

**Summary of Commission Decision**  
**of 10 February 2016**  
**declaring a concentration compatible with the internal market and the functioning of the EEA**  
**Agreement**  
**(Case M.7555 — Staples/Office Depot)**  
*(notified under document C(2016) 710)*  
**(Only the English text is authentic)**  
**(Text with EEA relevance)**  
**(2016/C 420/05)**

*On 10 February 2016 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>(1)</sup>, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision, can be found in English on the website of the Directorate-General for Competition, at the following address: [http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)*

### 1. INTRODUCTION

- (1) On 21 August 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which the undertaking Staples, Inc. ('Staples' or the 'Notifying Party', United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Office Depot, Inc. ('Office Depot', United States) by way of purchase of shares (the 'Transaction'). Staples and Office Depot are hereafter collectively referred to as the 'Parties'.
- (2) On 4 February 2015, Staples, Office Depot and Staples AMS, a wholly owned subsidiary of Staples, entered into an Agreement and Plan of Merger pursuant to which Staples AMS shall be merged into Office Depot, with Office Depot surviving the merger as a wholly owned subsidiary of Staples.

### 2. THE PARTIES

- (3) Staples is a publicly held US-based company, listed on the NASDAQ. It is active as a distributor of office products in North and South America, Europe, Asia, Australia and New Zealand. In the EEA, Staples sells office supplies mainly to business customers (business-to-business, 'B2B') through framework contracts, wholesale, catalogues, online sales and brick and mortar retail shops.
- (4) Office Depot is a publicly held US-based company, listed on the NASDAQ. It is active as a distributor of office products in 57 countries. Like Staples, in the EEA Office Depot focuses on B2B sales of office supplies through framework contracts, wholesale, catalogues, online sales and brick and mortar retail shops.

### 3. RELEVANT PRODUCT MARKETS

- (5) Contract distributors supply office products on the basis of framework contracts under which the customers may order supplies whenever the need arises.
- (6) The market investigation in the present case supports the Commission's findings in previous cases that the distribution of office supplies via the contract channel constitutes a separate market. That finding is based on the very limited demand-side and supply-side substitutability between the contract channel and other sales channels. Specifically, from the demand-side, business customers express a strong preference to purchase office supplies through contracts and the inability and lack of incentives to switch to other channels. From the supply-side, the market investigation indicates that competitors active in other sales channels are not capable to offer the specific customer service, pricing models and logistics required by business customers purchasing under contracts.
- (7) The market investigation furthermore confirms the Commission's findings in previous cases concerning the existence of separate markets for contracts with large business customers with 100-200 or more office workers (or 250 or more employees) on the one hand and smaller business customers with less than 100-200 office workers (or 250 or less employees) on the other hand.

<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

- (8) As regards the products purchased under the contracts, the evidence gathered during the market investigation points to a separate product market for the one-stop-shop supply under contracts of the three traditional office supply categories (stationery, paper, ink & toner). However, it can be left open whether alternatively separate product markets could be defined by individual product categories, because a significant impediment to effective competition arises regardless of whether a market is defined for one-stop-shop contracts, or whether separate markets by product categories are distinguished, in which case concerns arise for contracts covering stationery. The commitments submitted by the Parties remove the competition concerns under those alternative market definitions.
- (9) Finally, considering all the evidence available, notably the trend for certain customers to move toward international contracts, the advantages to customers provided by international contracts, the customers' potential and actual switching behaviour and the inability of national suppliers to compete for international contracts, the Commission concludes that international contracts of office supplies constitute a separate product market from non-international contracts of office supplies and assesses those markets separately.

#### *Wholesale distribution channel*

- (10) The market investigation supports the Commission's previous findings that the wholesale distribution of office products constitutes a separate product market. Wholesalers serve a customer base different from the one served by manufacturers and they are situated on a step of the value chain different from the one where retailers, contract stationers and direct sellers operate.
- (11) Based on the evidence gathered during the market investigation, the Commission assesses the wholesale market for office supplies in Sweden including at least the one-stop-shop supply of the three traditional office supplies categories (paper, ink & toner and stationery).

#### *Direct distribution channel*

- (12) The Commission considers, in accordance with its previous findings, that the direct sales channel constitutes a separate product market, because of different customer groups and lack of supply-side substitutability between the direct channel and other distribution channels.
- (13) As regards the direct distribution channel, it can be left open whether the conclusions regarding the segmentation by product category for the contract or wholesale channel apply to the direct channel in the same way, as no significant impediment to effective competition arises under either market definitions.

### **4. RELEVANT GEOGRAPHIC MARKETS**

- (14) The results of the market investigation point to an EEA-wide scope of the market for international contracts. This is due, in particular, to the increasing trend to purchase under contracts covering multiple EEA countries and the homogenous competitive dynamics at the EEA level where three main suppliers are currently able to serve customers in multiple locations in the EEA (the Parties and Lyreco). This is further confirmed by a quantitative analysis of the geographic spread of the purchase volumes in the Parties' international contracts.
- (15) As regards non-international contracts both with large business customers (more than 250 employees) and with smaller business customers, the market investigation supports the Commission's previous findings that these are national in scope, as contracts which are not concluded for multiple EEA locations are generally entered into at the national level. Moreover, there are different national preferences which result in different product catalogues and assortments across countries, different pricing and rebate systems at the national level in different countries and only the domestic competitors bid for contracts within a given country, as they lack the logistics solutions to cover other regions.
- (16) The market investigation indicates further that the market for the wholesale of office products in Sweden is national in scope, because the customers do not purchase from wholesalers located outside of Sweden and a wholesale supplier needs a local presence in order to be able to cater to the requirements of the customers. This is in accordance with previous Commission decisions.
- (17) The market investigation points to a national or wider geographic scope of the direct sales channel. However, the market definition can be left open, as the Transaction does not lead to a significant impediment to effective competition under either market definition.

## 5. COMPETITIVE ASSESSMENT

- (18) The Transaction leads to horizontal overlaps mainly on the following markets:
- (a) The markets for contracts either for the distribution of traditional office supplies or for the distribution of stationery, paper, ink & toner separately, namely:
    - The market for international contracts in the EEA;
    - The market for non-international contracts with customers with more than 100-200 office workers or 250 employees in Austria, Belgium, France, Germany, Ireland, Italy, Netherlands, Spain, Sweden and the UK;
    - The market for non-international contracts with customers with less than 100-200 office workers or 250 employees in Austria, Belgium, France, Germany, Ireland, Italy, Netherlands, Spain, Sweden and the UK;
  - (b) The market for the wholesale supply of traditional office supplies in Sweden;
  - (c) The market for the direct distribution of office supplies in Austria, Belgium, France, Germany, Italy, Netherlands, Spain and the UK.
- (19) In the absence of reliable independent data concerning the total size of each product market, the Parties proposed a number of approaches to calculate market shares, which are based on a series of assumptions.
- (20) The Commission's market investigation could not confirm the correctness of those assumptions and indicates that those estimates are not sufficiently reliable and likely to understate the combined market shares of the Parties significantly. Due to the inability to conduct a complete and reliable market reconstruction due to a number of factors, the Commission uses other indicators than market shares in its market assessment, including bidding data and qualitative evidence.
- (21) As set out above, the Commission leaves open the question whether the relevant market consists in the one-stop-shop supply under contracts of the three traditional office supply categories (stationery, paper, ink & toner) or in the supply of each of those product categories separately. The Commission acknowledges that there are specialist suppliers who are active only in the contract distribution of paper or in the contract distribution of ink & toner. If separate product markets were defined by product category, the presence of those specialist suppliers would make it unlikely that the transaction would result in a significant impediment to effective competition on the markets for contract distribution of ink & toner and contract distribution of paper to large business customers. Consequently, for each of the markets discussed below, the Commission assesses in-depth only the two alternative scenarios of a relevant product market encompassing the contract distribution of traditional office supplies to large business customers, and the contract distribution of stationery products to large business customers.
- (22) Furthermore, the evidence available to the Commission shows that the distribution of office supplies through non-international contracts to customers with less than 100-200 office workers or 250 total employees is highly unlikely to be affected by the Transaction in any significant way.

### *Horizontal overlaps in the contract channel – market for international contracts*

- (23) The market investigation largely confirms that the international contract market is very concentrated, as the Parties and Lyreco are the only competitors capable of supplying customers through international contracts, with a very limited presence on this market of specialist suppliers which in any event are only able to supply one product category and not the full-range.
- (24) This is confirmed by the feedback of market participants within the market investigation, bidding data from international tenders submitted by the Parties, and the data collected in the framework of the 2013 International Survey, which consistently indicate that there are only three suppliers active on the traditional office supplies market through international contracts with large business customers, that is the Parties and Lyreco. These three suppliers are the closest competitors to each other, and account for almost all sales on the relevant market. The remaining suppliers account for fewer participations in tenders in the international contracts market, have marginal sales and do not exert a significant constraint on the Parties.
- (25) The market investigation further indicates that after the Transaction the only remaining constraint exerted by Lyreco would not be sufficient to constrain the merged entity's incentive and ability to raise prices after the Transaction and avoid a significant impediment to effective competition.

- (26) Finally, the market investigation points to high barriers to entry in the international contracts market as setting up contract distribution operations in new EEA countries or entering into an international business alliance are options that are not readily available to national suppliers without incurring significant costs or risks. Moreover, the market investigation confirms the lack of credible potential competition for international contracts including from Amazon which the Commission discards as a potential competitor in this market in Europe.

*Horizontal overlaps in the contract channel – national market for business customers with more than 250 employees*

- (27) The Parties' activities overlap in Sweden, Netherlands, Austria, Belgium, France, Germany, Ireland, Italy, Spain and United Kingdom. The results of the market investigation point to a significant impediment to effective competition in Sweden and the Netherlands.
- (28) In Sweden, the market investigation shows that out of a large number of competitors listed by the Parties, only Lyreco, Ocase and Wulff Supplies offer the full range of traditional office supplies comparable to the Parties and required by the customers. The analysis of the Parties' bidding data supports that observation. The Transaction would combine two out of the three largest suppliers in terms of revenues and reinforce Staples' current position as market leader, with Lyreco and in particular Ocase and Wulff Supplies lagging far behind with significantly lower turnover.
- (29) In the Netherlands, the market investigation indicates that the only competitors active in the contract market for traditional office supplies are Lyreco, Hedera and Manutan. However, the activities of the latter in this market are very small and Hedera is not able to win large contracts in the Netherlands. Therefore, only Lyreco is capable of posing a credible competitive constraint on the Parties in this market. The merger would bring together two close competitors in the Netherlands, reinforcing Staples' leading position and widening the gap between the merged entity and Lyreco.
- (30) The market investigation indicates that the barriers to entry are high in both markets. Furthermore, the reduction from three to two large credible bidders in both Sweden and the Netherlands would reduce competition for those contracts significantly, providing the merged entity as well as the remaining competitors with the incentive and ability to raise prices.
- (31) As regards Austria, Belgium, France, Germany, Ireland, Italy, Spain and United Kingdom, the Commission finds that the Parties' position is not as strong as in the Netherlands and Sweden, and that other competitors are active on these markets which would exert a sufficient competitive constraint on the parties after the Transaction. Therefore, the Commission concludes that the transaction does not lead to a significant impediment to effective competition on these markets.

*Horizontal overlaps in the wholesale channel*

- (32) The only country where the Parties' wholesale activities overlap is Sweden. The market investigation identifies two types of customers: small retailers or bookshops with physical shops and online resellers. Online resellers run a website which is directly linked to the IT system of the wholesaler. The order is then processed and delivered to the end-customers by the wholesaler. The market investigation shows that only the Parties offer the IT and logistics solutions as well as product range meeting the needs of online resellers and there are currently no other competitors on the market who could supply those resellers. Barriers to entry are also high. Therefore, the Transaction would lead to a reduction from two credible competitors to one for the online resellers.

*Horizontal overlaps in the direct channel*

- (33) The Parties' activities in the direct channel overlap in Austria, Belgium, France, Germany, Italy, Netherlands, Spain and the United Kingdom. The market investigation indicates that in all of those countries there are other suppliers posing a competitive constraint on the Parties. Apart from a number of local competitors, Amazon exerts an important constraint on the Parties. Also, the market investigation shows that entry barriers to the direct channel are considerably lower than in the other channels.

*Conclusion on the competitive assessment*

- (34) The Commission concludes that the notified concentration would significantly impede effective competition with regard to horizontal overlaps in the contract channel in the market for international contracts and in the markets for national contracts with customers with more than 100/200 office workers or 250 employees in Sweden and the Netherlands. Furthermore, the notified concentration would significantly impede effective competition with regard to horizontal overlaps in the wholesale channel in Sweden.

- (35) The Transaction would not significantly impede effective competition in the markets for (i) B2B distribution of office products via the contract channel for business customers with more than 100/200 office workers or 250 employees in Austria, Belgium, France, Germany, Ireland, Italy, Spain and the United Kingdom; (ii) B2B distribution of office products via the contract channel on the national market for business customers with less than 100/200 office workers or 250 employees and (iii) distribution of office products via the direct channel.

## 6. COMMITMENTS

### *Description of the commitments submitted by the Parties*

- (36) In order to address the aforementioned competition concerns, the Parties submitted commitments on 27 November 2015. The Parties propose to divest a specific Office Depot legal entity following a restructuring to exclude (i) any business activities, assets, personnel and legal entities which relate exclusively to the direct, wholesale and retail channels (except in Sweden) and (ii) any business activities, assets, personnel and legal entities outside the EEA (hereinafter referred to as 'the Divestment Business').
- (37) This would in principle result in the divestment of Office Depot's activities in:
- (a) the B2B distribution of office supplies through the contract channel in the EEA and Switzerland and
  - (b) the B2B distribution of office supplies through the contract, direct, retail and wholesale channels in Sweden.
- (38) The Commitments of 27 November include an up-front buyer clause. The Transaction shall not be implemented before a final binding sale and purchase agreement for the sale of the Divestment Business has been signed and the Commission has approved the purchaser and terms of sale.

### *Assessment of the Commitments of 27 November 2015*

- (39) The divestiture of the Divestment Business of 27 November 2015 would remove the entire overlap in the EEA contract channel and in the wholesale channel in Sweden.
- (40) On the basis of the market test and its own analysis, the Commission found that:
- (a) The remedy is suitable and removes the competition concerns, as it removes the entire overlap between the Parties' activities in all of the markets in which competition concerns arise. The scope of the divestment ensures that the Divestment Business can become a viable supplier in international contracts in the EEA as well as on the national markets.
  - (b) The Divestment Business will be viable and competitive by ensuring sufficient profitability to operate as a viable business in the hands of a suitable purchaser.
  - (c) The Divestment Business will be competitive, even though it would only operate in the contract channel. The market investigation indicates that this is a viable business model and that a number of competitors on the market are only active in the contract channel.
  - (d) The carve-out of the contract business from Office Depot is an adequate solution in this case as any risks attributable to the carve-out have been limited sufficiently in the commitments.
  - (e) The Divestment Business will have sufficient access to office supply products from wholesales and manufacturers at prices allowing it to be competitive in the market. This is mainly because of the large scale of the Divestment Business.
  - (f) There are no significant issues to be expected in relation to the transfer of contracts from Office Depot to the Divestment Business, because only very few contracts have a change of control clause and the majority of respondents to the market investigation confirmed their willingness to continue purchasing office products from the Divestment Business.
  - (g) The Divestment Business is sufficiently interesting to attract suitable purchasers.
  - (h) The terms of the transitional agreements were insufficient, mainly in terms of guaranteeing the Divestment Business' access to office products following the divestment.
- (41) The Parties submitted a revised set of commitments on 10 December 2015 which maintain the basic scope and structure of the Commitments of 27 November 2015 and only make limited changes, mainly with regard to the transitional agreements, which address all of the Commission's concerns.
- (42) In its decision, the Commission reaches the conclusion that the Commitments are adequate and sufficient to eliminate the significant impediment to effective competition identified by the Commission.

## 7. CONCLUSION AND PROPOSAL

- (43) For the reasons mentioned above, the decision concludes that, subject to full compliance with the undertakings, the proposed concentration will not significantly impede effective competition in the internal Market or in a substantial part of it.
  - (44) Consequently the concentration should be declared compatible with the Internal Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
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