

**Statement of
Chairman Joseph J. Simons, Commissioner Noah Joshua Phillips, and
Commissioner Christine S. Wilson**

First, the evidence showed that rather than absorbing price increases from Essendant, many independent dealers would switch to Essendant's largest competitor, S.P. Richards. The evidence demonstrated that S.P. Richards offers comparable products and services and is viewed as a strong substitute for Essendant. Staff closely scrutinized the strengths and weaknesses of S.P. Richards relative to Essendant, including geographically, and the evidence showed that S.P. Richards is a viable substitute for Essendant. Although there are some transaction costs to switching wholesalers, the evidence showed that a substantial number of independent dealers have switched their wholesaler in the past, use both wholesalers today, and reported that they would be willing to shift their business in the face of a price increase from Staples.² Further, the evidence showed that many independent dealers could take other actions to counter any attempt by Staples to increase prices or degrade services, including buying directly from office supply manufacturers or from other sources. Thus, the evidence did not support the theory that Staples could profitably raise the prices that Essendant charges its customers in the first place.

The record further showed that even if Staples raised Essendant's prices and in turn independent dealers that used Essendant as their primary wholesaler raised prices, the customers those dealers would lose would not likely switch to Staples. Staples' share in the downstream market for mid-

dn te i rsha downstrear211 eu(e)4 ((o S)-4me)4 (s)-1 r p-1 (ha)4 (t)-2 (e)4 (ha)4 (o(w)2 (e as)- (a)4 (m)

d (os)-1 (e)4 ((w)2 ((f-11 po(a)14 (s)-1 n(o S)-(n t)-m)-2 (e)4 (e))-4 (m e)4 p w)2 (ha)4 (t)-2 (c)4 ((t)-2
dg wwd notc-2e -2 dowefa-11(os)-1 wr(m e)4 (os)-1 wc-g pu(a-11e)4 (h a)4 (aw-62 (r)2)ic ge e
d 44 um r52aaa 44 u 16-1 r r0

reduced price from suppliers by offering to buy more of their output, or by reducing the suppliers' transactions costs.³ The evidence here did not support any monopsony theory, and instead was consistent with procompetitive cost reductions.

In their dissenting statements, Commissioners Slaughter and Chopra raise a number of issues concerning this transaction. We address each below.

Both dissents question the parties' efficiency claims, arguing in particular that the merged firm's proffered ability to buy office supplies at lower prices should not be fully credited as an efficiency because it could instead constitute evidence of an increase in monopsony power. However, as we discuss above, this issue was carefully considered and the record did not support this concern based on the facts of this case. In any event, our decision does not rest on efficiencies, but rather on the absence of evidence that this acquisition will result in anticompetitive harm outside of the specific area addressed in our order.

Commissioner Chopra argues that, post-merger, Sycamore "will have a strong incentive to rapidly increase margins to make a clear case to a potential future acquirer,"⁴ on the grounds that

Commissioner Slaughter also is concerned that switching between Essendant and its primary direct competitor in wholesaling, S.P. Richards, is costly and unlikely. As discussed above, the evidence does not support this concern. We know that independent resellers are not locked in to either Essendant or S.P. Richards; indeed, many independent resellers use both. Staff's investigation, involving hundreds of interviews, also showed that

commit to a program that is unsustainable with our current resources and may in many cases be impossible to implement even with unlimited resources.

In closing, we emphasize one overarching point: as a law enforcement agency, we are constrained by the parameters of our authorizing statute and the facts of the case in front of us. That constraint is critical to the rule of law and the effective functioning of markets. Even in the context of a merger review, which, as both dissents emphasize, is a forward-looking exercise, we must base our predictions on facts supporting a cognizable theory under Section 7 of the Clayton Act. The dissents highlight a number of concerns, but all of those concerns were either investigated assiduously and ruled out by staff or speak to potential injuries that fall outside the scope of antitrust law. For these reasons, we decline to take broader action and vote to accept the consent decree as currently formulated.