faces substantial price and non-price competition from numerous suppliers even following such measures; (b) it seeks to offer customers that contract with Office Depot low prices, the ability to order through Office Depot's IT interface and convenient payment options; (c) it seeks to offer and will continue to seek to offer ways for its customers to lower costs and increase efficiency; and (d) its largest and most sophisticated customers are in a strong negotiating position that enables them to obtain low pricing and other preferential terms from Office Depot.

11. Office Depot denies the allegations in Paragraph 11 of the Complaint, except that Office Depot admits that it is one of many competitors for customers of office supplies and other products.

12. Office Depot denies the allegations in Paragraph 12 of the Complaint, except Office Depot admits that it competes vigorously against numerous other suppliers, including W.B. Mason, for sales to "large B-to-B customers." On information and belief, Office Depot avers that in fact many other competitors have more lean and cost effective organizational structures—and therefore lower costs in at least that respect—than Office Depot.

13. Office Depot denies the allegations in Paragraph 13 of the Complaint.

14. Office Depot denies the allegations in Paragraph 14 of the Complaint, except to the extent that Paragraph 14 of the Complaint states legal conclusions to which no response is required.

15. Office Depot denies the allegations in Paragraph 15 of the Complaint, except to the extent that Paragraph 15 of the Complaint states legal conclusions to which no response is required, and except that Office Depot admits that it competes vigorously against numerous competitors, including, but not limited to, Amazon, Amazon Business, independent vendors such as W.B. Mason, distribution consortia, manufacturers, and vendors of adjacent products, for sales of office supply products, janitorial/sanitation products, breakroom supplies, and many other products.

16.

II.
BACKGROUND

A.

Jurisdiction

20. Office Depot avers that to the extent Paragraph 20 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Office Depot admits the allegations in Paragraph 20 of the Complaint.

21. Office Depot denies the allegations in Paragraph 21 of the Complaint, except to

A.

Purported Relevant Product Market

26. Office Depot denies the allegations in Paragraph 26 of the Complaint, except to the extent that Paragraph 26 of the Complaint states legal conclusions to which no response is required.

27. Office Depot admits the allegations in Paragraph 27 of the Complaint.

28. Office Depot denies the allegations in Paragraph 28 of the Complaint, except to the extent that Paragraph 28 of the Complaint states legal conclusions to which no response is required.

29. Office Depot denies the allegations in Paragraph 29 of the Complaint, except to the extent that Paragraph 29 of the Complaint states legal conclusions to which no response is required.

30. Office Depot denies the allegations in Paragraph 30 of the Complaint, except to the extent that Paragraph 30 of the Complaint states legal conclusions to which no response is required.

31. Office Depot admits that the sale and distribution of its products may include the warehousing, sale, and distribution of a range of office supplies, along with customer service and other value-added services, but also avers that in many instances it does not include all of these functions—for example, Office Depot often partners with third parties for “last mile” delivery and other distribution functions. Office Depot denies the remaining allegations in Paragraph 42 of the Complaint, and in particular denies that the above functions are particular to the sale of “consumable office supplies” or sales to “large B-to-B” customers.

32. Office Depot avers that to the extent that Paragraph 32 of the Complaint states legal conclusions, no response is required. Office Depot denies the remaining allegations in Paragraph 43 of the Complaint, except admits that Office Depot competes with numerous competitors for all of its customers, including “large B-to-B customers”, certain of which may

Depot if they choose to purchase from Office Depot, although Office Depot still faces substantial price and non-price competition from numerous suppliers.

- b. Office Depot denies the allegations in Paragraph 32(b) of the Complaint, except that Office Depot admits that certain Office Depot customers have operations in multiple regions of the United States and that its customers generally seek to increase efficiency and reduce costs.
- c. Office Depot denies the allegation in Paragraph 32(c), except that Office Depot admits that certain of its customers, including certain “large B-to-B” customers, seek next-day and desktop delivery for certain deliveries.
- d. Office Depot denies the allegation in Paragraph 32(d), except that Office Depot admits that certain of its customers, including certain “large B-to-B” customers, seek higher levels of customer service than other customers seek.
- e. Office Depot admits that many of its customers, including “large B-to-B” customers, seek detailed reporting to track their uses and needs for office products, and that many of its customers request the creation of customizable product catalogs to lower their prices.
- f. Office Depot denies the allegation in Paragraph 32(f), except that Office Depot admits that certain of its customers, including certain “large B-to-B” customers, seek a vendor with an IT system that can interface with their e-procurement and billing systems.
- g. Office Depot denies the allegation in Paragraph 32(g), except that Office Depot admits that certain of its customers, including certain “large B-to-B” customers, seek vendors with financial stability and experience and a reputation for supplying customers with office supplies and other products.

33. Office Depot denies the allegations in Paragraph 33 of the Complaint, except that: (a) Office Depot admits that it seeks to recognize the needs of its customers and tailors its products and services to meet those needs; and (b) Office Depot admits that certain of its employees spend more time serving certain sizes and types of customers than others.

34. Office Depot denies the allegations in Paragraph 34 of the Complaint, except to the extent that Paragraph 34 of the Complaint states legal conclusions to which no response is required.

B.

Purported Relevant Geographic Market

35. Office Depot avers that to the extent that Paragraph 35 of the Complaint states legal conclusions, no response is required. To the extent a response is required, Office Depot

denies the allegations in paragraph 35 of the Complaint, except that: (a) Office Depot admits that it competes with numerous competitors, including Staples, for the sale and distribution of

43. Office Depot denies the allegations in Paragraph 43 of the Complaint, except to

Staples, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon, Amazon Business, and vendors of adjacent products.

50. Office Depot denies the allegations in Paragraph 50 of the Complaint, except that Office Depot admits that its customers benefit from the competition between Office Depot and the numerous other vendors, including but not limited to Staples, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon, Amazon Business, and vendors of adjacent products, that sell, among other products, “consumable office supplies.” Office Depot further admits that its customers often switch, or threaten to switch, to any of numerous other vendors, to obtain better prices or other terms. And Office Depot also admits that its customers, including “large B-to-B” customers, that hold non-exclusive contracts with Office Depot often make purchases of products that Office Depot sells from other vendors that offer lower prices or better terms, while remaining on contract with Office Depot.

51. Office Depot avers that Plaintiffs’ selective documentation and examples of purported price competition between Office Depot and Staples for “large B-to-B customers,” chosen from among the over fourteen (14) million pages of documents produced by Office Depot and Staples to Plaintiffs and offered without context, is misleading as framed, and ignores the many instances of documented competition, including but not limited to price competition between Office Depot and other vendors of office supplies in which Office Depot lowered its prices or offered better terms to match the prices of those other vendors, or lost sales to those other vendors, including both in the course of a bidding process, and throughout the life of the contract with the customer even once the contract was awarded to Office Depot. Office Depot admits that when its customers sign non-exclusive contracts with Office Depot, those customers are free to purchase office supplies from any other vendor and are not required to purchase any office supplies at all from Office Depot. Office Depot further admits that many of its customers have contracts with other office supply vendors but make purchases from other suppliers that do not have a contract with the customer when those suppliers can offer superior products, lower prices, or better terms.

52. Office Depot denies the allegations in Paragraph 52 of the Complaint.

53. Office Depot denies the allegations of Paragraph 53 of the Complaint, except that: (a) Office Depot admits that it competes against numerous other vendors, including Staples, W.B. Mason, other independent vendors, distribution consortia, manufacturers, Amazon, Amazon Business, and vendors of adjacent products, that sell office supplies, among other products, to offer the best overall terms to its customers, including “large B-to-B” customers; (b) Office Depot admits that its customers often switch, or threaten to switch, to numerous other vendors, to obtain better prices, services, or other terms; (c) Office Depot admits that customers, including “large B-to-B” customers, that hold contracts with Office Depot often make purchases of products that Office Depot sells from other vendors that offer lower prices or better terms, while remaining on contract with Office Depot; and (d) Office Depot admits that its largest and most sophisticated customers are in a strong negotiating position that enables them to obtain low pricing and other preferential terms from Office Depot.

54.

VII.

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2015, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell
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I also certify that I delivered via electronic mail a copy of the foregoing document to:

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Counsel Supporting the Complaint

Counsel for Respondent Staples, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: December 23, 2015

Notice of Electronic Service

I hereby certify that on December 23, 2015, I filed an electronic copy of the foregoing Answer and Defenses of Respondent Office Depot, Inc., with:

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I hereby certify that on December 23, 2015, I served via E-Service an electronic copy of the foregoing Answer and Defenses of Respondent Office Depot, Inc., upon:

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