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10/12/2015

Case M.7555 – Staples/Office Depot

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Articles 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the "*EU Merger Regulation*"), Staples, Inc (the "*Notifying Party*" or "*Staples*") and Office Depot, Inc. ("*Office Depot*") hereby enter into the following commitments (the "*Commitments*") vis-à-vis the European Commission (the "*Commission*") with a view to rendering the acquisition by Staples of sole control over Office Depot (the "*Concentration*") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the EU Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "*Decision*"), in the general framework of European Union law, in particular in light of the EU Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "*Remedies Notice*").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled from time to time by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the EU Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "*Consolidated Jurisdictional Notice*").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and the Schedule, which Staples commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Staples and who has/have received from Staples the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

HSR Act: the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as amended

HSR Closing Date: the date that the Parties are legally able to close the Concentration under the HSR Act (and so long as this date is on or after the Effective Date)

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Office Depot: Office Depot, Inc., incorporated under the laws of Delaware, with its registered office at Boca Raton, Florida and registered under Employer Identification Number 59-2663954.

Parties: Staples and Office Depot.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, Staples commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 20 of these Commitments. To carry out the divestiture, Staples commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Staples has not entered into such an agreement at the end of the First Divestiture Period, Staples shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.
3. The Concentration shall not be implemented before Staples or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 20. The divestiture of the Divestment Business shall only be consummated if, and after, the Concentration is consummated. In the event that the Concentration lapses, these Commitments shall lapse.
4. The Parties shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, Staples or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed Purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 20; and
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
5. In order to maintain the structural effect of the Commitments, Staples shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 46 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of Office Depot's business-to-business distribution of office supplies through the contract channel in the EEA, including Switzerland and of Office Depot's business-to-business distribution of office suppliers through all distribution channels in Sweden. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, as described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) the Personnel.
7. To the extent the transfer of the assets described in paragraphs (3) (d) and (3) (e) (i) in the Schedule is subject to a third parties contractually required consent, the Parties commit to endeavour best efforts to obtain such consents.
8. In addition, the Divestment Business includes the benefit of various transitional arrangements on an at cost basis, as detailed in the Schedule. Upon request of the Monitoring Trustee, the period for the transitional arrangements as detailed in the Schedule will be further extended [...], in consultation with the Commission, if required to preserve the viability and competitiveness of the Divestment Business, unless any delays in the operation of the Divestment Business are due to negligence or bad faith of the Purchaser.
9. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone other than for the purpose of implementation of these Commitments.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

10. From the HSR Closing Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:
- (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
11. From the Effective Date until Closing, the Parties undertake to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

12. From the HSR Closing Date until Closing the Parties commit to procure that the Divestment Business is kept separate from the businesses that the Parties will be retaining and, after Closing to keep the Divestment Business separate from the business Staples is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.
13. From the HSR Closing Date until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business which the Parties are retaining and in accordance with paragraph 10 above.

Immediately after the HSR Closing Date, the Parties shall appoint a Hold Separate Manager, who shall be part of the Key Personnel. The Hold Separate Manager shall manage the Divestment Business independently and in the best interests of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the business retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(c) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

Ring-fencing

14. From the HSR Closing Date until Closing, the Parties shall, to the extent reasonably practicable, implement, or procure to implement, all necessary measures to ensure that they do not, after the HSR Closing Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the HSR Closing Date will be eliminated and not be used by the Parties. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business (i) which is reasonably necessary for the divestiture of the Divestment Business and the implementation of the transitional arrangements; (ii) which is reasonably required to maintain the viability of the Divestment Business; or (iii) the disclosure of which to the Parties is required by law.

Non-solicitation clause

15. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 24 months, after Closing.

Due diligence

16. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

17. Staples shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten working days after the end of every month following the Effective Date (or otherwise at the Commission's request). Staples shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five working days of their receipt.
18. Staples shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers, unless duly justified.

Section D. The Purchaser

19. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
 - (a) The Purchaser shall be independent of and unconnected to Staples and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
20. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Staples has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Staples must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel or without the business

activities of one or more countries, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

21. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Staples commits not to close the Concentration before the appointment of a Monitoring Trustee.
22. If Staples has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Staples at that time or thereafter, Staples shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
23. The Trustee shall:
 - (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
24. The Trustee shall be remunerated by Staples in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Parties

25. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as Divestiture Trustee to the Commission for

approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 23 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

26. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

27. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 21 and 26 of these Commitments.

Trustee nominated by the Commission

28. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

29. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Staples, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

30. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 10 and 12 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 13 of these Commitments;
 - (c) with respect to Confidential Information,:
 - determine all necessary measures to ensure that Staples does not after the HSR Closing Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

- make sure that any Confidential Information relating to the Divestment Business obtained by Staples before the HSR Closing Date is eliminated and will not be used by Staples, and
 - decide whether such information may be disclosed to or kept by the Parties as the disclosure or retention is reasonably necessary to allow the Parties to carry out the divestiture of the Divestment Business and the implementation of the transitional arrangements, is reasonably required to maintain the viability of the Divestment Business until Closing, or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Staples or Affiliated Undertakings;
- (iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure Staples' or Office Depot's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending Staples a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (vii) promptly report in writing to the Commission, sending Staples a non-confidential copy at the same time, if it concludes on reasonable grounds that Staples or Office Depot is failing to comply with these Commitments;

- (viii) within one week after receipt of the documented proposal referred to in paragraph 20 of these Commitments, submit to the Commission, sending Staples a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

31. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 20 and 21 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Staples, subject to Staples' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Staples.

III. Duties and obligations of the Notifying Parties

34. The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Staples' or Office Depot's books, records, documents, management or other personnel, facilities, sites and technical information

necessary for fulfilling its duties under the Commitments and the Parties shall provide the Trustee upon request with copies of any document. The Parties shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

35. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Staples shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. Staples shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Staples shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. Staples shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Staples for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of Staples, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Staples' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Staples refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Staples. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Staples during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
39. The Parties agree that the Commission may share Confidential Information proprietary to Staples or Office Depot with the Trustee. The Trustee shall not disclose such information and the

principles contained in Article 17 (1) and (2) of the EU Merger Regulation apply *mutatis mutandis*.

40. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
41. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
 - (a) the Commission may, after hearing the Trustee and Staples, require Staples to replace the Trustee; or
 - (b) Staples may, with the prior approval of the Commission, replace the Trustee.
43. If the Trustee is removed according to paragraph 42 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 21-28 of these Commitments.
44. Unless removed according to paragraph 42 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

45. The Commission may extend the time periods foreseen in the Commitments in response to a request from Staples or, in appropriate cases, on its own initiative. Where Staples requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall Staples be entitled to request an extension within the last month of any period.

46. The Commission may further, in response to a reasoned request from Staples showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Staples. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

47. The Commitments shall take effect upon the date of adoption of the Decision.

Date: 10 December 2015

SCHEDULE : DIVESTMENT BUSINESS

1. The Divestment Business as operated to date has the following legal and functional structure. The Divestment Business consists of:
 - (i) the business to business ("**B2B**") distribution of office supplies through the contract channel ("**Contract Channel**") in the EEA¹; and
 - (ii) the B2B distribution of office supplies through the contract, direct, retail and wholesale channels in Sweden.

2. The divestiture of the Divestment Business will be carried out through the transfer of the legal entity Office Depot (Operations) Holdings BV or any other legal entity or entities comprising the Divestment Business following a restructuring to exclude:
 - (i) any business activities, assets, personnel² and legal entities which relate exclusively or predominantly to the direct, wholesale or retail channels (except in Sweden);
 - (ii) certain dormant companies and intermediate holding companies not conducting Contract Channel business; and
 - (iii) any business activities, assets, personnel and legal entities exclusively or predominantly outside the EEA.

provided that the exclusion of any business activities, assets, personnel or legal entities does not have any adverse effect on the viability and competitiveness of the Divestment Business and, provided further, that all business activities, assets, personnel or legal entities of the Divestment Business as defined in paragraph 1 of the Schedule are transferred to the Purchaser under the supervision of the Monitoring Trustee in accordance with paragraph 30 (ii) (d) of the Commitments.

3. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets:
 - (i) The warehouse in Senlis, France;
 - (ii) The whole inventory in the warehouses which are relevant for Office Depot's EEA Contract Channel business (and, in Sweden, also the direct, wholesale and retail businesses).

¹ Switzerland is included in the Divestment Business as it forms part of Office Depot's European business. Any reference throughout this Schedule to EEA includes Switzerland.

² For the avoidance of doubt, any personnel not working predominantly for the business of one of the distribution channels, i.e. of the contract, direct, retail or wholesale channel, is included in the Divestment Business, subject to a transitional support arrangement for Staples on an at cost basis for a period of up to [...] after Closing.

- (b) the following main intangible assets:
 - (i) The assignment of the "Office Depot" trademarks to the extent their geographical scope is limited to the EEA or any part thereof and related to and used predominantly by the EEA Contract Channel business and of the "Office Depot" trademarks with geographical scope limited to Sweden, subject to a transitional licence to Staples for up to [...] after Closing, as included but not limited to in **Annex 1** of the Schedule; and
 - (ii) IT software and hardware, used by Office Depot predominantly for the Contract Channel in the EEA and by Office Depot in Sweden as included but not limited to in **Annex 2** of the Schedule; and
- (c) the following main licences, permits and authorisations:
 - (i) all of the licences, permits and authorisations used by the Office Depot Contract Channel business in the EEA and of Office Depot in Sweden;
- (d) the following main contracts, agreements, leases, commitments and understandings, subject to third parties consent to the extent such consent is contractually required:
 - (i) The agreements with the logistics providers that supply the relevant products in the EEA for the Contract Channel business and in Sweden for all distribution channels;
 - (ii) the partnerships agreements for the distribution of office supplies in the EEA for the Contract Channel business ;
 - (iii) The lease of the warehouse located in Zwolle, Netherlands;
 - (iv) The leases of the warehouse located in Grossostheim, Germany;
 - (v) The leases of the warehouses located in Saint Martin de Crau and Meung sur Loire, France;
 - (vi) The leases of the warehouses in Belvedere, Leicester, Northampton and Manchester, UK;
 - (vii) The leases of the warehouses in Dublin, Ireland;
 - (viii) The lease of the warehouse in Siziano, Italy;
 - (ix) The lease of the warehouse in Hostivice, Czech Republic;
 - (x) The lease of the warehouse in Madrid, Spain;
 - (xi) The lease of the warehouse in Stränggäs, Sweden; and
 - (xii) The lease of the warehouse in Lenzburg, Switzerland.

A list of the leases to be transferred is attached in **Annex 3** of the Schedule. The transfer of leases are subject to transitional access and

use rights to Staples for the warehouses used for the direct and retail business (except for Sweden) on an at cost basis for a period of up to [...] after Closing.³

- (e) the following customer, credit and other records:
 - (i) The current customer contracts for Office Depot's EEA Contract Channel business and international key accounts customers, subject to the consent of the customers to the extent such consent is contractually required;
 - (ii) The current customer lists for Office Depot's EEA Contract Channel business and international key accounts customers (see **Annex 4** of the Schedule) and for Office Depot in Sweden;
 - (f) the following Personnel:
 - (i) all personnel employed by Office Depot in the EEA related to and working predominantly for the Contract Channel business; and
 - (ii) all personnel employed by Office Depot Svenska AB or Office Depot Sweden (Holding) related to the B2B distribution of office supplies through the direct, retail or wholesale channels;
- subject to applicable labour laws;
- (g) the following Key Personnel:
 - (i) a list of employees who are indispensable (see **Annex 5** of the Schedule), including executives; and
 - (h) at the option of the Purchaser, the arrangements for the supply of the following products or services by Staples or Affiliated Undertakings for the transitional period specified below (such period might be extended in accordance with paragraph 8 of the Commitments) :
 - (i) merchandising/procurement and supply chain services from the Office Depot facility in Leicester, UK for a transitional period of up to [...] after Closing;
 - (ii) all office products for the Divestment Business, including own-brand products of Office Depot currently distributed via the Contract Channel, from the Office Depot's vendors for a transitional period of up to [...] after Closing;

³ For the avoidance of doubt, Staples may need to have access to certain confidential information to the extent necessary for the implementation of this transitional arrangement.

- (iii) IT and marketing support from the Office Depot facility in Leicester, UK for a transitional period of up to [...] after Closing;
- (iv) IT support from the eCommerce team at the Office Depot facility in Venlo, the Netherlands for a transitional period of up to [...] after Closing;
- (v) IT software and hardware which is shared between the Contract Channel business of Office Depot and the retained business of Office Depot and not divested under 3(b)(ii) for a transitional period of up to [...] after Closing;
- (vi) accounts receivable (AR) and accounts payable (AP) services from the Office Depot service centre in Cluj, Romania for a transitional period of up to [...] after Closing;
- (vii) use of the venues and facilities in the headquarters of Office Depot BV in Venlo, the Netherlands, to the extent necessary for the operation of the Contract Channel business for a transitional period of up to [...] after Closing; and
- (viii) Support for back-office functions (including HR and payroll) for a transitional period of up to [...] after Closing;

4. The Divestment Business shall not include:

- (a) any personnel of the Parties, other than the Personnel or Key Personnel as set out in paragraphs 3(f) and 3(g) above;
- (b) any asset, interests, customer records or contracts, rights or property (including intellectual property, know-how or trademarks) not part of the Divestment Business or which is used predominantly in relation to a business of Office Depot other than the Divestment Business;
- (c) monies owed to Office Depot; and
- (d) any assets, interests, rights or property (including any intellectual property, know-how or trademarks) of Staples or its Affiliated Undertakings other than assets, interests, rights or property that Staples acquires from Office Depot pursuant to the Concentration.

5. If there is any business activities, assets, legal entities or personnel which is not covered by paragraph 2 and 3 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Annex 1 of the Schedule - List of the IP rights of the Divestment Business

[...]

Annex 2 of the Schedule - List of IT system used by the Divestment Business

[...]

Annex 3 of the Schedule - Overview of warehouses

[...]

Annex 4 of the Schedule - List of current contract customers

[...]

Annex 5 of the Schedule - Headcount of personnel of the Divestment Business

[...]