



EUROPEAN COMMISSION
DG Competition

***CASE M.7555 - STAPLES/OFFICE
DEPOT***

(Only the English text is authentic)

**MERGER PROCEDURE
REGULATION (EC) 139/2004**

Article 8(2) Regulation (EC) 139/2004

Date: 10.2.2016

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EUROPEAN
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COMMISSION DECISION

of 10.2.2016

**declaring a concentration to be compatible with the internal market and the EEA
Agreement**

(Case M.7555 - STAPLES/OFFICE DEPOT)

(Only the English text is authentic)

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declaring a concentration to be compatible with the internal market and the EEA Agreement

(Case M.7555 - STAPLES/OFFICE DEPOT)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 25 September 2015 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

Whereas:

1. INTRODUCTION

(1) On 21 August 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Staples, Inc. ("Staples" or the "Notifying Party") intends to acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, of the whole of the undertaking Office Depot, Inc. ("Office Depot") by way of purchase of shares ("the transaction"). Staples and Office Depot are collectively referred to as the "Parties", while the company resulting from the transaction is referred to as "the merged entity".

(2) 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.

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

² OJ C ...,.... 201X., p.

³ OJ C ...,.... 201X., p.

- (3) 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.

2. THE OPERATION AND THE CONCENTRATION

- (4) 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.
- (5) As a result of the transaction, Staples would acquire sole control of Office Depot. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Staples: EUR 17 399 million; Office Depot: EUR 8 462 million). Each of them has a Union-wide turnover in excess of EUR 250 million (Staples: EUR [...]; Office Depot: EUR [...]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
- (7) The transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE PROCEDURE AND THE INVESTIGATION

- (8) The Notifying Party notified the transaction on 21 August 2015.
- (9) After a preliminary examination of the notification and based on the Phase I market investigation, the Commission concluded that the transaction raised serious doubts as to its compatibility with the internal market and with the functioning of the EEA agreement as regards the potential markets for the sale of office supplies through international contracts in the EEA and through national contracts in the Netherlands and Sweden and in relation to the potential market for the wholesale of office supplies in Sweden. Therefore, on 25 September 2015 the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation (the "Article 6(1)(c) Decision"). The period up to the adoption of the Article 6(1)(c) Decision will hereafter be referred to as "Phase I". The period from the adoption of the Article 6(1)(c) Decision until the adoption of this Decision will hereafter be referred to as "Phase II".
- (10) On 6 October 2015, the Notifying Party submitted its written comments on the Article 6(1)(c) Decision (the "Response to the Article 6(1)(c) Decision").
- (11) On 8 October 2015 a formal State of Play meeting took place between the Commission and the Parties.
- (12) During the in-depth market investigation in Phase II, the Commission:
- (a) reviewed the submissions of the Parties, sent several requests for information to the Parties and reviewed responses, held several meetings and telephone interviews with the Parties;

- (b) sent several requests for information to third parties (competitors, customers, purchasing groups, the Parties' distributors and suppliers), reviewed responses, and held telephone interviews with third parties;
 - (c) reviewed internal documents submitted by the Parties;
 - (d) conducted a targeted market reconstruction analysis by requesting data from major market participants; and
 - (a) reviewed bidding data gathered by the Parties' themselves, transaction data of the Parties and two customer surveys commissioned by Staples in 2013 (for the purposes of this Decision the following two parts of the 2013 survey will be distinguished: 'the 2013 national survey' and 'the 2013 international survey') and 2015 ('the 2015 international survey').⁴
- (13) A second State of Play meeting took place on 6 November 2015. In that meeting the Parties were informed about the outcome of the Phase II market investigation, the Commission's intention to issue a Statement of Objections and the scope of the Statement of Objections.
- (14) On 11 November 2015 the Phase II proceedings were extended by 15 working days in agreement with the Notifying Party, pursuant to Article 10(3) of the Merger Regulation, in order to allow the Commission to fully assess the arguments advanced by the Parties and to discuss the scope of potential commitments considered by the Parties. On 25 November 2015 and also in agreement with the Notifying Party, the Phase II proceedings were extended by five working days for the same reasons, pursuant to Article 10(3) of the Merger Regulation.
- (15) In order to address the competition concerns identified by the Commission, of which the Parties were informed in the course of the procedure, the latter submitted commitments on 27 November 2015. The Commission launched a market test of those commitments on 30 November 2015. On 10 December 2015 the Parties submitted revised commitments.
- (16) The meeting of the Advisory Committee took place on 27 January 2015.

5. THE OFFICE PRODUCTS MARKET AND THE ACTIVITIES OF THE PARTIES

- (17) The term "office products" is used to describe a wide range of products used in offices by businesses or consumers. Traditionally it includes: (i) stationery (for instance pens, pencils, notebooks, and staplers), (ii) ink & toner and (iii) cut sheet paper. Other categories of office products are office furniture and office equipment (for instance computers, printers, and copying machines).

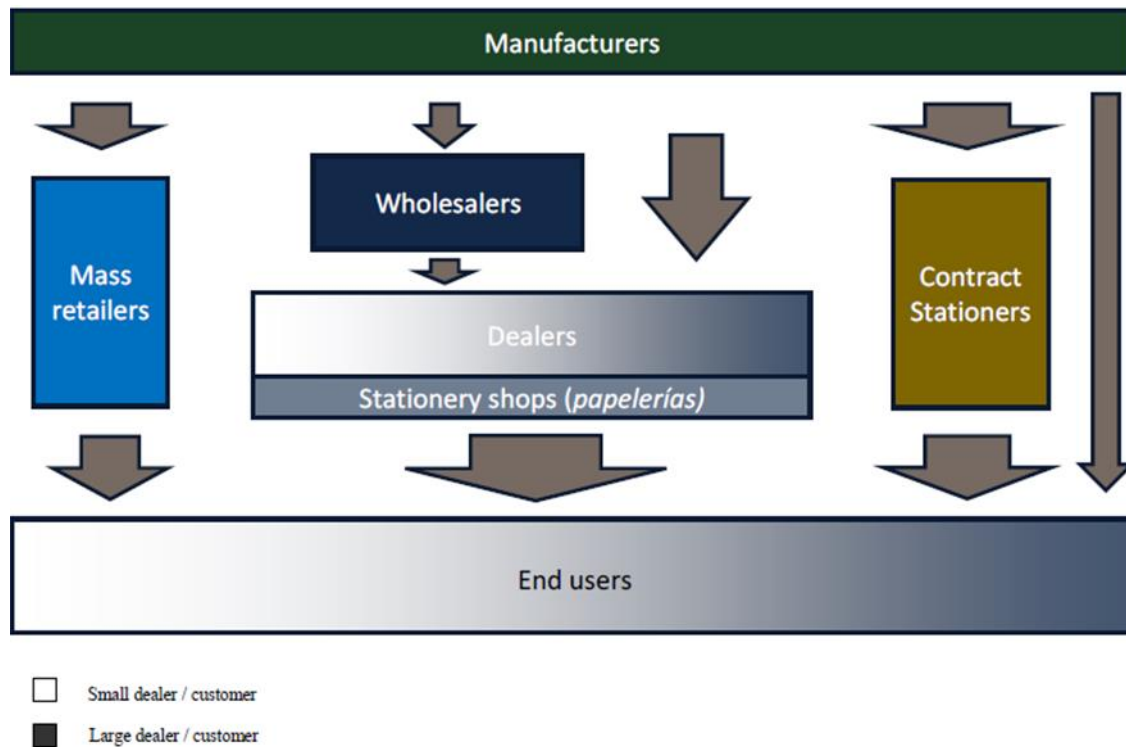
⁴ Staples commissioned one customer survey for national customers in the Netherlands and Sweden and for international customers in 2013 and an additional survey for international customers in 2015. The surveys were conducted over the phone in the form of computer assisted telephone interviews, that is to say the interviewer followed a script provided through a software application. The company [...] was responsible for conducting the survey. The company [...] was the company responsible to collect the data in the field. The respondents were not informed that the survey was commissioned by Staples. It was presented as an independent market study, only [...]s name was mentioned. There was also no contact between the Parties' external counsel and [...], the latter being in contact only with [...]. As regards the selection of the contact details of international customers, Staples was asked to provide a comprehensive list of its customer contact details, those lists were then provided in full to the survey vendor, without any modification. The survey vendor then chose contacts from those lists at random to interview (see email sent by the Parties to the Commission on 3 September 2015).

- (18) According to the Parties,⁵ the European traditional office supplies sector (including the product categories stationery, ink & toner and cut sheet paper) is in decline. Office supplies providers, including the Parties, face a declining demand for traditional office products as a result of the increased digitalisation of the European workplace. Customers are using fewer office supplies as offices become increasingly "paperless" due to an increased usage of PCs, laptops, tablets and smart phones and greater emphasis is placed on environmental considerations. The trend is expected to continue as younger generations enter the workforce. Additionally, in the face of fairly stagnant economic growth in Europe, customers are increasingly cost conscious and businesses have targeted their office supply spending as an area for savings.
- (19) In response to those market trends, existing suppliers, including the Parties, have diversified into the supply of non-traditional products such as cleaning products, washroom supplies and personal protective equipment, presentation and planning supplies, arts and graphics supplies, food and break room supplies (for example coffee, tea, snacks), mail and shipping supplies (boxes for sending packages) and mobile phones.
- (20) On the business customers' side, the trend is towards the centralised procurement of various product categories for as many locations as possible in order to benefit from volume related discounts and to optimise the time and effort spent on the purchasing of input materials of low importance such as office supplies.
- (21) The Parties distribute a full range of office products in all EEA countries where they are active. Both Parties have a direct presence in Austria, Belgium, France, Germany, Ireland, Italy, the Netherlands, Spain, Sweden and the United Kingdom. In addition, there are countries where the Parties have distribution agreements with third Parties giving rise to overlaps between the direct operations of one Party and the operations carried out indirectly through a distributor in that country by the other Party. Those countries are the Czech Republic, Denmark, Finland, Norway, Poland and Slovakia.⁶
- (22) The distribution of office products is made through a multitude of channels as illustrated in Figure 1. The illustration, however, does not show sales through open online systems or physical catalogues ("the direct channel" or "direct sales") which would take a similar position as the "stationery shops" or the "mass retailers" in the illustration in Figure 1:

⁵ Form CO, section 6 A.

⁶ According to the submissions in the Form CO, [...] where Staples has distribution agreements in place for the supply of its international customers.

Figure 1: Distribution channels in the office supply sector⁷



- (23) The Parties' sales are made through contract sales, physical retail outlets (where there is insignificant overlap), direct sales (online or through paper catalogues), and wholesale.
- (24) In previous decisions,⁸ the Commission has provided the following description of the different types of distribution channels:
- Contract distributors supply office products on the basis of framework contracts under which the customers may order supplies whenever the need arises.
 - Retail outlets (stationery shops) are physical shops selling office products primarily to individuals and small enterprises/offices.
 - Wholesalers purchase office products directly from manufacturers in order to sell them to dealers and stationery shops for re-sale (but not to end users).
- (25) As regards catalogue sales, the Parties explained that those are direct sales made through a physical catalogue. These have decreased over time due to the emergence of online sales. Online sales are direct sales made through open online systems on the internet.
- (26) In the Article 6(1)(c) Decision, the Commission raised serious doubts as to the compatibility of the transaction with the internal market in relation to the potential market for the sale of office supplies through international contracts in the EEA and through national contracts in the Netherlands and Sweden, and in relation to the potential market for the wholesale of office supplies in Sweden.

⁷ Case M.6382 – Unipapel/Spicers, recital 27.

⁸ For instance case M.6382 – Unipapel/Spicers, recitals 26 and 28.

- (27) On the basis of the in-depth investigation in Phase II the Commission confirms its preliminary findings as regards the existence of a separate market for the sale of traditional office supplies through international contracts. Moreover, based on the in-depth investigation in Phase II the Commission confirms its preliminary concerns in relation to the following markets: (i) the market for international contracts for the sale of traditional office supplies and stationery, (ii) the market for non-international contracts for the sale of traditional office supplies and stationery to large business customers (250 employees and more) in Sweden and the Netherlands and (iii) the wholesale market for office supplies in Sweden.
- (28) As regards the direct channel (online and catalogue sales) no competition concerns were identified in the 6(1)(c) Decision or the Phase II investigation. Furthermore, the Parties' activities in retail result in very limited overlaps and do not lead to affected markets.⁹ Therefore retail will not be discussed further in this Decision.

6. RELEVANT MARKETS

6.1. Product market definition

- (29) Pursuant to the Commission Notice on Market Definition,¹⁰ the purpose of the definition of the relevant product market is to identify in a systematic way the competitive constraints faced by the undertakings involved in a concentration. A relevant product market comprises all those products and services which are regarded as interchangeable or substitutable by customers. For the definition of the relevant market, demand substitutability and supply substitutability play a role.¹¹
- (30) The Parties distribute a full range of office products to business customers¹² through different distribution channels as shown in Figure 1 and described in recitals (23) to (25). Depending on the various EEA countries where they are present, they act as contract stationers (distribution of office supplies through framework contracts), wholesalers, catalogue and online sellers or brick and mortar retailers.
- (31) The Notifying Party rejects any possible sub-segmentation within the B2B distribution of office products. It argues that the relevant product market is the overall distribution of office products, irrespective of the categories of products supplied or the channels through which those sales are made. Nevertheless, the Notifying Party submits that the product market definitions can be left open in this case.

⁹ Staples is active in the retail distribution of office supplies in Germany, the Netherlands, Norway, Portugal and Sweden; Office Depot has retail shops in France and Sweden. Therefore the only overlap in retail distribution of office supplies arises in Sweden where, according to the Parties, the Parties' combined market share is around [5-10]%. As regards the local level, both Parties sell office supplies through shops in four Swedish cities: Gothenburg, Lund, Stockholm and Uddevalla. However, it is doubtful whether Staples' presence in Gothenburg and Stockholm can be considered as a retail presence. In those two cities, Staples has very small shops which are [...]. In any event Staples' market share would be negligible in those cities at well below [0-5]%. As regards the overlaps in Lund and Uddevalla, the Parties estimate the market shares to be less than [5-10]% for Staples and less than [10-20]% for Office Depot leading to a combined market share of less than [20-30]%.

¹⁰ Commission Notice on the definition of relevant market for the purposes of Community competition law ("Commission Notice on Market Definition"), OJ C 372, 9.12.1997, p. 5-13.

¹¹ Commission Notice on Market Definition, paragraphs 2, 7 and 13 et seq.

¹² The Parties also sell office products to consumers directly (business-to-customer, "B2C") but they estimate their combined shares for B2C as negligible (well below 5%) in all EEA countries irrespective of the sales channel, Form CO, paragraph 88. Therefore, the B2C channel will not be assessed further in this Decision.

- (32) On the basis of the market investigation, the Commission finds that the B2B distribution of office products can be segmented in a number of different ways.
- (33) First, a distinction can be made according to the different distribution channels through which office products are supplied, at least identifying the contract channel, the direct sales channel (including catalogue and online sales) and the wholesale channel as separate markets, since suppliers of those channels cater to the different needs of customers (section 6.1.1).¹³
- (34) Second, the product market can be segmented according to product categories, identifying as separate markets either the market for the supply of traditional office supplies or the market for the supply of each product category, such as stationery, ink & toner and paper (section 6.1.2).
- (35) Third, as regards the contract channel, a distinction can be drawn between international and non-international contracts (section 6.1.3).
- (36) Fourth, as regards non-international contracts, another distinction can be drawn based on the size of the customers (section 6.1.4).

6.1.1. *Segmentation by distribution channel*

- (37) The Notifying Party considers that the relevant product market includes sales made through all distribution channels and that it should not be sub-segmented by channel. It argues that contract customers as a whole are not substantially different from customers who purchase through the direct (online/catalogue) or retail channels. Moreover, according to the Notifying Party, contract suppliers face strong competition from online suppliers such as Amazon, who offer a competitive service and competitive price benchmarking.¹⁴ Therefore, it would be inappropriate, according to the Notifying Party, to focus only on a specific channel and ignore other channels in the competitive assessment.¹⁵
- (38) In a previous decision, the Commission found evidence that the market could be segmented according to different channels: sales from manufacturers, wholesaling, contract sales, retail sales, online and catalogue sales.¹⁶ According to the Commission, different distribution channels correspond to the needs of different customer groups, although certain customer groups may be served through several channels.

6.1.1.1. Contract distribution channel

- (39) With regard to the contract channel in particular, the Commission previously concluded with respect to the Dutch market that there is a separate market for contract stationers within the larger market for the distribution of office supplies. Contract stationers typically conclude framework contracts with customers which are usually awarded on the basis of tenders. Those contracts are generally written agreements, sometimes of several years' duration, which govern prices and other sales conditions, and under which the customer may order supplies whenever the need arises.¹⁷

¹³ Retail is not discussed in this decision for the reasons outlined in footnote 9.

¹⁴ Form CO, paragraph 113.

¹⁵ Form CO, paragraph 75.

¹⁶ Case M.2965 – Staples/Guilbert, recitals 9 and 13.

¹⁷ Case M.2286 – Buhmann/Samas Office Supplies, recitals 19, 20.

- (40) The Commission's conclusion was based on the finding that contract stationers have specific characteristics that particularly match large customers' needs. In particular, contract stationers supply a full range of products (including stationery, paper, ink & toner as well as other product categories), which makes them a one-stop-shop allowing customers to satisfy the bulk of their needs from one preferred supplier. According to the Commission's previous findings, those are distinguishing characteristics which make the contract channel different from other distribution channels.¹⁸
- (41) Those findings were confirmed in *Staples/Guilbert* where the Commission found, following the market investigation, that large firms tend to prefer the contract channel for their office supplies and do not use direct sales or retail stores.¹⁹
- (42) According to the Notifying Party, both Parties operate a separate business division for their contract customers with the main difference being that many contract customers use an active sales network including account managers.²⁰ Furthermore, the Parties consistently analyse the market distinguishing between the contract B2B market on the one hand and non-contract B2B market on the other hand in the ordinary course of business.²¹ Indeed, both Parties' businesses are structured into the following business divisions (i) contract business, (ii) direct/online business and (iii) retail business. More specifically, Staples has different business divisions for "Advantage Europe" (the European contract business), "Online Europe" and "Retail Europe", while Office Depot distinguishes at least between "Contract Europe" and "Direct Europe".²²
- (43) The Parties have submitted internal documents to the Commission which reflect that approach. The slide in Figure 2 illustrates the internal distinction between contract, direct and retail business in one of Staples' internal documents:

Figure 2: Staples internal document entitled "EU Market Shares", March 2014, slide 4, Annex 7.7 of the Form CO

[...]

- (44) Similarly, Office Depot distinguishes between competitors active in the contract channel and the direct channel in its internal analyses of the competitive landscape. For instance, in one of its internal documents submitted with the notification, Office Depot analyses the "EU Contract Competitor Landscape" separately from the "EU Direct Competitor Landscape" and the national "Contract Competitors" separately from national "Direct Competitors".²³

6.1.1.1.1. Demand-side considerations

- (45) From a demand-side perspective, in line with its precedents,²⁴ the Commission finds, on the basis of the results of the investigation, that business customers purchasing their office products under contracts generally do not consider other sales channels,

¹⁸ Case M.2286 – Buhrmann/Samas Office Supplies, recitals 37, 39.

¹⁹ Case M.2965 – Staples/Guilbert, recital 13.

²⁰ Form CO, paragraph 89.

²¹ Form CO, paragraph 78.

²² See the organisational charts of the Parties submitted by Staples on 5 June 2015.

²³ Office Depot internal document entitled "EU OP Market Situational Analysis", March 2015, Annex 8.1 of the Form CO.

²⁴ Case M.2286 – Buhrmann/Samas Office Supplies, recital 20.

including manufacturers, retail shops, open online shops or distance order catalogues, to be viable alternatives.²⁵

- (46) In that respect and on the basis of the results of the market investigation, the Commission considers that purchasing under contracts offers a number of advantages to customers, such as common and consistent services provided by one supplier to several offices, one single agreement to manage, one price list on a dedicated web portal, the optimisation of logistics, the efficient management and control of expenditure in office supplies and the possibility of leveraging a position as a high spending customer to obtain good service levels and competitive pricing.²⁶
- (47) The majority of contract customers that responded to the market investigation in Phase I and Phase II indicated that they would not switch to other providers (such as manufacturers, wholesalers, mass merchandisers and brick-and mortar retailers) should the price of office products sold through contracts increase by 5-10%.²⁷ Although roughly half of the respondents during the Phase I market investigation had initially indicated their willingness to switch to online or catalogue sellers in the event of price increases in the contract channel, customers submitted in subsequent explanations and follow-up phone calls that only suppliers fulfilling the requirements set out in the invitations to tenders for the supply of office products (in particular, distribution of office supplies to business customers and readiness to enter into a framework contract) are taken into account as suitable suppliers.²⁸
- (48) The Notifying Party contends that the fact that roughly half of the respondents to the Phase I market investigation originally indicated their willingness to switch to online or catalogue sellers in the event of price increases is evidence of the fact that customers could equally satisfy their needs for office supplies through other channels.²⁹
- (49) However, on the basis of the investigation in Phase II the Commission considers that, even if other channels are available to business customers, the sourcing of office supplies through framework contracts remains an essential element of their procurement strategy for those products, as more than 75% of customers that purchase through contracts indicated that it is not viable to purchase traditional office supplies without a framework contract in place.³⁰ Moreover, the majority of respondents that replied to the market investigation in Phase II confirmed the existence of a number of indirect cost savings that would compensate for an increase in prices of their purchases of office supplies under contract. The main indirect cost savings indicated by those customers include savings on transaction costs and on management and administration of the contracts, easier supplier management, increase control in expenditure and no minimum purchasing costs.³¹

²⁵ Replies to Phase II questionnaires Q8a-j to customers – Question 11; replies to Phase I Questionnaire Q4 to customers (contract) – Question 7; agreed minutes of the conference calls with customers.

²⁶ Replies to Phase II questionnaires Q8a-j to customers – Question 11; replies to Phase I Questionnaire Q4 to customers (contract) – Question 8.

²⁷ Replies to Phase II questionnaires Q8a-j to customers – Question 20.5; replies to Phase I questionnaires Q4 to customers (contract) and Q5 to customers (international) – Question 9.

²⁸ Replies to Phase I questionnaires Q4 to customers (contract) and Q5 to customers (international) – Question 9.

²⁹ Response to the Article 6(1)(c) Decision.

³⁰ Replies to Phase II questionnaires Q8a-j to customers – Questions 11 and 11.1.

³¹ Replies to Phase II questionnaires Q8a-j to customers – Question 20.5.

- (50) The Notifying Party also argues that customers multi-source office supplies, including the three traditional product categories, from multiple sales channels through leakage in practice. According to the Notifying Party, customers who have awarded a contract to a provider of office suppliers may still opt out of some purchases from the contracts and switch part of their spending to other suppliers, including from suppliers in other sales channels.
- (51) However, the 2013 and 2015 surveys³² [...] for national customers in the Netherlands and Sweden and for international customers suggest that leakage is limited. In the Netherlands, [70-80]% of the respondents mentioned that their organisation sources all requirements for stationery exclusively through contracts,³³ (the corresponding figure for ink & toner is [70-80]%,³⁴ [80-90]% for paper³⁵). In Sweden, the corresponding figures are [70-80]% for stationery, [70-80]% for ink & toner, and [90-100]% for paper.³⁶ In other words, a limited number of customers source the traditional product categories outside the contracts. This is also confirmed by the international surveys conducted in 2013 and 2015. The 2013 international survey shows that leakage concerns only a minor part of the office supplies needs of international customers as only [10-20]% of respondents who indicated they had made purchases outside their international contracts purchased more than [20-30]% of their needs outside the contracts relationship.³⁷ The limited importance of leakage is also confirmed in the 2015 international survey which shows that, among the respondents who use a single supplier for several countries, (i) only [20-30]% mention that some local country units opted out of the central office supplies contracts in the last five years, and (ii) only [10-20]% purchased more than [20-30]% of their needs outside the contracts relationship.³⁸ The multi-sourcing behaviour (of the three traditional product categories) through leakage therefore appears limited.

6.1.1.1.2. Supply-side considerations

- (52) According to the Notifying Party, a further segmentation of the market according to the type of supplier (for instance contract stationers, dealers, mass retailers, other resellers, and manufacturers) is not appropriate because that would not take into account a substantial part of competition. The Notifying Party submits that such segmentation by channel is less relevant than before as there is intense competition

³² See footnote 4.

³³ See Annex B.1, question 19, of the submission "*Staples/Office Depot – competition from specialist suppliers*", RBB Economics, 31 August 2015.

³⁴ See Annex B.1, question 23, of the submission "*Staples/Office Depot – competition from specialist suppliers*", RBB Economics, 31 August 2015.

³⁵ See Annex B.1, question 27, of the submission "*Staples/Office Depot – competition from specialist suppliers*", RBB Economics, 31 August 2015.

³⁶ See Annex B.2, questions 19, 23, and 27, of the submission "*Staples/Office Depot – competition from specialist suppliers*", RBB Economics, 31 August 2015.

³⁷ See Annex A.1 of the submission "*Competitive Assessment - International Customers*", dated 18 May 2015, question 14. [50-60]% of those respondents purchased less than [10-20]% of their needs outside contract relationship, [30-40]% of those respondents purchased between [10-20]% and [20-30]% of their needs outside contract relationship, [5-10]% purchased [20-30]% to [40-50]% of their needs outside the contracts relationship, [0-5]% purchase more than [40-50]% of their needs outside the contract relationship. [5-10]% of respondents replied that they did not know.

³⁸ See question 16 and question 17 of the 2015 International survey, "Project Warrior – survey Questionnaire", dated 11 May 2015. [40-50]% of those respondents purchased less than [10-20]% of their needs outside contract relationship, [30-40]% of those respondents purchased between [10-20]% and [20-30]% of their needs outside contract relationship, [10-20]% purchased [20-30]% to [40-50]% of their needs outside the contracts relationship, [5-10]% purchase more than [40-50]% of their needs outside the contract relationship. [5-10]% of respondents don't know.

between different channels including channels not explicitly referred to by the Commission, such as general wholesale, online dealers, mass merchandisers and specialist suppliers.³⁹

- (53) The Commission considers, on the basis of the market investigation that there is no supply-side substitutability between the contract market and other sales channels, contrary to the Notifying Party's claims, and in line with the findings in previous decisions.⁴⁰ Indeed, according to the results of the market investigation a number of competitors operating in other sales channels would not be capable of offering the customer service, pricing models and logistics required by business customers in the contract channel.⁴¹
- (54) In the words of a competitor, who has previously tried to enter that channel, the tender contract market "*suffers from high barriers to entry. Those barriers are not only related to the size and the capacity needed to serve the customers, but also to endogenous strategies pursued by the incumbents. Special systems are needed in order to be an effective competitor in the tendering market.*"⁴²
- (55) In particular, supply through the contract channel necessitates setting up a dedicated organisation (with account management, dedicated customer service and sales force, efficient logistics and supply chain) and providing a wide-range of services (such as broad product assortment, easy ordering via online and e-procurement solutions as well as efficient logistics solutions) to meet specific customer needs. This has been confirmed by contract suppliers who responded to the market investigation.⁴³ However, supply-side substitutability requires that suppliers would not need to adjust existing tangible and intangible assets, make additional investments, take strategic decisions or incur time delays.⁴⁴
- (56) The relevance of barriers to entry as well as the constraints posed by potential competitors will be addressed further within the competitive assessment.⁴⁵

6.1.1.1.3. Conclusion

- (57) Based on the assessment in recitals (39) to (56), the Commission finds that the supply of office products by contract stationers through the contract channel constitutes a separate product market from other distribution channels such as direct distribution and wholesale distribution.

6.1.1.2. Direct distribution channel

- (58) There are indications in the Commission's precedents pointing to the existence of a separate product market for the direct sales channel which is separate from the product markets for contract sales and for wholesale of office suppliers, although the Commission ultimately left that question open for the direct sales channel.
- (59) In *Buhrmann/Samas Office Supplies*, the Commission distinguished between different types of office supplies distributors, including contract stationers, smaller office supplies dealers and dealer groups, mail order companies, office superstores, electronic office supplies wholesalers selling directly to larger end-user offices and

³⁹ Form CO, paragraph 119.

⁴⁰ Case M.2286 – Buhrmann/Samas Office Supplies, recital 37.

⁴¹ Replies to Phase I Questionnaire Q3 to competitors (direct sales) – Question 9.

⁴² Agreed minutes of a conference call with a competitor of 11 June 2015.

⁴³ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 9.

⁴⁴ Commission Notice on Market Definition, paragraphs 20 and 23.

⁴⁵ Commission Notice on Market Definition, paragraph 23.

other resellers such as electronic office supplies dealers, e-tailers (resellers only selling via the internet and outsourcing stock keeping and delivery to others), hardware dealers and high street retailers.⁴⁶ The suppliers active mostly via the direct channel include mail order companies and e-tailers according to that distinction.

- (60) In *Staples/Guilbert*, the Commission distinguished between the contract channel and distant selling and established that large firms tend not to use distant selling or superstores and prefer contract stationers for their office suppliers. The Commission further found that the number of references between distant selling and superstores was comparable, if not identical, and fairly different from that of high street specialists, department stores and comparison stores and supermarkets. At the same time, it was not clear whether customers would switch from distant selling to superstores in the event of a non-temporary price increase in this channel, or if they would prefer another distribution channel. The Commission ultimately left the market definition open.⁴⁷
- (61) Whereas in previous decisions a distinction was made between mail order companies who issue printed catalogues and electronic retailers, in today's digitised world the suppliers active in the direct sales channel mostly offer their clients the opportunity to purchase office supplies via online catalogues available on the website of the supplier. In a previous decision on catalogue sales in a different distribution industry, the Commission found that home-shopping by catalogue and home-shopping on the internet form part of the same relevant market, since those channels are interchangeable from the customer's point of view and are subject to a similar regulatory framework with regard to the right of return, for example.⁴⁸
- (62) With regard to the relevant customer groups targeted by the direct sales channel, the Notifying Party submits that it does not apply an internal threshold to distinguish between contract and non-contract customers. However, the Notifying Party also explains that it rarely enters into a contract with customers with an annual spend below EUR 5 000.⁴⁹ Those customers use other sales channels than the contract channel, that is to say the retail or the direct sales channel.
- (63) According to the results of the market investigation, suppliers active in direct sales do not have the capabilities to compete with contract stationers and they target smaller B2B customers (mainly customers with less than 50 office workers).⁵⁰
- (64) Based on the assessment in recitals (58) to (63), the Commission finds that the supply of office products through the direct channel constitutes a separate product market from contract sales and the wholesale of office supply. The Commission can, however, leave open whether the relevant product market for direct sales also includes retail sales since the transaction does not lead to a significant impediment to effective competition if only the narrower market for direct sales is considered where the overlap between the Parties' activities is more pronounced.

6.1.1.3. Wholesale distribution channel

- (65) In *Buhrmann/Samas Office Supplies*, the Commission found that wholesalers of traditional office products do not, or at least do not primarily, sell directly to end-

⁴⁶ Case M.2286 – Buhrmann/Samas Office Supplies, recital 13.

⁴⁷ Case M.2965 – Staples/Guilbert, recital 13.

⁴⁸ Case M.5721 – Otto/Primondo Assets, recital 20.

⁴⁹ Form CO, paragraph 89.

⁵⁰ Replies to Phase I Questionnaire Q3 to competitors (direct sales) – Question 16.

users and concentrate on servicing dealer groups, smaller independent dealers and retailers. They offer a wide range of services to dealers, including logistical systems whereby orders are fulfilled directly from the wholesaler's stocks and dispatched directly to the end-user.⁵¹ Similarly, in *Unipapel/Spicers*, the Commission found that wholesalers buy from manufacturers and sell to downstream dealers and stationery shops, but not to end-users.⁵² The Commission furthermore considered that manufacturers do not compete actively with "pure" traditional office wholesalers; however they do exert an important competitive constraint.⁵³ Similarly, buyer groups and specialised office supply chains were also excluded as competitors from the competitive assessment; however the Commission indicated that they also do exert competitive pressure on "pure" traditional office wholesalers.⁵⁴

(66) In this Decision and on the basis of the results of the market investigation, the Commission considers that wholesalers serve a customer base different from the one served by manufacturers and that they are situated on a step of the value chain different from the one where retailers, contract and direct sales stationers operate. In addition, both buyer groups and manufacturers can clearly be distinguished from wholesalers in terms of services offered as only the latter provide to dealers and retailers IT solutions, a large range of products, low requirements in terms of minimal order size and direct delivery service from the wholesaler's warehouse to the end customers, allowing dealers and retailers to operate without the need to run their own warehouses.⁵⁵

(67) Based on the assessment in recitals (65) and (66) and in line with the Commission's precedents, the Commission finds that the wholesale distribution of office supplies constitutes a separate product market from direct distribution to end-users and distribution through contracts.

6.1.2. *Segmentation by product category, all channels*

(68) In the Form CO, the Notifying Party considers both generally and for all distribution channels that segmenting the market by product category⁵⁶ would be artificial, because such an approach would not reflect the commercial reality. The Notifying Party argues that business customers choose interchangeably between purchasing office products jointly and separately (the latter either in separate tender lots or in separate tenders). According to the Notifying Party, many of the Parties' competitors are active across different categories and the different product categories are, as a general rule, sold through the same channels with the same business teams and with the same assets (for instance, warehouses or online ordering systems). In addition, all suppliers can easily and rapidly expand into different product categories. Even when customers choose to purchase products separately, competition from specialist suppliers remains.

⁵¹ Case M.2286 – Buhrmann/Samas Office Supplies, recital 15 and Case M.6382 – Unipapel/Spicers, recital 29.

⁵² Case M.6382 – Unipapel/Spicers, recital 28.

⁵³ Case M.6382 – Unipapel/Spicers, recitals 103-106.

⁵⁴ Case M.6382 – Unipapel/Spicers, recital 37.

⁵⁵ Replies to Phase I Questionnaire Q7 to competitors (wholesale) – Question 4; replies to Phase II Questionnaire Q11 – Question 9.

⁵⁶ The categories are stationery, ink & toner, cut sheet paper, facilities supplies, break room supplies, office furniture, office and printing machines, computer accessories, printing and copying services, packaging material and others.

- (69) Therefore, in the Parties' view the distribution of office supplies encompasses at the very least traditional office supplies (stationery, ink & toner and cut sheet paper), catalogue furniture and small business machines.⁵⁷
- (70) In a previous decision, the Commission indicated that the distribution of complete ranges of office furniture and the distribution of larger business machines and services associated therewith are separate activities from the distribution of office supplies, although there can be some overlaps.⁵⁸ The same reasoning would apply to the distribution of broad ranges of other types of products sold by the Parties such as cleaning products, food and break room supplies (for example coffee, tea, snacks), computers and mobile phones.
- (71) The evidence gathered by the Commission in this Decision, in line with precedents, points to each distribution channel as a relevant market consisting of the distribution of office supplies including traditional categories (stationery, ink & toner and cut sheet paper) and excluding the distribution of complete ranges of office furniture, large business machines and associated services, cleaning products, food, IT and telecommunications equipment. The specific claims made by the Parties and the specific features concerning the contract, direct and the wholesale channels will be further addressed in sections 6.1.2.1 to 6.1.2.3.

6.1.2.1. Distinction by product categories, contract channel

6.1.2.1.1. The views of the Notifying Party

- (72) The Notifying Party argues that there is not a single market encompassing the sale of stationery, ink & toner and cut sheet paper through contracts.⁵⁹
- (73) First, as regards customers' current purchasing patterns, the Notifying Party submits that between [40-50]% and [50-60]% of the Parties' customers buy all three traditional product categories together. This relatively infrequent single-sourcing behaviour would demonstrate, in the Notifying Party's view, that multi-sourcing (that is to say sourcing individual product categories separately from different suppliers) is a viable option for customers and so the cost advantage of single-sourcing (that is to say purchasing the three traditional product categories together) cannot be substantial.⁶⁰
- (74) Second, as regards customers' switching patterns, based on evidence from the Parties' customer database, the Notifying Party contends that many customers switch from using a single supplier to using multiple suppliers, and any preference for single-sourcing the three traditional product categories is transient, with the majority of customers who purchased their full range of traditional office supplies from Staples or Office Depot in 2012 switching at least partially to alternative suppliers in 2014.
- (75) Third, the Notifying Party argues that specialist suppliers exert a competitive constraint on the Parties and should be included in the relevant product market, in particular the manufacturers of ink & toner, including suppliers of Managed Print Services ("MPS"), and manufacturers or specialised distributors of cut sheet paper. Suppliers of MPS sell ink & toner as one element of a broader service contract

⁵⁷ Form CO, paragraphs 81-86.

⁵⁸ Case M.2286 – Buhrmann/Samas Office Supplies, recital 10.

⁵⁹ See submission "*Competition from specialist suppliers*", dated 31 August 2015, RBB Economics.

⁶⁰ See submission "*Staples/Office Depot – competition from specialist suppliers*", dated 31 August 2015, RBB Economics, pages 9-10.

encompassing mainly the supply of printing machines and the provision of services such as maintenance and provision of printing consumables.

- (76) During Phase II, the Notifying Party also expressly submitted that there is no separate business for stationery sales as the Parties do not treat those sales as a separate market in their internal documents; there is no monitoring of stationery sales, and there are no separate business plans or budgets for stationery. Similarly, the Parties do not have stationery-specific sales representatives, and no infrastructure specifically targeted at stationery.⁶¹

6.1.2.1.2. The Commission's assessment

- (77) The existence of a customer focus on a one-stop-shop for purchases of traditional office supplies is confirmed by how the Parties target customers and monitor their sales in the ordinary course of business. For instance, when calculating the target spending to classify customers, such as international customers or "Enterprise" customers, the Parties use turnover thresholds that normally include stationery, paper and ink & toner. Facility products are sometimes included, whereas one of the Parties only exceptionally classifies customers as international also based on spending in furniture.⁶² Similarly, other contract stationers, including the Parties' main competitors, monitor sales by broad categories corresponding to the full-range of supplies of traditional office products.
- (78) Moreover, as will be further explained in recitals (79) to (85), the customers' preference for the one-stop-shop purchase of traditional office supplies has been confirmed by the outcome of the market investigation on current purchasing and switching patterns.

6.1.2.1.2.1. Current purchasing patterns

- (79) As regards the Notifying Party's first main argument that the single-sourcing behaviour for the three traditional product categories is relatively infrequent, with [40-50]%-[50-60]% of customers buying all three traditional product categories together, the Commission notes that the figure quoted by the Parties includes all customers, irrespective of their size (small or large business customers) and types (national or international customers). It is therefore of limited relevance in the Commission's assessment for international customers and for large national customers (those segmentations will be discussed in sections 6.1.3 and 6.1.4).
- (80) Against this background, the Commission reviewed Staples' sales data in Belgium and the Netherlands for international and enterprise (namely large private) customers, focusing on customers who made a purchase in at least one of the three traditional office product categories of paper, ink & toner and stationery.⁶³ As shown in Table 1, [60-70]% of Staples' customers that made a purchase in at least one of the traditional office product categories made purchases in all three categories together. Essentially no customer bought only paper or only ink & toner from Staples. Overall, these two products are always bought jointly with stationery products.
- (81) Therefore, the analysis of Staples' sales data for international and large customers in Belgium and the Netherlands suggests that such customers have a strong preference for purchasing the three traditional office product categories of stationery, paper and

⁶¹ See Memo on the Commission's concerns as regards stationery, at points 2, and 5 to 8.

⁶² See Replies to the Commission's request for information of 2 October 2015, Question 1.

⁶³ For example, customers having bought only furniture, or computers and none of the traditional categories were omitted.

ink & toner together. Within those products, stationery is a key element of the traditional product categories, without which paper and ink & toner are rarely sold. Neither paper nor ink & toner is typically purchased without stationery, whereas some customers ([10-20]%) purchased only stationery.

Table 1: Staples customers buying in at least one of the traditional categories, 2014. Staples sales data (BE, NL), IAT and ENTR customers only

Customer buying...	Number of customers	Value [1000 EUR]	% of customers	% of value sold in traditional categories
Stationery only	[...]	[...]	[...]%	[...]%
Paper only	[...]	[...]	[...]%	[...]%
Ink only	[...]	[...]	[...]%	[...]%
Stationery&Ink. no Paper ⁶⁴	[...]	[...]	[...]%	[...]%
Stationery&Paper. no Ink ⁶⁵	[...]	[...]	[...]%	[...]%
Paper&Ink. no Stationery	[...]	[...]	[...]%	[...]%
Stationery&Ink&Paper	[...]	[...]	[...]%	[...]%
Total	[...]	[...]	100%	100%

Source: Staples sales data submitted with the report RBB Economics: "Relevance of bidding data for the competitive assessment", dated 18 May 2015.

- (82) Furthermore, on the basis of the qualitative results of the market investigation, the Commission considers that, contrary to the Notifying Party's claim, a majority of contract customers have a preference for the one-stop-shop supply of office products offered by contract stationers as it offers several cost and convenience advantages which are not available when purchases are split. Indeed, a vast majority of customers replying to the Commission's market investigation purchase most traditional office supplies from the same company. Few respondents purchase each category separately; of the minority that purchases only one category separately from the others, that category predominantly consists of ink & toner, and paper and stationery are almost always purchased together.⁶⁶
- (83) The majority of competitors replying to the Commission's market investigation also confirmed the customers' preference for the one-stop-shop supply of office products. Almost all responding competitors in the Phase II investigation report that most customers typically purchase different categories of office supplies together⁶⁷ and

⁶⁴ The existence of separate contracts for paper seems to be explained by the existence of separate contracts for large volumes of paper purchased in bulk as discussed in recital (88).

⁶⁵ The existence of separate contracts for ink & toner seems to be explained – at least in part – by the existence of a different business model and contractual arrangements for MPS as discussed in recitals (86) and (87). This option is not available to all customers and in particular not for customers requiring ink & toner for desktop printers as opposed to multifunctional printer-copiers.

⁶⁶ Replies to Phase II questionnaires Q8a-j to customers – Questions 4 and 5; replies to Phase I Questionnaire Q4 to customers (contract) – Questions 10 and 10.1.

⁶⁷ Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – Question 6. In Phase I respondents unanimously pointed out that different office products are purchased together either typically or by some customers: replies to Phase I Questionnaire Q1 to competitors (contract) – Question 14, however the Phase I question referred to a wider range of categories than traditional office supplies only.

that this is a particularly clear preference for large customers.⁶⁸ Aside from savings generated by a rationalisation of suppliers,⁶⁹ another reported reason relates to the fact that traditional office supplies consist of a large number of products of a relatively low value.⁷⁰

6.1.2.1.2.2. *Switching patterns*

- (84) As regards the second main argument of the Notifying Party that the preference for single sourcing is transient since the majority of customers purchasing their full range of traditional office supplies from the Parties in 2012 have switched, at least partially, to alternative suppliers in 2014, there is no distinction in the Parties' analysis by the type of customers (international and large national customers vs smaller customers). Therefore, the argument is less relevant for the assessment of the sourcing preference for international and large customers, which is the focus of the Commission's investigation. Moreover, among the customers who purchased their full range of traditional office supplies from the Parties in 2012 and switched to alternative suppliers in 2014 (see recital (74)), a significant proportion of those customers have switched their purchases completely between 2012 and 2014 (around [30-40]%), which is equally consistent with single-sourcing the three traditional product categories from another supplier.⁷¹ Moreover, partial switching is defined as a reduction of sales of 50% or more in any of the traditional product categories.⁷² Therefore, that definition of partial switching does not allow to infer a preference for single sourcing within each product category, in particular stationery.⁷³
- (85) Furthermore, the Commission analysed the sourcing behaviour of the Top 100 employers in each country where the Parties' contract businesses overlap in order to verify whether the Notifying Party's claim would apply to large contract customers

⁶⁸ Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – Question 8, where a majority of competitors indicated that 70% or more of their large customers prefer having a one-stop-shop for their office supplies under one single contract.

⁶⁹ For instance, reply of a competitor to Phase II Questionnaire Q9 to competitors (contract stationers) – question 8: '(...) *Most large corporate customers have a long tail-end of suppliers that they wish to rationalize. More categories from 1 supplier equal optimization of supplier database, cost savings and efficiency in total cost of ownership. Meaning consolidated orders, bigger average order value, less invoices, less reporting and less administrative work at the customer end.*'

⁷⁰ For instance, reply of a competitor to Phase II Questionnaire Q9 to competitors (contract stationers) – question 8: '*Due to the high number of products in combination of the relative low value per item in office supplies, companies / customers prefer to have one supplier to handle all the logistics and knowledge of the product groups*'

⁷¹ See RBB Economics, "*Staples/Office Depot – competition from specialist suppliers*", 31 August 2015, Table 10 and Table 11.

⁷² See RBB Economics, "*Staples/Office Depot – competition from specialist suppliers*", 31 August 2015: partial switching is defined as "*reduction in sales of 50% or more in any of the traditional categories*" between 2012 and 2014.

⁷³ Importantly, this definition of partial switching does not allow distinguishing between moving purchases to another supplier and reducing purchase value with the same supplier, and therefore is likely to overestimate true supplier switching. Reducing purchase value with the same supplier may occur for example due to the rationalisation and reorganisation of purchases. The Parties explain on page 4 in their "Replies to the 25 June 2015 Commission's RFI" that [...]. Such switching from non-core to core products is particularly relevant for stationery, as stationery seems to constitute the bulk of non-core products, as explained in footnote 224.

that buy under contract.⁷⁴ The Commission found that most of the Parties' large customers made purchases in all three product categories, both in 2012 and 2014.⁷⁵

6.1.2.1.2.3. *Role of specialist suppliers*

- (86) As regards the Parties' third main argument that specialist suppliers providing only one or very few categories of traditional office supplies should be included in the relevant product market, the Commission refers to its finding set out in recitals (70) and (71) that the distribution of office machines and associated services such as managed print services (MPS) should be considered a separate activity from the distribution of office supplies, even if there is a certain overlap in the distribution of ink & toner. That overlap in the distribution of ink & toner means that MPS may exert a competitive pressure when the market for distribution of ink & toner is considered individually but not when the market for the full range distribution of traditional office supplies is considered. MPS providers confirmed in the market investigation that they do not compete with the Parties in the provision of office supplies through contracts to final consumers.⁷⁶
- (87) The reason why the ink manufacturers who are active in MPS cannot be considered as a competitive constraint in the broader market for contract supplies of traditional office products is due to the nature of their distribution arrangements. The manufacturers normally sell ink & toner as consumables, and not as part of MPS, via reselling partners such as contract stationers.⁷⁷ Thus, private label manufacturers and Original Equipment Manufacturers ("OEMs"), such as Canon and HP, do not provide ink & toner or other office supplies directly to end consumers outside of MPS contracts. Even when large customers negotiate better prices for large supplies of those consumables directly with OEMs, they do not source directly from OEMs, but via the contract stationer of their choice, which receives ad hoc rebates by the OEM in order to be able to supply the customer at the agreed price.⁷⁸ While the manufacturers may compete with the Parties through MPS as an alternative to contract distribution of ink & toner, they cannot be considered as active within the contract channel itself, nor as potential competitors for full range supplies.
- (88) As for cut sheet paper, it is mostly sold together with stationery products, as set out in recital (81). Specialist paper manufacturers rely on contract stationers to distribute their products. They contract directly with the final customer only in the event of large orders.⁷⁹ While this may exert a competitive pressure when the market for distribution of cut sheet paper is considered individually, the main features of their

⁷⁴ For more details on this type of analysis, see below at recitals (256) et seq.

⁷⁵ In 2014, [70-80]% of customers that made a purchase in any traditional office category from Staples actually bought all three categories together. With Office Depot's customers the same figure is [80-90]%. Purchases in 2012 show essentially the same pattern.

⁷⁶ Reply of an MPS provider to Phase II Questionnaire Q10 to specialists – Question 6.1, where the respondent stated that it is not a competitor, but: "*...only a supplier to Lyreco, Office Depot and Staples.*" Replies to Phase II Questionnaire Q10 to specialists, Questions 3, 5 and 16.

⁷⁷ Agreed minutes of a conference call with a competitor of 22 October 2015: "*In case of large customers, where there is a big deal, certain terms (including the prices) can be negotiated between the customers and the manufacturer directly (...) [competitor], as a distributor, in big deal cases can receive assigned rebates from the manufacturers.*" (...) "*The largest suppliers include HP and Lexmark.*"; reply of an OEM to Phase II Questionnaire Q10 to specialists – question 9.1 "*This may occasionally occur in tenders held by large corporate customers. We may negotiate a maximum sale price. (Distributors are permitted to discount from the agreed maximum resale price and the retailers can negotiate a discount)*".

⁷⁹ Agreed minutes of a conference call with a specialist supplier of 21 October 2015.

supplies, notably the large volumes,, make the specialist paper suppliers unsuited to be considered as competitors in the contract distribution of traditional office supplies. Similar to the ink & toner specialists, while the paper specialists may compete with the Parties as an alternative to contract distribution of cut sheet paper, they cannot be considered as potential competitors for full range contract supplies.

- (89) Despite the fact that some customers buy paper or ink & toner separately from specialist suppliers, the majority of the supplies are thus made by generalist contract stationers such as the Parties and their contract stationer competitors, most notably Lyreco. Contrary to the Notifying Party's submission that ink & toner manufacturers and paper manufacturers could easily expand or enter the stationery segment, the specialist suppliers replying to the Commission's market investigation indicate that they are generally not active in stationery supplies, and deny their ability to expand their business model to encompass stationery.⁸⁰ An explanation for their inability to supply stationery is that distributing stationery and other office product categories would require logistics arrangements which they do not have,⁸¹ or which are more advanced than those they are able to set up.⁸² As discussed in recitals (86) to (88), while they may exert a competitive pressure on contract distribution of ink & toner through MPS or on contract distribution of cut sheet paper through bulk sales, if those categories were analysed separately, they may only exert a very limited pressure when considering the market for stationery contracts or contracts for traditional office supplies including stationery.⁸³ Nevertheless, that competitive pressure will be taken into account in the competitive assessment, for instance when the Commission assesses the closeness of competition between the Parties and their competitors (such as in recitals (351), (417) and (496)).
- (90) Therefore, the Commission finds that the evidence points to the existence of a market for contract distribution of traditional office supplies, which encompasses stationery, ink & toner, and paper. Customers within the relevant market most often purchase those categories together from contract stationers. Manufacturers and distributors of ink & toner and paper have limited sales within the relevant market compared to contract stationers who are capable of offering the full range of products.

6.1.2.1.3. Conclusion

- (91) In the light of the considerations set out in recitals (72) to (90), the Commission concludes that there is in all likelihood a separate product market for the one-stop-shop supply under contracts of the three traditional office supply categories (stationery, paper, ink & toner). However, for the purpose of this Decision, it can be left open whether, alternatively, separate product markets could be defined by individual product categories (defining thus three separate product markets for the supply of stationery, the supply of paper and the supply of ink & toner) because a significant impediment to effective competition arises regardless of whether a market is defined for one-stop-shop contracts for traditional office supplies or whether separate markets by product categories are distinguished, in which case concerns arise for the contract distribution of stationery products. Furthermore, it is not

⁸⁰ Replies to Phase II Questionnaire Q10 to specialists – Question 2.

⁸¹ Reply to Phase II Questionnaire Q10 to specialists – Question 7.

⁸² Agreed minutes from conference call with a specialist paper supplier: *"Logistics is generally a barrier to expansion for this market. In order to compete with the Parties, a company should be able to sell and deliver small quantities of product, and have efficient logistic arrangements in place to achieve this at a low cost. Setting this up can be very difficult"*.

⁸³ Any such pressure will be considered in the competitive assessment.

necessary for the Commission to conclude on the matter, given that the Parties have submitted remedies that would adequately remove any competition concerns identified by the Commission under the alternative product market definitions.

6.1.2.2. Distinction by product category, wholesale channel

- (92) In *Unipapel/Spicers*, the Commission found that the wholesale of traditional office supplies encompasses a number of categories, including: (i) traditional office/stationery products, for example pens, pencils, notepads, filing products, folders, paper; (ii) basic electronic office supplies, such as printer cartridges and data storage, as well as business machines, such as printers and faxes as well as (iii) office furniture, for example chairs and desks.⁸⁴ The Commission analysed those three markets separately but it ultimately left the market definition open.
- (93) In Sweden, the only country where the Parties' wholesale activities overlap to any significant extent, the Parties are active in the wholesale of the whole range of office supplies, including all of the three product categories listed in recital (92). The respondents to the market investigation indicate that the majority of retailers purchasing office supplies at the wholesale level have a preference for one-stop-shop purchasing with regard to the traditional office supplies categories including at least stationery products, ink & toner and paper.⁸⁵ This is due to the fact that a large proportion of customers in Sweden are small online retailers whose business model consists of running an online website where end-users can place orders and the handling and delivery is done directly by the wholesaler. In order to have a competitive offer in their online shops, the retailers require that the wholesaler offers a full range of products which can be then delivered to the end-users by a single supplier, which minimises the delivery costs and allows the online shops to offer competitive prices.⁸⁶
- (94) Based on the assessment in recitals (92) to (93), for the purpose of this Decision, the Commission will assess the effects of the transaction in 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).

6.1.2.3. Distinction by product categories, direct channel

- (95) Given that no significant impediment to competition arises in the direct channel under any alternative market definition examined for the contract and the wholesale channel, for the purposes of this Decision, 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.

6.1.3. *Contract market: Distinction between international and non-international contracts*

- (96) Within the contract market, there are customers who purchase office supplies in two or more different countries. In order to procure office supplies in different countries, such customers may group their spending for office supplies with a single supplier under a single contract covering more than one country. While the Commission has not drawn a distinction between international and non-international contracts for office supplies in its previous decisions, the results of the Commission's market investigation presented in this Decision provide evidence to suggest that there is a

⁸⁴ Case M.6382 – Unipapel/Spicers, recital 24.

⁸⁵ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 5 and replies to Phase II Questionnaire Q11 to customers (wholesale) – Question 10.

⁸⁶ Agreed minutes of conference calls with retailers of 28 October and 4 November 2015.

separate product market for international contracts of office supplies due to limited demand- and supply-side substitutability between international and non-international contracts.

6.1.3.1. The views of the Notifying Party

- (97) In the Form CO, and particularly in Annex 22, in the Response to the Article 6(1)(c) Decision, as well as in further submissions during Phase II, the Notifying Party has provided a number of factual elements and arguments that would run counter to a sub-segmentation of the contract market between international and national contracts.
- (98) The Notifying Party's main arguments are the following:
- (a) International customers are able to switch all or part of their requirements to different types of suppliers including national suppliers.
 - (b) Customers with spending in multiple countries do not have a strong preference for international contracts because international contracts do not provide customers with a material pricing advantage;
 - (c) Customers would switch to national contracts in the event of a 5 to 10% price increase. In order to come to that conclusion, the Notifying Party relies to a large extent on two customer surveys commissioned by Staples, the 2013 international survey and the 2015 international survey mentioned in recital (12);⁸⁷
 - (d) Tenders for international contracts are made up of different product baskets per each country; since baskets are priced per country, customers can benchmark the prices offered by international suppliers with the prices offered by national suppliers;
 - (e) Margins for international customers are not higher than for non-international customers;
 - (f) Even when customers purchase office supplies in more than one country, since many of the sales under purportedly international contracts are in fact made mainly in one EEA country or in very few EEA countries, international contracts would not be markedly different from national contracts.

6.1.3.2. Internal classification by the Parties

- (99) First, the Parties themselves define a sub-set of international contracts within their respective contract businesses. They define international contracts as those signed with customers (i) purchasing office supplies for at least three countries and (ii) spending a minimum amount per year (Staples: minimum spend of EUR [500 000-1 000 000]; Office Depot: minimum spending of EUR [500 000-1 000 000]). Staples defines such customers as "International Account Team" ('IAT') customers and Office Depot defines them as "International Key Accounts" ('IKA').
- (100) Staples sees the international customers segment as follows: "[...]."⁸⁸
- (101) Second, both Parties have separate departments and employees dealing with customers purchasing under international contracts. Staples European international

⁸⁷ For a description of the methodology of the surveys, see footnote 4.

⁸⁸ Staples internal document entitled "ISR. International Sales Roadmap", February 2012, page 15.

team includes the head of the international team and [...] employees. Office Depot's contract business in Europe includes a "Director International Accounts Europe" and there are a total of [...] dedicated employees under the Director, including dedicated International Business Development Managers and International Business Managers.⁸⁹

- (102) Staples introduced its International Account Team in 2001 and summarises its functions in Figure 3:

Figure 3: Staples internal document entitled "ISR. International Sales Roadmap", February 2012, page 3
[...]

- (103) Therefore, the Parties themselves internally distinguish a separate group of customers who purchase under international contracts which lends weight to the argument that international contracts should be considered as a separate product market.

6.1.3.3. Demand-side considerations

- (104) From a demand-side perspective and in the light of the results of the market investigation, the Commission considers, for the reasons set out in the present section, that international customers do not view purchasing under international and non-international contracts as equal or sufficiently comparable substitutes to include them in the same product market.

- (105) Moreover, according to the results of the market investigation, a significant number of international customers are unable or unwilling to switch between supply under international and non-international contracts and have a preference for being supplied through international contracts.

- (106) That is consistent with what is stated in Office Depot's internal documents "*A typical international customer or prospect is looking for: i) cross border reduction of supplier base; ii) cross border harmonization of assortment; iii) economies of scale: price and cost (TCO); iv) single point of contact; v) 'Glocal' approach; vi) footprint maximization; vii) blueprint for more strategic categories; viii) partner mirroring their own purchasing organization; ix) partner with cross border authority*".⁹⁰

6.1.3.3.1. Trend to move to international contracts

- (107) The international customers' category is expanding. Customers and competitors reported, in the context of the market investigation, that they observe a general trend to move to international contracts.⁹¹ One competitor explains in that context: "*Several years ago multinational companies were much more keen on discussing separately (e.g. country per country) their need in office supplies. There is an evident trend where they tend to cumulate all needs in one single international contract excluding companies that are unable to compete internationally, which are by far the majority*".⁹²

- (108) This trend is the result of an ongoing process aimed at optimising time and effort spent on the purchasing of input materials, and in particular of materials of low

⁸⁹ See Staples' reply to the Commission's request for information of 2 October 2015.

⁹⁰ Office Depot internal document "International Accounts Europe - GAC meeting - Boca Raton, April 30th 2014".

⁹¹ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 27.2; agreed minutes of the calls with customers and competitors.

⁹² Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 27.2.

importance such as office supplies. Indeed, many customers refer to office supplies as "c-parts" which have a low importance in the running of their business and therefore they prefer to keep the purchasing process as simple as possible, also in order to better monitor their spending.⁹³ In line with that general trend, most customers who currently purchase under international contracts and who replied to the Commission's market investigation reported that they had decided to switch to international purchasing in recent years.⁹⁴ Some companies follow that trend by relying on the assistance of service providers specialised in the organisation of multinational procurement strategies.⁹⁵ Other companies confirmed the existence and importance of that trend by highlighting that it has been accompanied by an internal re-organisation which results in the reduction of procurement staff in favour of central contracting and tenders implemented at headquarter level.⁹⁶

- (109) Staples itself appears to acknowledge the growing importance of international contracts for its business in the last ten years: "[...]."⁹⁷
- (110) Staples also identifies a trend towards more international tendering: "[...]."⁹⁸
- (111) The trend is confirmed by the fact that against the backdrop of a market which is shrinking in size, an increasing proportion of the Parties' net contract sales is represented by international contracts.⁹⁹ Although the Commission asked for turnover data for the past ten years (2005-2014), the Parties were only able to provide data for a shorter period. Staples was able to provide data only for the last three years (2012-2014) and for the first months of 2015. Even data for this relatively short period shows, however, that the proportion of international contract sales [increased by 1-3 percentage points between 2012 and the first months of 2015] (for Stationery [the increment was of 1-3 percentage points between 2012 and the first months of 2015]). Office Depot was able to provide data for the last five years in the overlap countries except Sweden. International contract sales as a proportion of contract sales [increased by 2-4 percentage points between 2010 and 2014].

⁹³ Agreed minutes of the call with a customer of 2 September 2015: "[customer] does not want to invest more procurement resources in the procurement of office supplies which are "C-parts" and as such not important input products for [customer]. More specifically, [customer] would not have the manpower to launch several local tenders and compare all the prices at the local level."

⁹⁴ Replies to Phase I Questionnaire Q5 to customers (international contracts) – Question 17.

⁹⁵ Agreed minutes of a conference call with a service provider of 29 September 2015: "There is a significant and increasing trend towards global tenders for customers: international customers want international contracts." (...) "The customers generally consult [company] in order to get its advice on how to globalize its contracts and not to regionalize them."

⁹⁶ In a conference call one of those customers stated that: "If [customer] were to have 6 different, local contracts, they would need 6 different webshops and payment / invoicing systems. This would create a need of 3 more employees." (agreed minutes of conference call with customer of 18 November 2015). Another customer stated that: ".. decentralisation would add personnel costs as the national business units would have to run the tender processes again. Currently, only two employees within [customer] are managing the contract centrally." (agreed minutes of call with a customer of 9 September 2015).

⁹⁷ Staples internal document entitled "ISR. International Sales Roadmap", February 2012, page 3.

⁹⁸ *Ibid*, page 7.

⁹⁹ See reply to RFI of 2 October 2015 on international contracts.

6.1.3.3.2. Advantages of international contracts

(112) The customers replying to the Commission's market investigation explained that international contracts for office supplies have the following advantages compared to multiple national contracts:¹⁰⁰

- (a) Lower prices/international rebates through pooling of purchasing volumes
- (b) Reduced human resources spending on purchasing process
- (c) Uniform quality
- (d) Uniform IT ordering system
- (e) Uniform invoicing system
- (f) Improved cost control
- (g) Central and advanced reporting to identify best practices
- (h) Advanced logistics
- (i) Better service/one key account manager

(113) The following quotes illustrate customers' comments received in the course of the market investigation on the advantages of international contracts:¹⁰¹

"An international contract against several national contracts represents: only one negotiation, only one implementation, only one supplier monitoring, quick and global and detailed view of our spending."

"The advantage of an international framework contract is that [a customer] has more negotiating power (when the whole Group is involved); it also facilitates the deployment of good practice policies, as all the entities can take advantage of the Group power negotiation. Office supplies represent a rather small spending: there is no interest for the Group to generate human resources to tackle local negotiation country by country."

"Lower prices (including volume discounts, centralized monitoring of our international spending, reduction of the number of different products we purchase, simplification of invoicing, payment and deliveries, etc.)"

(114) To quantify such advantages, a distinction should be made between direct cost advantages (through lower purchasing prices), indirect cost advantages (through process cost optimisation) and other advantages in terms of service and quality. When asked during the market investigation how much cheaper it is for them to buy through an international contract, customers' replies ranged from "a few percent" to 40%. Conference calls with some of those customers during Phase I showed that some customers had understood their answer to include only direct cost advantages. The individual (non-confidential) replies were:¹⁰²

¹⁰⁰ Replies to Phase I Questionnaire Q5 to customers (international contracts) – Question 13; agreed minutes of calls with customers; almost all of the customers replying to the Commission's market investigation identified all or some of the advantages listed in recital (112).

¹⁰¹ Replies to Phase I Questionnaire Q5 – Question 13.

¹⁰² Replies to Phase I Questionnaire Q5 – Question 13.1; none of the customers explicitly stated in reply to Question 13.1 that the price levels were the same (although the lack of reply by some customers has to be interpreted with caution); agreed minutes of the conference calls with customers.

Company	Cost Savings	Company	Cost Savings
Respondent 1	10-15%	Respondent 7	5-10%
Respondent 2	10%	Respondent 8	5%
Respondent 3	10-20%	Respondent 9	5-10%
Respondent 4	5-10%	Respondent 10	40%
Respondent 5	"a few%"-40%	Respondent 11	"much cheaper"
Respondent 6	8-15%%	Respondent 12	15%

- (115) More interviews with customers buying under international contracts took place during the market investigation in Phase II. When asked how much cheaper it is for them to buy through an international contract, the respondents gave the following replies, referring either only to direct cost advantages or to both direct and indirect cost advantages.¹⁰³

Company	Cost Savings	Company	Cost Savings
Respondent 1	5-10% [D]	Respondent 7	10 % [I]
Respondent 2	40% [D/I]	Respondent 8	up to 20 %[D]
Respondent 3	10%[D]	Respondent 9	up to 30%[D]
Respondent 4	20%[D]	Respondent 10	5-10%[D]
Respondent 5	12-13% [D]	Respondent 11	20%[D]
Respondent 6	10 %[D]	Respondent 12	10-15% [D/I]

- (116) The Parties argue that international contracts do not provide customers with a material pricing advantage.¹⁰⁴ This is based on question 34 of the 2013 international survey which asked the surveyed customers about the price differential between contracts with national and international vendors.¹⁰⁵ According to the Parties, the responses to that question show that the expected prices from a single international vendor may be either higher or lower than the expected prices from a combination of national vendors. More precisely, the distribution is symmetric across the different options available to the respondents: [10-20]% of respondents mention that international prices are higher by more than [5-10]%; [10-20]% of respondents mention that international prices are higher by less than [5-10]%; [30-40]% of respondents mention that there is no difference between international prices and national prices; [10-20]% of respondents mention that national prices are higher by

¹⁰³ The replies including only direct cost advantages are marked in the table as [D] while only indirect cost advantages are marked as [I] and replies including both are marked [D/I] (agreed minutes of conference calls with customers of 20 November 2015, 23 November 2015, 24 November 2015, 23 November 2015, 24 November 2015, 18 November 2015, 18 November 2015, 12 November 2015, 24 November 2015, 26 November 2015, 26 November 2015, 26 November 2015).

¹⁰⁴ See the submission "*Competitive Assessment – International Customers*", dated 18 May 2015, RBB Economics, page 14.

¹⁰⁵ The 2015 International survey has similar results as the 2013 International survey.

less than [5-10]%; and [10-20]% of respondents mention that national prices are higher by more than [5-10]%.¹⁰⁶

- (117) The Commission, however, considers that the formulation of the question does not allow for such inferences. This question is phrased as: "*assuming no differences in other features, what is your expected price differential between purchasing from a single international vendor vs a group of 2-3 national vendors – if any?*".¹⁰⁷ The Commission considers that the wording "*assuming no differences in other features*" is potentially misleading since it prompts the respondents to assume that potentially important differences between international and national suppliers such as for example the number of countries covered do not exist. Moreover, given the assumption implied by the wording of that question, which is that national suppliers are identical to international suppliers in all other features except prices, it is not surprising that the proportion of customers that mention that international prices are lower than national prices ([30-40]%) is relatively similar to the proportion of customers mentioning that international prices are higher than national prices ([20-30]%).¹⁰⁸
- (118) As part of a broader effort to verify the results of its market investigation against the findings of the 2013 and 2015 surveys submitted by the Parties, the Commission has been able to reach 28 of the 104 respondents to the 2015 international survey. Among the customers that could quantify the savings generated by an international contract, all but two indicated that the savings they obtain from international contracts are 10% or higher. This is in line with the Commission's findings in the market investigation.
- (119) The price advantage of international contracts, moreover, is not exclusively explained by the fact that customers can aggregate the volumes they purchase under a single contract with a supplier, and obtain rebates based on volumes. Internal documents show that rebates may also be granted in correlation with the geographical scope of the contract itself.¹⁰⁹
- (120) As regards the Notifying Party's argument that it would not be relevant to distinguish a different segment for international contracts, because the spending made under such contracts in the EEA is in any case concentrated in one or few EEA countries, the Commission finds that the evidence available to it does not support that conclusion. According to a submission on the geographical coverage for each of the Party's international contracts,¹¹⁰ only one third of the Parties' international contracts cover more than [70-80]% of the customer's demand in one country only. Of the

¹⁰⁶ Question 18 of the 2015 international survey allows to carry out a similar analysis. Excluding the don't know/unsure category, [10-20]% of respondents mention that international prices are higher by more than [5-10]%, [10-20]% of respondents mention that international prices are higher by less than [5-10]%, [20-30]% of respondents mention that there is no difference between international prices and national prices, [10-20]% of respondents mention that national prices are higher by less than [5-10]%, and [20-30]% of respondents mention that national prices are higher by more than [5-10]%.
¹⁰⁷ See the submission "*Competitive Assessment – International Customers*", dated 18 May 2015, RBB Economics, page 14.

¹⁰⁸ In the 2015 international survey, despite the potentially misleading wording, the proportion of respondents mentioning that national prices are higher than international prices increases up to [40-50]%, compared to [30-40]% in the 2013 international survey.

¹⁰⁹ See internal documents showing rebates offered for additional countries added to the contract, irrespective of the quantity thresholds purchased by the customers. For instance, Office Depot internal excel file titled ODP – EU – 00017765.

¹¹⁰ Form CO, Annex 23.

remaining two-thirds of contracts, [70-80]% cover sales of office supplies to more than five countries.¹¹¹

6.1.3.3.3. Customer preference

(121) Based on the results of the 2015 and 2013 International surveys, the Parties argue that international customers do not have a strong preference for international contracts.

(122) Table 2 summarises the replies to the relevant questions in the 2013 and 2015 international surveys asking the surveyed customers about the number of different suppliers they have across different countries.¹¹²

Table 2: Results of the 2013 and 2015 International surveys on sourcing policy for international customers

2015 International survey	Number of observations	%	Cumulative %
A single supplier covering all countries	[...]	[...]%	[...]%
A single supplier covering most of the countries	[...]	[...]%	[...]%
A single supplier covering some of the countries	[...]	[...]%	[...]%
Different suppliers in each country	[...]	[...]%	100%
Total	[...]	100%	

Don't know/unsure: [...] observations

2013 International survey	Number of observations	%	Cumulative %
Single vendor in all countries	[...]	[...]%	[...]%
Single vendor for more than 50% of countries	[...]	[...]%	[...]%
Single vendor for less than 50% of countries	[...]	[...]%	[...]%
Different vendors in each country	[...]	[...]%	100%
Total	[...]	100%	

Don't know/unsure: [...] observations

Source: Commission' calculations based on the 2013 and 2015 International surveys.

(123) In their interpretation of the results concerning the 2015 international survey in Table 2, the Parties aggregated the number of respondents for the following three categories: (i) a single supplier covering most countries, (ii) a single supplier covering some countries, and (iii) a different supplier in each country. This allows them to claim that [60-70]% of the customers responding to the 2015 international survey use multiple vendors across countries ([60-70]% in the 2013 international survey).¹¹³

(124) The Commission notes however that the survey results may also lead to different interpretations. In particular, it is also possible to aggregate the number of respondents having indicated that they have (i) a single supplier covering all countries; (ii) a single supplier covering most countries, in which case the Parties' surveys could be read as indicating that [60-70]% ([70-80]% in the 2013

¹¹¹ Form CO, Annex 23.

¹¹² Question 8 of the 2013 International survey (see Annex A.1 of the submission "*Competitive Assessment - International Customers*", dated 18 May 2015, RBB Economics), and Question 8 of the 2015 International survey (see "*Project Warrior – survey Questionnaire*", dated 11 May 2015, RBB Economics).

¹¹³ See "*Competitive Assessment – International Customers*", submission of 18 May 2015, RBB Economics.

international survey) of the respondents use a single supplier for all or most of the countries.

- (125) The important gap in the percentages between the categories "single supplier covering most of the countries" ([30-40]% of respondents in the 2015 international survey, [30-40]% of respondents in the 2013 international survey) and "single supplier covering some of the countries" ([10-20]% of respondents in the 2015 international survey, [5-10]% of respondents in the 2013 international survey) suggests that the strength of the preference for single sourcing is different between those two categories of respondents. Therefore, the Commission disagrees with the Parties' approach to pool the respondents that use a single supplier for most countries with the respondents that use a single supplier for some countries or a different supplier in each country.
- (126) The results of the Commission's market investigation on the advantages of international contracts also point to a marked preference of multinational customers for contracting office supplies under an international contract (see recitals (112) to (120)).
- (127) Furthermore, to address the Parties' claim presented in recital (121) and to better understand large customers' preference for sourcing office supplies internationally from a single supplier, the Commission reviewed sales data provided by the Parties on Staples' and Office Depot's international customers.¹¹⁴ That data includes purchases from the Parties by customer and country. The Commission could identify 55 firms that appear as customers with both Parties in at least one EEA country. While those firms do indeed purchase from both Parties across various countries (and possibly within the same country as well), the Commission found that they typically make the overwhelming share of purchase value from only one of the Parties. Analysing the value split of purchases made from the Parties by subsidiaries of those customers located in various countries showed that typically more than [90-100]% of the total sales value of customers across all subsidiaries were completed with one of the Parties, leaving less than [0-10]% for the other Party. This behaviour is consistent with a strong preference for single sourcing office supplies internationally.

6.1.3.3.4. Switch to national contracts in reaction to a SSNIP

- (128) In the Phase I investigation, a majority of respondents among international customers (13 out of 20 respondents who took a clear position on the matter¹¹⁵) indicated that they would not switch to sourcing separately per country if they could get a better price from national suppliers. Those customers confirmed in their reply that they had a set preference to source office supplies from one international supplier.¹¹⁶ However, when asked about a hypothetical small but significant and non-transitory increase in price ("SSNIP") of 5 to 10% in international contracts, a clear majority of customers (14-15¹¹⁷ out of 21 respondents) indicated that they would switch to non-international contracts.¹¹⁸ Out of the 20 respondents who took a clear position on the

¹¹⁴ Form CO, Annex 23.

¹¹⁵ That counting of replies is based on the confidential and non-confidential replies. In total, seven respondents indicated that they would switch to sourcing separately per country, 13 indicated that they would not and four respondents indicated "Other".

¹¹⁶ Replies to Phase I Questionnaire Q5 – Question 14.

¹¹⁷ One of the customers who had indicated that it would switch to national contracts in reaction to a SSNIP in international contracts explained its reply by stating "*If there are no other international substitutions available*" so it is not clear whether its reply can be counted as a yes or no.

¹¹⁸ Replies to Phase I Questionnaire Q5 – Question 15.

first question, 18 also replied to the second question. Out of these, eight respondents provided seemingly contradictory replies by replying no to the first switching question and yes to the second switching question.

- (129) To investigate those potential inconsistencies in the customers' replies, the Commission conducted follow-up calls with the eight customers whose answers appeared to be contradictory. The Commission also spoke to the other respondents who had indicated their readiness to switch to national contracts in the event of a SSNIP in international contracts and to respondents who had indicated that they would not switch.
- (130) While the 15 customers who had indicated that they would switch to national contracts in the event of a SSNIP in international contracts generally clarified that it is very difficult to reply to a hypothetical question of that kind, nine of them replied that they would not switch in light of a price increase of 5 to 10%, and the remaining six said that a price increase of 5 to 10% would not by itself be sufficient to persuade them to revise their procurement strategy, and they would probably continue sourcing under an international contract.¹¹⁹ The Commission thus found that virtually all of those respondents had overstated their actual switching behaviour when replying to the written Commission questions in the Phase I investigation. The Commission also contacted customers that indicated they would not switch in the event of a 5 to 10% price increase (even if there was no inconsistency in their reply) but none of those customers suggested that they would switch when clarifying their replies, thus confirming their reply. While there was evidence of overstated switching behaviour in their replies to the SSNIP question, there was no evidence of an understated switching behaviour in reply to the same question. This was also consistent with the indication of savings achieved through international contracts, which generally exceed 10%.¹²⁰
- (131) The Parties, however, reiterated their argument to prove that customers purchasing office supplies under international contracts would switch to non-international contracts in case of a SSNIP in international contracts. The Parties mostly rely on the 2013 and 2015 International surveys. [80-90]% of the respondents in the 2015 international survey replied that they would switch from international suppliers to national suppliers in the event of a price increase of [10-20]% by all international suppliers (the corresponding figure was [80-90]% in the 2013 international survey).¹²¹ The detailed results of the 2015 international survey are presented in Table 3.

¹¹⁹ See minutes of follow-up conference calls with customers.

¹²⁰ See paragraphs (114) and (115).

¹²¹ See email sent by the Notifying Party to the Commission on 3 September 2015.

Table 3: Results of the 2015 international survey on the Question 20 "What is the minimum price increase by the major international suppliers that would cause you to purchase from national players for your office supply needs"

	Incl. don't know			Excl. don't know		
	Number of observations	%	Cumulative %	Number of observations	%	Cumulative %
A price increase of less than [0-5]%	[10-20]	[10-20]%	[10-20]%	[10-20]	[10-20]%	[10-20]%
A price increase of between [0-5]% and [0-5]%	[20-30]	[30-40]%	[40-50]%	[20-30]	[40-50]%	[50-60]%
A price increase of between [5-10]% and [10-20]%	[10-20]	[10-20]%	[60-70]%	[10-20]	[20-30]%	[80-90]%
A price increase above [10-20]%	[10-20]	[10-20]%	[70-80]%	[10-20]	[10-20]%	100%
Don't know/unsure	[10-20]	[20-30]%	100%	NA		
Total	81	100%		64	100%	

Source: Commission's calculations based on the 2015 international survey.

- (132) The follow-up calls with customers who answered positively to the SSNIP question in the Commission's Phase I investigation as described in recital (128) raised the question whether the differing outcomes of the Parties' surveys and of the Commission's market investigation could be explained by a tendency of customers to overstate their switching behaviour in reply to the SSNIP question also in the context of the Parties' surveys.
- (133) In order to assess that hypothesis, the Commission identified the 52 respondents that replied positively to the SSNIP question in the 2015 international survey, that is to say those customers who replied that they would switch to national contracts in the event of a price increase of 10% or less.¹²² The Commission was able to contact more than half (28 out of 52) of those who indicated that they would switch for a price increase of 10% or less.
- (134) Three of the respondents do not, in fact, purchase office supplies under an international framework contract, so for those respondents, the SSNIP question was not applicable. As regards the remaining respondents, the Commission found evidence that they had overstated their switching intentions and that in most cases they had not taken into account the cost of switching when replying to the 2015 survey.¹²³ None of those remaining 25 respondents contacted by the Commission clearly confirmed that they would switch to national contracts in the event of a SSNIP in international contracts. Eight respondents explained that they may consider switching subject to a number of factors (such as prior attempts to negotiate better prices with their existing international suppliers) but that this was not certain. Six respondents indicated that they would rather not switch, and 11 respondents indicated that they would definitely not switch. Generally, the respondents contacted by the Commission indicated that they would not switch from international contract

¹²² Those 52 customers include the 11, 27 and 14 customers listed in Table 3 who replied they would switch in case of a price increase of less than 2%, between 2% and 5% and between 5% and 10% respectively.

¹²³ Minutes of conference calls with respondents to the 2015 survey.

to national contracts because that would entail reversing their company's policy of central sourcing.¹²⁴

- (135) Those results cast significant doubt on the results of the 2013 and 2015 international surveys regarding the switching behaviour of international customers. Even assuming that the eight respondents that were unsure about their potential behaviour would indeed switch for a price increase of up to 10%, this leads to a switching proportion within the sample of 32% for a price increase of up to 10%. While that proportion is based on a relatively small number of respondents (25), it is in stark contrast to the Parties' submission of a figure of 80-90% from the survey evidence. The Commission also notes that its approach is conservative and thus favourable to the Parties, since the 28 respondents contacted were classified as switchers in the 2015 international survey (and thus had made 100% positive replies to the SSNIP question), which should therefore have led to a bias toward a high number of switches.
- (136) Furthermore, some of the survey responses are inconsistent when comparing the question on switching and the question on price differences between international and national suppliers. In the 2015 international survey, among the 38 respondents replying that they would switch in the event of a price increase by international suppliers of less than 5%, eight respondents also replied that national prices are more than 5% higher.
- (137) Those findings were further confirmed by the customers' actual switching behaviour as reported in the market investigation. Only two respondents to the market investigation in Phase II reported that they had actually switched to national suppliers in the past, in response to a lower price offer compared to international suppliers,¹²⁵ while only one respondent in Phase I reported a partial switch to a non-international contract.¹²⁶ All other respondents that switched in the past had switched from national to international contracts and were thus part of a progressive trend to pool the spending in different countries under a single international framework contract.¹²⁷
- (138) The Parties further submitted a sample list of customers of both Parties that allegedly switched from an international contract to a national contract. The Commission verified those submissions, also contacting some of those customers mentioned by the Parties, and found that several of the customers were examples of customers

¹²⁴ Minutes of conference calls with respondents to the 2015 survey.

¹²⁵ Reply of one customer to Phase II Questionnaire Q8f to customers – Questions 34 and 43.1. However, the suppliers of this customer are Staples in the United Kingdom and Lyreco in the remaining countries in which the customer is active, see reply to question 43.1. Further, in Phase I of the market investigation, the same customer stated that: "*3 international suppliers can meet our 'one stop shop' needs: Staples, Lyreco or Office Depot*", Phase I Questionnaire Q4 to customers (contract), question 19.3. For the other customer, the switch happened because the company purchases such low amounts of office supplies that no volume gains can be obtained by having centralised purchasing, (agreed minutes of conference call with a customer of 30 November 2015).

¹²⁶ Agreed minutes of conference call with customer of 2 September 2015.

¹²⁷ For example, one customer explained: "*The global agreement was concluded in 2011.[...] Before 2011 the contracts were mostly national/regional.*" Another customer stated that: "*[...] has had local contracts historically, but 1,5 years ago it started to gradually replace these by moving to international sourcing.*" A customer further explained "*At the beginning of 2013, [...] started preparing its first international tender for office supplies. [...] regarded stationery/office supplies as a product group well-suited for international supply. At the end of 2013, the tender was launched for 6 countries in Europe.*" (agreed minutes of conference calls with customers of 16 October 2015, 24 November 2015 and 12 November 2015).

sourcing a product from a specialist supplier¹²⁸ or customers moving from central sourcing to local sourcing but maintaining the Parties or Lyreco as a supplier. In one instance, a customer reached by the Commission expressly denied having already switched away from the international contract with one of the Parties in reaction to a planned price increase.¹²⁹

6.1.3.3.5. Price setting and benchmarking in international contracts

- (139) The Parties further submit that the prices in international contracts are set at a national level and that customers use national prices as a benchmark to assess the competitiveness of international offers. Calls with competitors and replies from customers to the market investigation confirm that prices in international contracts appear to be set at the national level in many cases.¹³⁰ However, that does not in itself provide evidence on demand-side substitutability since the comparison of prices at the national level can be caused by a number of reasons (including comparison with previous offers made under national tenders, differences in local purchasing power and differences in cost-to-market). Therefore, comparison of national prices does not necessarily imply that national contracts will be considered as adequate substitutes for international contracts.
- (140) Furthermore, the Parties' internal documents indicate that there is a growing trend towards uniform pricing in Europe and that discounts are granted on the basis of overall volumes instead of being granted on a country by country basis. While multinational customers responding to the market investigation largely confirmed that the comparison of offers within international tenders is made on the basis of national baskets, some of them acknowledged that contracting under an international contract allowed them to obtain a uniform price, or that they expected that by contracting internationally they could achieve a uniform price across different countries.¹³¹
- (141) Even in the many cases where a price comparison is made based on national baskets of products and national price lists, benchmarking cannot be fully made against prices set nationally because of rebates. Most international contracts contain volume rebates which are granted across the total spending of the customer so that irrespective of the starting price, customers have to factor in an overall spending rebate when comparing offers.
- (142) As regards price benchmarking, the Commission has also analysed the results of the 2013 survey.¹³² Among the international customers who conducted a price benchmarking in the market place in the last two years before the 2013 survey, [80-90]% included Staples in the price benchmark, [70-80]% of the respondents

¹²⁸ See Reply to Request for information on the reply to the Article 6(1)(c) decision, reply to Question 1 and Annex 1.

¹²⁹ See Minutes of a conference call with a customer, 30 October 2015.

¹³⁰ Replies to Phase I Questionnaire Q5 – Question 20; agreed minutes of conference calls with customers of 26 November 2015, 25 November 2015 and 23 November 2015.

¹³¹ In a conference call one customer said that: "*The prices for the products covered by the contract are set at an international level.*" Another customer who recently tendered said that: "*Prices will be negotiated centrally with the new framework contract.*" Another customer said that: "*Generally, [customer] requests to have uniform prices for all countries under its international contact. This is however not always possible, especially in case of products manufactured locally.*" (agreed minutes from conference calls with customers of 28 November 2015, 24 November 2015 and 24 November 2015 respectively).

¹³² See Annex A.1 of the submission "*Competitive Assessment - International Customers*", dated 18 May 2015, RBB Economics, question 20 and question 21. See also footnote 273 for a detailed description of this question in the 2013 International survey.

included Lyreco, and [40-50]% of the respondents included Office Depot. Other alternatives appear significantly less than the three international suppliers: "a combination of local vendors" is mentioned by only [5-10]% of the respondents, Amazon by only [5-10]% of the respondents, Fiducial (which is a national supplier in France and to a lower extent in Belgium) by only [5-10]%, specialised ink & toner vendors by only [0-5]% of the respondents, and Quantore (which is a national supplier in the Netherlands) by only [0-5]% of the respondents. Those results suggest that international customers benchmark prices among the three international suppliers, and that national vendors and specialists suppliers are often not included in the price benchmarking against international suppliers. The Commission also notes that it was not possible to conduct a similar analysis with the 2015 international survey since that question on price benchmarking was not included.

6.1.3.3.6. Conclusion on demand-side substitutability

(143) Based on the assessment in recitals (104) to (142) and the outcome of the market investigation, the Commission considers that there is limited demand-side substitutability between international and non-international contracts.

6.1.3.4. Supply-side considerations

6.1.3.4.1. Capability of national suppliers to supply customers in other countries

(144) From a supply-side perspective, suppliers do not appear to be able to offer international contracts if they do not have operations set up in the relevant countries.¹³³ Such operations would include at the very minimum logistics capabilities and customer service which can be performed either through the supplier's own operations or through an alliance with a local partner. Further requirements would include knowledge of the specific market situation and local product preferences as well as the ability to serve multi-lingual clients in terms of catalogues and customer service.

(145) In the words of a competitor, 'due to the legal structure, the complexity, the geographical scope and various law/jurisdictions, international contracts differ materially from national contracts'.¹³⁴

(146) The results of the market investigation indicate that setting up new contract distribution operations in an EEA country or entering into an international business alliance are options that are not available in the short term without incurring significant costs or risks.¹³⁵ For instance, one of the competitors estimated that the required investments would exceed several million EUR and take several years. However, as already set out in recital (55), supply-side substitutability requires that suppliers would not need to adjust existing tangible and intangible assets, make additional investments, take strategic decisions or incur time delays.¹³⁶

(147) Another competitor¹³⁷ indicated that: '[competitor] is not operating internationally (...). This is a real disadvantage, as large customers want international framework contracts. (...). There are barriers to expansion that generally make it difficult to

¹³³ Further details on the need to have a local presence in the EEA countries will be discussed in the section on the geographic market definition (see section 0).

¹³⁴ Reply of a competitor to Phase II Questionnaire Q9 – Question 32.1.

¹³⁵ Replies to Phase I Questionnaire Q1 – Questions 55.1 and 55.2.

¹³⁶ Commission Notice on Market Definition, paragraphs 20 and 23.

¹³⁷ Agreed minutes of a conference call with a competitor of 16 October 2015.

expand to other countries: those are related to specific local demands, market knowledge, the need to build a local presence and suitable logistics'.

- (148) The inability to supply customers internationally also reduces the ability to participate in international tenders from the outset, particularly when the tender specifications on an international tender expressly require previous experience in supplying customers under international contracts. For example, in an invitation for an international tender, a customer included an eligibility requirement for the supplier to have "*performed at least three contracts within the last five years substantially similar in scope and magnitude.*"¹³⁸ Another customer listed "*experience with international companies with high coverage of footprint in Europe*"¹³⁹ as the "*key attribute*" of the successful supplier. Yet another customer listed the "*supplier's relevant global experience*" as part of the evaluation criteria for the assessment of suppliers' proposals in response to its tender.¹⁴⁰
- (149) Therefore, the Commission finds that national suppliers have little to no capacity to supply customers in other countries under international contracts.

6.1.3.4.2. Participation of national competitors in international tenders

- (150) The results of the market investigation indicate that some customers allow suppliers to only bid for certain countries covered by an international tender.¹⁴¹ However, in most cases, only the Parties and Lyreco participate in international tenders. Of the customers purchasing under international contracts who replied to the market investigation, only a few listed national suppliers as participants in their international tenders.¹⁴²
- (151) Evidence from the market investigation also suggests that, while locally active, companies may be invited in order to have more competitive pressure on international suppliers, they are either unable to bid or do not succeed in securing only part of the customer's tendered spending.¹⁴³ Furthermore, local companies do not appear to be successful in international tenders as the bidding data analysis presented by the Parties shows (see recitals (319) to (325)).
- (152) The 2013 international survey also shows that in most cases, only the Parties and Lyreco compete for international tenders. As discussed in recitals (326) to (330), when respondents were asked about the suppliers participating in tenders, Staples, Office Depot, and Lyreco were by far the most cited participants, both at the initial stage and at the shortlist stage of the tenders. National suppliers and specialists rarely appear as participants for international tenders. In addition, as discussed in recital (142), the Parties and Lyreco are the most cited suppliers included in price benchmarking conducted by the respondents, compared to national suppliers and specialists which cited by very few respondents. As discussed in recitals (335) to

¹³⁸ See internal documents of Office Depot, a document entitled "Invitation for international bidding for [customer] centralised contract for the procurement of office supplies" of 10.07.2015.

¹³⁹ See reply to RFI of 20 November, including Office Depot's internal document entitled "Request for proposal, office supplies [company]" of 17.02.2015.

¹⁴⁰ See reply to RFI of 20 November, including Office Depot's internal document entitled "Request for proposal (RFP), Global Office Consumables Tender" of 03.06.2015.

¹⁴¹ Replies to Phase I Questionnaire Q5 – Question 47 and replies to Phase II questionnaires Q8a-j to customers – Question 8.

¹⁴² Replies to Phase I Questionnaire Q5 – Question 45.

¹⁴³ Agreed minutes from conference calls of 29 September 2015 and 16 October. Replies to Phase II questionnaires Q8a-j to customers – Question 8 for evidence of local suppliers being invited but unable to bid or win the contract.

(338), the 2013 international survey also reveals that international customers consider that national suppliers and specialists are not credible alternatives to the Parties and Lyreco for international contracts. Last, the analysis of bidding data for international tenders suggest that the competition is mainly between the Parties and Lyreco, while national and specialist suppliers do not pose a significant competitive pressure in international tenders (see recitals (319) to (325) for a detailed discussion).

- (153) The evidence thus indicates that despite receiving bids of competitors which can only provide non-international contracts, in practice, the customers do not consider such bids as viable substitutes to international bids.

6.1.3.4.3. Conclusion on supply-side substitutability

- (154) In light of the analysis in recitals (144) to (153), the Commission finds that there is limited supply-side substitutability between international and non-international contracts.

6.1.3.5. Margin levels

- (155) The Parties also argue that margin levels can be used as an indicator to assess whether national and international contracts could fall into separate product markets. According to the Parties, their margins for international contracts¹⁴⁴ are, on average, almost the same as their margins for national contracts. According to the Parties, this justifies not defining separate markets since the purported differences in competitive conditions (in terms of number and strength of competitors) should lead to higher margin levels for international contracts.¹⁴⁵

- (156) However, the margin levels can be influenced by many factors (not considered in the analysis provided by the Notifying Party), including but not limited to the scale of the contracts and the dynamics in the negotiations between customers and suppliers. That issue notwithstanding, the margin analysis alone is insufficient to counter the findings related to demand and supply-side substitutability as established in line with the available evidence and the results of the market investigation.

6.1.3.6. Conclusion on the segmentation of the contract market

- (157) Based on the assessment in recitals (144) to (156), the Commission considers all the evidence available and the outcome of the investigation and takes into account the trend for customers to move toward international contracts, the advantages to customers provided by international contracts and their potential and actual switching behaviour and the inability of national suppliers to compete for international contracts. In light of that evidence, the Commission concludes that international contracts of office supplies constitute a separate product market from non-international contracts of office supplies.

6.1.4. *Non-international contract market: Segmentation by customer size*

6.1.4.1. The views of the Notifying Party

- (158) With regard to national contracts, the Parties consider that a further distinction among national contracts according to customer sizes (for example based on a specific number of office workers) is not warranted. According to the Notifying Party, given the arbitrary nature of a cut-off point which would separate large and small customers, distributors are not in a position to price discriminate between

¹⁴⁴ Following the Parties' internal classification, see recital (99).

¹⁴⁵ Form CO, Annex 22, page 15.

customers; no matter how large or small the customer, suppliers will provide the same service and product range offering.

6.1.4.2. The Commission's assessment

- (159) As regards the contracts for different customer sizes, the Commission previously concluded in *Buhrmann/Samas Office Supplies*¹⁴⁶ that it was necessary to distinguish between, on the one hand, small customers and, on the other hand, medium-sized to large customers (which would generally include at least customers with 200 office workers or more but the category would be extendable to customers with 100 offices workers or more). The latter source traditional office supplies nationwide and have specific requirements in terms of one-stop-shop ordering and account management, specific ordering and delivery facilities adapted to their own systems and processes and logistics. That approach is broadly confirmed by the results of the market investigation in this Decision.¹⁴⁷
- (160) That distinction is in line with the Parties' own internal segmentation of different customers, which they classify in different categories depending on their target spending in office supplies.
- (161) According to Staples' internal classification, a customer with less than [200-300] employees is classified as a 'Mid-Market account', while above that level it is classified as an 'Enterprise account' (with the exception of International IAT accounts as defined in recital (99)).
- (162) Similarly, Office Depot's customer classification relies on the potential spending of those customers. The main categories are 'Inside Sales Accounts' (Spending under EUR [5 000-10 000] per year), 'Regional Accounts' (EUR [5 000-10 000] to [25 000-30 000] per year), 'Mid-Market Accounts' (EUR [25 000-30 000] to [100 000-110 000]), and Major Accounts (more than EUR [100 000-110 000] per year), excluding the International IKA category as defined in recital (99).
- (163) When providing data on their customers spending, the Parties submitted that while they have no means to monitor sales to customers with 100-200 office workers, they are able to provide data on customers with more than 250 total employees, which could be used as a proxy for the previous office-worker level established in the Commission's precedent.
- (164) Internal documents of the Parties confirm the Commission's previous findings that when supplying large business customers, suppliers need to meet specific requirements, concerning logistics, service, invoicing, and specific e-platforms.¹⁴⁸ Below that threshold, the contract market has less distinctive features and may be subject to competition from other channels. In this regard, the Notifying Party itself acknowledges that from a demand-side perspective, Enterprise customers (that is to say customers with [200-300] or more employees) typically have procurement departments and follow more formal procurement processes (for example, they engage in more in-depth negotiations and there is more involvement from the Parties'

¹⁴⁶ See case M.2286 – *Buhrmann/Samas Office Supplies*, recital 18.

¹⁴⁷ Replies to Phase I Questionnaire Q1 – Questions 16 to 18.

¹⁴⁸ See reply to the Commission's request for information of 20 November, including for example Office Depot's internal document entitled "Tender Information, Request for Quotation(RFQ) – Gating Document –" of 3 June 2014, page 13. See also Staples' internal document entitled "[...] Request For Proposal event" of 31 July 2015.

account managers), as opposed to midmarket customers (that is to say customers with less than [200-300] employees).¹⁴⁹

- (165) Moreover, the Notifying Party indicated in a submission during the Phase II investigation that *“The level of threshold of contract sales is very low and contracts are relatively subjective concept (...). Indeed, negotiated contracts that follow negotiations basically only exist for very large customers with more than [200-300] employees. As such, the hypothetical market for 250+ customers is arguably the best proxy of the hypothetical contract market”*.¹⁵⁰
- (166) Therefore, based on the findings in its precedents, the Parties’ internal segmentation of customers and customers’ specific requirements which can only be met by a subset of suppliers, the Commission considers that there is a separate product market for contracts with customers with more than 100-200 office workers or 250 employees.
- (167) Moreover, according to the results of the market investigation in Phase I and as set out in the Article 6(1)(c) Decision, the Commission initially saw indications that there could be a further sub-segmentation of the market for non-international contracts pertaining to the uppermost part of the market, that is to say very large contracts. Thus, the Commission investigated also whether in addition to a separate market of contracts with customers with more than 250 employees there could be a separate market with customers larger than that, for instance with more than 1 000 employees or with a very large spending per year, including the largest customers who spend more than EUR 1 million per year.
- (168) During the market investigation in Phase II, however, the Commission found that several of those large customers purchase office supplies under international and not national contracts. Furthermore, while the national competitors selling to customers with more than 250 employees confirmed their inability to supply office products to customers spending in more than one country, they did not generally indicate any specific barriers to supplying such very large contracts across the different national markets. Therefore, the Commission’s initial hypothesis concerning the existence of a potential market for very large contracts was not confirmed in the course of the Phase II investigation.

6.1.4.3. Conclusion on the non-international contract market

- (169) Based on the arguments in recitals (160) to (168) and in line with its precedents, the Commission concludes that the market for non-international contracts can be split into (i) the market for non-international contracts with large customers with more than 100-200 office workers or 250 total employees; and (ii) the market for non-international contracts with customers with less than 100-200 office workers or 250 employees.

¹⁴⁹ See "Note on the reduction in the number of key suppliers for stationery", submitted on 23 October 2015, paragraph 7.

¹⁵⁰ Form CO, Annex 26, 'Market shares of full range contract suppliers'.

6.1.5. Conclusion on the product market definition

(170) In the light of the analysis set out in sections 6.1.1 to 6.1.4, the Commission concludes that for the purposes of the product market definition in this case, the following separate product markets can be identified:

- (a) As regards the channels for distribution of office products: (i) contract channel, (ii) direct channel and (iii) wholesale channel constitute separate product markets;
- (b) Within the contract channel, international and non-international contracts constitute separate product markets. The non-international contract market can be further segmented into (i) the market for large business customers with more than 250 employees (or 100-200 office workers) and (ii) the market for business customers with less than 250 employees (or 100-200 office workers);
- (c) As regards the categorisation by product, there is a separate product market for the one-stop-shop supply of traditional office supplies categories. The question whether there exists a further segmentation by individual category of traditional office products can be left open.

6.2. Geographic market definition

6.2.1. International contracts

(171) The Notifying Party contests that there is a separate market for international contracts and has therefore not submitted specific arguments on the geographic scope of that market.

(172) According to the results of the Commission's investigation, multinational customers that purchase under international contracts require supplies at different locations in several EEA countries. The Parties are not themselves active in all European countries but when they supply an international customer in countries where they are not active, they rely on partnerships with third parties.¹⁵¹

(173) The Parties' business model seems to be structured in such a way as to allow for them to have their own direct local presence in countries where international customers have the highest spending or where several international customers have operations.

(174) Table 4 summarises the geographic presence of the Parties in the EEA.¹⁵²

Table 4: The Parties' geographic presence in the EEA

Country	Staples	Office Depot
Austria	Active	Active
Belgium	Active	Active
Bulgaria	Third party distribution	
Croatia		Third Party distribution
Cyprus		

¹⁵¹ Office Depot has partnerships in place in the following countries: Denmark (with Paperlinx Scandinavia), Finland (with Paperipalvelu Koskimo ja Rannali), Norway (with Wittusen & Jensen), Poland (with Ofix) and Croatia (with Gornji Grad). Further, [...]. Staples has partnerships in place in the following countries: Czech Republic (with Activa), Slovakia (with Activa), Bulgaria (with OPlus) and Romania (with Dacris). See Form CO, Annex 27.

¹⁵² Form CO, paragraph 145.

Country	Staples	Office Depot
Czech Republic	Third party distribution	Active
Denmark	Active	Third party distribution
Estonia		
Finland	Staples	Third party distribution
France	Active	Active
Germany	Active	Active
Greece		
Hungary	Active (through Austria)	
Iceland		
Ireland	Active	Active
Italy	Active	Active
Latvia		
Liechtenstein		
Lithuania		
Luxembourg	Active (through BE)	Active (through NL)
Malta		
Netherlands	Active	Active
Norway	Active	Third party distribution
Poland	Active	Third party distribution
Portugal	Active	
Romania	Third party distribution	
Slovakia	Third party distribution	Active
Slovenia	Third party distribution	
Spain	Active	Active
Sweden	Active	Active
United Kingdom	Active	Active

- (175) Similar to the Parties, Lyreco – the Parties' main competitor in international contracts in the EEA – has presence in a large number of EEA countries.¹⁵³
- (176) The Parties submitted information about the country split of their international customers in the EEA.¹⁵⁴ Both Parties generate the highest proportion of their sales from international contracts in the EEA in Germany, the United Kingdom and France. The geographic coverage of their contracts with customers labelled as international is much wider however. [80-90]% of Staples international-labelled customers (IAT) have at least 25% of their EEA spending in two or more countries. [60-70]% of Office Depot international-labelled customers (IKA) have at least 25% of their EEA spending in two or more countries.
- (177) While many international contracts thus involve significant spending in at least the larger western European economies (such as Germany, France, the United Kingdom and Benelux), the EEA countries where international customers purchase under

¹⁵³ See footnote 247 for a list of countries where Lyreco is active.

¹⁵⁴ Form CO, Annex 23.

international contracts varies and is customer specific, as it depends on the locations where they are present. To be competitive in international contracts, suppliers thus need to be able to cover a significant number of EEA countries.

- (178) The purchasing needs of customers across the EEA, as well as the direct and indirect presence of the Parties and of their main competitor Lyreco in most EEA countries, indicate that the market is EEA-wide in scope.
- (179) Nevertheless, several of the Parties' customers buy under international contracts of a dimension wider than the EEA, including mainly purchases in the United States, which may indicate a geographic market wider than the EEA. However, the Commission found that a global dimension of this market seems to be excluded by the qualitative and quantitative findings set out in recitals (180) to (184).
- (180) From a demand-side perspective, within the market investigation, customers with a presence wider than the EEA generally expressed a preference for global contracts.¹⁵⁵ However, they also indicated that sourcing at regional level (for instance separately in the EEA and in North America) is an alternative option to joint sourcing because contracts at regional level are of such a significant size as to allow for the typical benefits of international contracts to be reaped.¹⁵⁶
- (181) A quantitative analysis of the countries included in the Parties' international contracts confirms those findings. As regards Staples, more than [60-70]% of the international-labelled customers (IAT) with spending in the EEA have no spending on office supplies outside of the EEA. As regards Office Depot, while a large majority of its customers with spending in the EEA also have some spending outside of the EEA under international contracts, EEA sales represent approximately [60-70]% of sales to those international customers.¹⁵⁷
- (182) Moreover, even if some EEA customers have also purchased for office supplies outside of the EEA, a large majority of those customers purchase under a European or regional contract as opposed to a global contract. Information from the Parties on their contracts with international customers shows that less than [30-40]% of their international customers have a global contract. Even adopting a conservative approach which excludes customers from which it was not possible to obtain information, the percentage would be below [30-40]% for Office Depot, and below [40-50]% for Staples. In value terms, less than [30-40]% of the value from international contracts at Office Depot and less than [40-50]% of the value from international contracts at Staples is generated from global contracts.¹⁵⁸
- (183) From a supply-side perspective, the observed competitive dynamics are homogeneous at EEA level. Tenders for international contracts covering the EEA where the Parties submit bids typically see also Lyreco, a supplier active at EEA level, as a participant to the tender and often as a successful bidder.

¹⁵⁵ Agreed minutes from a conference call with a customer of 26 November 2015: "*The reason why only invited Staples and Office Depot to this tender is because they are the only suppliers which are able to offer their products on a global basis*".

¹⁵⁶ Agreed minutes from a conference call with a customer of 24 November 2015: "*Although a global contract covering the EU and other regions is theoretically possible, this is not something [customer] is currently seeking. This is because at the moment [customer]'s strategies are driven on a regional basis.*"

¹⁵⁷ See reply to RFI of 13 November 2015, question 1.

¹⁵⁸ See reply to RFI of 20 November 2015.

(184) The Commission thus finds that the market for international contracts has an EEA-wide geographic dimension.

6.2.2. *Non-international contracts with large business customers (250+)*

(185) The Notifying Party submits that the plausible markets it identified, that is to say the distribution of office supplies irrespective of the distribution channel, are national in scope, and '*not narrower than national*' for B2B customers.¹⁵⁹

(186) In *Buhrmann/Samas Office Supplies*, the Commission found that the geographic scope of the distribution of office supplies in the Netherlands was national, and thus concluded that the geographic scope of the market for contract stationing for the distribution of office supplies to larger end-users is national in scope.¹⁶⁰

(187) Those findings are broadly confirmed by the results of the Commission's investigation in this Decision.¹⁶¹ Non-international contracts with large business customers are generally entered into at national level; there are different national preferences which result in different product catalogues and assortments across countries,¹⁶² as well as different pricing and rebate systems at the national level in different countries. From a supply-side perspective, only domestic contract stationers bid for contracts within a country, as they have to avail themselves of an existing logistical framework to service such contracts.

(188) As regards the competitive dynamics, the competitors differ from country to country (with the exception of the Parties and Lyreco), and in their monitoring of competition in a given country, as is reported in internal documents,¹⁶³ the Parties themselves compare their position to that of other competitors established in the same country.

(189) Therefore, the Commission finds that the market for non-international contracts with large business customers has a national dimension.

6.2.3. *Non-international contracts with business customers (250-)*

(190) Contracts with business customers employing less than 250 employees fulfil all the criteria as described in section 6.2.2. While some participants indicated an even more local dimension of contracts with smaller business customers, as many customers with less than 250 employees have one or a limited number of locations and do not need deliveries to multiple nationwide offices,¹⁶⁴ the majority of participants in the market investigation confirmed the national dimension of contracts with business customers employing less than 250 employees.¹⁶⁵

(191) Therefore, the Commission finds that the market for non-international contracts with less than 250 employees has at most a national dimension.

¹⁵⁹ Form CO, paragraph 135.

¹⁶⁰ Case M.2286 – Buhrmann / Samas Office Supplies, recitals 49 and 54 – 55.

¹⁶¹ Replies to Phase I Questionnaire Q4 to customers (contract) – Questions 13 to 17.

¹⁶² Agreed minutes of a conference call with a competitor of 22 October 2015: '*Each local market [has] different private label assortment, as some products characteristics or the popularity of brands differ from one local market to another*'.

¹⁶³ See for instance Office Depot Internal Document "Office Depot - Competitor Intelligence, European Markets", April 2015.

¹⁶⁴ Agreed minutes of a conference call with a competitor of 9 September 2015.

¹⁶⁵ Replies to Phase I Questionnaire Q4 – Questions 13 to 17.

6.2.4. Wholesale distribution channel

- (192) In Unipapel/Spicers, the Commission found that the wholesale of traditional office supplies was to a large extent national in scope, because the marketing and sale activities are organised on a national basis and each country has particular features when it comes to demand for the traditional office supply products.¹⁶⁶ This was also confirmed for the wholesale of IT products and printing consumables.¹⁶⁷ The Commission ultimately left the geographic market definition open however.
- (193) In this Decision, the results of the market investigation for the Swedish wholesale market – the only wholesale market where the activities of the Parties overlap to a significant extent – indicate that the market is national in scope. The respondents to the market investigation indicated that they do not purchase from wholesalers located outside Sweden and that a wholesale supplier needs a local presence in order to be able to cater to the requirements of the customers.¹⁶⁸
- (194) Therefore, the Commission finds that the market for the wholesale of office supplies in Sweden has a national dimension.

6.2.5. Direct distribution channel

- (195) As indicated in recital (185), the Notifying Party submits that the plausible markets it identified, that is to say the distribution of office supplies irrespective of the distribution channel, are national in scope, and '*not narrower than national*' for B2B customers.¹⁶⁹
- (196) In previous decisions, the Commission assessed the geographic market for the distance selling of office supplies and home-shopping.
- (197) In *Staples/Guilbert*, the Commission found that the distance selling of office supplies may be national in scope, among other things due to language and cultural differences for catalogues, to the close proximity to customer base required for efficient delivery costs and to the fact that the same references are usually available within the national market. The market definition was however left open.¹⁷⁰
- (198) In a case related to home-shopping in a different distribution industry, the Commission confirmed that the market is national, due to language differences and costs and delays associated with placing international orders and the international distribution of individual packages.¹⁷¹
- (199) The results of the market investigation were mixed in this respect. A number of competitors indicated that local presence is necessary in order to sell office supplies through the direct sales channel in a given country, however other competitors pointed to the contrary and indicated that it is possible to supply many locations from a single country.¹⁷² The results of the market investigation also pointed to the existence of companies whose activities encompass more than one country being served from a single location.¹⁷³ The customers participating to the market

¹⁶⁶ Case M.6382 – Unipapel/Spicers, recital 58.

¹⁶⁷ Case M.6382 – Unipapel/Spicers, recitals 60-67.

¹⁶⁸ Replies to Phase I Questionnaire Q7 – Questions 6 and 7.

¹⁶⁹ Form CO, paragraph 135.

¹⁷⁰ Case M.2965 – Staples/Guilbert, recital 15.

¹⁷¹ See case M.5721 – Otto/Primondo Assets, recitals 31 and 32.

¹⁷² Replies to Phase I Questionnaire Q3 – Question 22.

¹⁷³ Replies to Phase I Questionnaire Q3 – Question 23.

investigation also indicated their readiness to purchase office supplies from providers not present in their country.¹⁷⁴

- (200) Amazon, who is one of the largest competitors in the direct channel, does not have a national presence in all of the countries where it delivers its products, but nevertheless offers deliveries to multiple European countries (in a number of countries and cases without additional shipment fees). Therefore both arguments used by the Commission in the *Otto / Primondo Assets* case do not apply in this Decision, as (i) in certain cases there are no additional costs for placing international orders with Amazon and (ii) the linguistic argument is not valid for certain cases, such as Amazon UK servicing customers in Ireland, Amazon DE servicing customers in Austria and Amazon FR servicing customers in Belgium.
- (201) The Commission therefore finds that the market for the direct distribution of office supplies is national or wider. However, for the purposes of this decision, the precise market definition can be left open since the transaction would not lead to a significant impediment to effective competition if only the narrower national markets are considered where the overlap between the Parties' activities is more pronounced.

6.3. Conclusion on the relevant markets

- (202) On the basis of its analysis laid down in sections 6.1 and 6.2, the Commission concludes that the relevant markets to assess in this Decision are:
- (a) The markets for contracts for the distribution of traditional office supplies and for the distribution of stationery (to be assessed in section 7.2), namely:
- The EEA-wide market for international contracts;
 - The national markets for non-international contracts with business customers with more than 100-200 office workers or 250 employees;
 - The national markets for non-international contracts with business customers with less than 100-200 office workers or 250 employees;
- (b) The national markets for the wholesale supply of traditional office supplies (to be assessed in section 7.3);
- (c) The national or wider markets for the direct distribution of office supplies (to be assessed in section 7.4).

7. COMPETITIVE ASSESSMENT

7.1. Legal and analytical framework for the assessment

- (203) Pursuant to Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (204) In accordance with the Horizontal Merger Guidelines¹⁷⁵, in order to evaluate whether mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, the Commission conducts its analysis by

¹⁷⁴ Replies to Phase I Questionnaire Q6 – Question 13.

¹⁷⁵ Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines"), OJ C31, 5.2.2004, p. 5-18.

"compar[ing] the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger".

(205) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. The assessment in this Decision will focus exclusively on non-coordinated effects.

(206) The Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows:

"A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in those competitive constraints could lead to significant price increases in the relevant market."

(207) Generally, a merger giving rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor after the transaction. Nevertheless, mergers that do not lead to the creation or the strengthening the dominant position of a single firm may also give rise to competition concerns. In particular, mergers in oligopolistic markets involving the elimination of important competitive constraints that the Parties previously exerted upon each other with a reduction of competitive pressure on the remaining competitors may, independently of the likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition.

(208) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.

7.2. Competitive assessment of sales made through the contract channel

(209) The activities of the Parties in the contract channel overlap in (i) international contracts with business customers, (ii) non-international contracts with business customers with more than 100-200 office workers or 250 employees and (iii) non-international national contracts with business customers with less than 100-200 office workers or 250 employees.

(210) The Commission's assessment of the distribution of office supplies through the contract channel in this Decision will focus on the markets for international

customers and non-international customers with more than 100-200 office workers or 250 total employees. 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.

- (211) Based on the market investigations, the Commission considers that there are a wide number of competitors able to cater for the needs of smaller contract customers. The majority of competitors replying in the course of the market investigation indicated that they are targeting customers belonging in the range of 0-200 office workers. Fewer competitors indicated their ability to win contracts for and supply customers with 200 and more office workers. This was further confirmed by a qualitative analysis where some competitors indicated that the smaller customers are easier to supply because they usually require less complicated logistics due to one or few locations, they pay less attention to prices per product but appreciate more the customer service, good long-lasting relationship with their local supplier and other aspects offered by small suppliers.¹⁷⁶
- (212) The Notifying Party indicated that depending on the methodology applied, the affected markets in the segment for below 250 employees would be Sweden and the Netherlands. However, the overall data gathered by the Commission during the market investigation points to sufficient competition in the B2B contract segment for the supply of office products to companies with less than 250 employees.
- (213) According to the results of the market investigation a number of competitors are active and competitive in the contract channel for smaller customers in Sweden, including 24 individual distributors belonging to the RKV dealer group, as well as Ocay and Wulff Supplies.¹⁷⁷ In the Netherlands, there are around 450 smaller suppliers belonging to the Quantore purchasing cooperative who supply the needs of small and medium sized customers and compete on the market for smaller customers who do not require a formal tender procedure.¹⁷⁸ Overall, no competition concerns were raised by the participants to the market investigation with regard to the customers below 250 employees.
- (214) Therefore the distribution of office supplies through contracts to customers with less than 100-200 office workers or 250 total employees will not be discussed further in this Decision.
- (215) The remainder of section 7.2 will first discuss three general points applicable to the analysis of the contract markets, namely the calculation of market shares (section 7.2.1), the analysis of margins (section 7.2.1.2) as well as the level of differentiation in the markets (section 7.2.1.3).
- (216) This will be followed by an assessment of the markets for the distribution of office supplies through international contracts (sections 7.2.2 and 7.2.3) and through non-international contracts in Sweden and the Netherlands (sections 7.2.4 to 7.2.7) where competition concerns arise, followed by an analysis of the markets for non-international contracts in Austria, Belgium, France, Germany, Ireland, Italy, Spain and the United Kingdom where no competition concerns arise (sections 7.2.8 to

¹⁷⁶ Agreed minutes with a competitor of 9 September 2015.

¹⁷⁷ Agreed minutes of a phone call with competitors of 9 September 2015, 9 September 2015 and 28 July 2015.

¹⁷⁸ Agreed minutes of a phone call with a competitor of 11 June 2015.

7.2.23). Finally, the Commission will also assess the overlaps which arise in the contract distribution of office supplies due to partnership agreements (section 7.2.24).

- (217) For each of those markets, the Commission left open the question whether the relevant market consists in the contract distribution to large business customers of the three traditional office supplies categories or of each of those product categories separately. The Notifying Party submitted, and the Commission acknowledges, that there exist specialist suppliers only active in the contract distribution of paper or ink & toner, that is to say there are manufacturers and specialised distributors of paper, such as Antalis or Papyrus, and specialised manufacturers and distributors of ink & toner, such as HP, Canon or 123inkt.
- (218) While those specialist suppliers may face limitations in terms of distribution logistics as set out in recital (89), they have specialised knowledge and may offer competitive prices and were therefore considered as viable suppliers in those two individual product categories by a number of customers in the market investigation.¹⁷⁹ Moreover, the specialist suppliers also appear to exert pressure on the Parties' margins in the distribution of paper and ink & toner which are lower than the margins in the distribution of stationery products, as will be set out in section 7.2.1.2. The overall evidence collected by the Commission in the Phase I and Phase II market investigations thus suggests that there are a sufficient number of strong suppliers if the product categories of ink & toner and cut sheet paper are considered separately. It also suggests that the specialist suppliers are able to exert competitive pressure on the Parties for those customers who choose to purchase ink & toner or paper separately from stationery.
- (219) In the event of a separate product market definition according to product category, the presence of those specialist suppliers thus makes 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, where they are active. Consequently, for each of the markets listed in recital (216), the Commission assessed 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.

7.2.1. Common issues

7.2.1.1. Calculation of market shares

- (220) In this section the Commission analyses the different submissions of the Notifying Party on market shares. The Commission considers that the market shares provided by the Parties are subject to significant uncertainty and are highly sensitive to the assumptions used. The significant uncertainty on market shares provided is also recognised in the own Notifying Party's submission, mentioning that those approaches are "*subject to significant uncertainties and require a number of assumptions*" (see Annex 21, page 1). This is a consequence of the absence of contemporaneous independent third party estimates of the market size of the contract channel for large national customers and international customers. The Commission has therefore examined alternative ways to assess the Parties' competitive position in its assessment of the contract channel in this section.

¹⁷⁹ Replies to Phase I Questionnaire Q4 – Question 22.

7.2.1.1.1. Market shares at the country level

7.2.1.1.1.1. *The Notifying Party's estimates*

- (221) The Notifying Party argues that the market shares of the merged entity would be small in candidate national markets for B2B contracts overall and in a potential sub-segment of large customers with more than 250 employees (corresponding roughly to 100-200 office workers) in all overlapping countries. This would be the case regardless of whether one considers all office supplies, core office supplies (consisting in stationery, ink & toner, and paper), or stationery, ink & toner and paper separately.
- (222) As the total market size of each candidate market or sub-segment is unknown, the market shares provided by the Parties rely on estimates of the total size of the market that are based on a series of assumptions. The different approaches are described in recitals (223) to (238).
- (223) In the first approach referred to as "top-down" (see Annex 21 of the Form CO), the Notifying Party multiplied an estimate of the number of office workers in both the private and public sector by an estimate of the annual spending on office supplies per office worker. The Commission understands that the annual spending includes all office supplies and is not limited to the spending on traditional office supplies (that is to say stationery, ink & toner, paper). The Notifying Party then calculated the total annual spending on office supplies (that is to say the market size) per country with a distinction between smaller (below 250 employees) and larger (above 250 employees) companies. This information was then used to calculate the Parties' market shares based on their actual sales in a given country.
- (224) In order to estimate the number of office workers per country, the Notifying Party uses Eurostat and OECD statistical data on the total number of employees in each country, coupled with statistical data on the sizes of enterprises, employees in the public sector and the proportion of office workers versus non-office workers. In order to allocate the public employees to large organisation above 250 workers, the Notifying Party assumes that in each country 90% of the public workers are working in organisations with at least 250 employees. In this first approach, the annual spending per office worker is assumed to be EUR 300.
- (225) With this first approach, the combined market share of the Parties for organisations with more than 250 employees would be below 20% in all overlapping countries, except in Sweden with a [30-40]% market share.¹⁸⁰
- (226) The Parties also provide additional market shares by using a EUR 200 and EUR 400 annual spending per office worker to show how sensitive the combined market share is to the applied assumption on annual spending. With EUR 200 annual spending per office worker, the combined market share of the Parties as regards the large organisations would only be above 20% in Sweden ([50-60]%).¹⁸¹ Similarly, with a EUR 400 annual spending per office worker, the combined market share of the Parties would only be above 20% in Sweden for large organisations.¹⁸²

¹⁸⁰ Form CO, Annex 21, Table 5.

¹⁸¹ Form CO, Annex 21, Table 14 and 15.

¹⁸² Form CO, Annex 21, Table 17 and 18.

- (227) The second approach proposed by the Notifying Party uses MPA¹⁸³ data to estimate the total sizes of the market for office supplies. The MPA total figures include both the traditional office supplies (stationery, ink & toner, and paper) and other product categories such as IT equipment and office furniture. The MPA figures include both the retail sales to customers (B2C) as well as sales to corporate customers (B2B sales). The Notifying Party considers that the MPA figures should be reduced by 20% to remove the B2C sales. In other words, the Notifying Party considers that 80% of the MPA figures are relevant to calculate the market size for office supplies for B2B customers. Moreover, since MPA stopped reporting on the office supplies market in 2008, the Parties used the data from 2006 to 2008 with some adjustments based on employment change between 2008 and 2012-2014.¹⁸⁴
- (228) In this second approach, the Parties also calculated those market shares with a distinction between smaller (below 250 office workers) and larger (above 250 office workers) customers. As regards organisations with more than 250 employees, the Parties use their previous estimates of the total number of office workers in large organisations (including private business above 250 employees and including 90% of the public sector employees) and compute its share over the total office workers.¹⁸⁵ The proportion obtained is then applied to the MPA market figures in order to obtain the market size for large organisations with more than 250 employees (see Tables 11 and 12 of Annex 21 of the Form CO).
- (229) As regards the organisations with more than 250 employees, the combined market share of the Parties would be below 20% in all overlapping countries, except in Sweden with a market share of [20-30]%.¹⁸⁶
- (230) The third approach proposed by the Notifying Party estimates directly the market size of each product category from different sources in order to calculate market shares by product category.^{187 188} As discussed in recital (227), each market size is reduced by 20% to remove the B2C sales (in other words, 80% of the figure obtained is assumed to be related to B2B customers). As regards large organisations with more than 250 employees, the market sizes of each product are reduced by the same proportions as used to adjust the MPA data as described in recital (227).
- (231) With this third approach, as regards the overall B2B market, the combined market share of the Parties would be above 20% for Stationery in Sweden (with [60-70]%),¹⁸⁹ above 20% for paper in Ireland ([40-50]%), the Netherlands ([20-30]%), and Sweden ([30-40]%),¹⁹⁰ and slightly above 20% for ink & toner in the Netherlands ([20-30]%).¹⁹¹ As regards the large organisations, the combined market share of the Parties would be above 20% for Stationery in Sweden (with

¹⁸³ MPA International is a research organisation which reports on the office supplies industry (see Form CO, Annex 21, page 13).

¹⁸⁴ Form CO, Annex 21, Table 9.

¹⁸⁵ Form CO, Annex 21, Table 11.

¹⁸⁶ Form CO, Annex 21, Table 12.

¹⁸⁷ Form CO, Annex 29, where the Parties uses this data to argue that the average annual spend per office workers should be in the range of EUR 1 000 to 2 000. Based on his data, the Parties' share exceeds 20% only in Sweden for the organisations with more than 250 employees.

¹⁸⁸ Form CO, Annex 30: description of the different public sources for data on stationery, ink & toner, paper, facilities products, furniture, office technology, and other.

¹⁸⁹ Form CO, Annex 21, Table 20.

¹⁹⁰ Form CO, Annex 21, Table 23.

¹⁹¹ Form CO, Annex 21, Table 26.

[70-80]%),¹⁹² above 20% for paper in Ireland ([30-40]%) and Sweden ([30-40]%),¹⁹³ and below 20% for ink & toner in all overlapping countries.¹⁹⁴

- (232) As regards stationery in particular, in a memo submitted by the Notifying Party on 23 October 2015, "*Memo on the Commission's concerns as regards stationery*", the market share in Sweden is [20-30]% (instead of [60-70]% in Annex 1 of the Form CO) for the overall B2B market and [20-30]% (instead of [70-80]% in Annex 21 of the Form CO) for large organisations. The Notifying Party considers that the market size used for Sweden was understated since it implies a "*far lower*" per-office worker annual spending in office suppliers than the average of the 10 overlapping countries.¹⁹⁵ Assuming that the spending per office worker was the same as the average of the 10 overlapping countries, the market share of the merged entity for stationery in Sweden would decrease to [20-30]% for the overall B2B market and [20-30]% for large organisations (see paragraph 12 and Table 29 of Annex 29 of the Form CO). The Notifying Party makes a similar observation for the market size of paper in Ireland, which seems under-stated based on public data. After correction, the market share of the merged entity for paper in Ireland would decrease from [40-50]% to [20-30]% for the overall B2B market and from [30-40]% to [20-30]% for large organisations (see paragraph 12 and Table 29 of Annex 29 of the Form CO).
- (233) In addition, the Notifying Party provided market shares for the combination of stationery, ink & toner, and paper together. The combined share of the Parties for the B2B market of stationery, ink & toner and paper would be below 20% in all overlapping countries, except for the Netherlands with a market share slightly above 20% ([20-30]%) and Sweden ([30-40]%).¹⁹⁶ As regards the large organisations, the combined share of the Parties would only be above 30% in Sweden ([30-40]%).¹⁹⁷
- (234) In a fourth approach (see Annex 26 of the Form CO), called the bottom-up approach, the Notifying Party estimates the revenues of the main competitors for the full range of traditional categories. The total size of this hypothetical market is given by the sum of the revenue of the rivals concerned. With this approach, the combined market share of the Parties is above 20% in France, Ireland, the Netherlands, Sweden, and the United Kingdom.¹⁹⁸
- (235) Last, in a fifth approach, in Annex 24 of the Form CO, the Notifying Party provides market shares for the contract distribution channel for all categories of office supplies. The total B2B market size is estimated using a EUR 400 and a EUR 1 000 spending per office worker. The Notifying Party mentions that this is a conservative approach since Staples estimates that in countries in which it is active the average spending per office worker across all categories ranged from EUR 1 000 to EUR 2 000 (see paragraph 13 of Annex 24 of the Form CO, see also Table 2 of Annex 29 of the Form CO). The total market size obtained is then reduced to include only contract sales (see Table 1 of Annex 24). This data was then used to calculate the Parties' market shares based on their actual contract sales in a given country.

¹⁹² Form CO, Annex 21, Table 21.

¹⁹³ Form CO, Annex 21, Table 24.

¹⁹⁴ Form CO, Annex 21, Table 27.

¹⁹⁵ See Memo on the Commission's concerns as regards stationery, paragraph 38, and Annex 29 to the Form CO, paragraph 12.

¹⁹⁶ Form CO, Annex 29, Table 4.

¹⁹⁷ Form CO, Annex 29, Table 5.

¹⁹⁸ Form CO, Annex 26, Table 3.

- (236) Using EUR 400 of annual spending per office worker, the combined share of the merged entity for the contract distribution channel for all categories would be below 20% in all overlapping countries, except in the Netherlands with a market share slightly above 20% (a [20-30]% market share) and Sweden with a [30-40]% market share.¹⁹⁹ Using EUR 1 000 of annual spending per office worker, the combined share of the merged entity for the contract distribution channel for all categories would be below 20% in all overlapping countries.²⁰⁰
- (237) The Notifying Party also submit market shares for the traditional categories by assuming using EUR 300 annual spending per office worker (see also paragraph 8 of Annex 29 of the Form CO). In that case, the combined share of the merged entity for the contract channel for the traditional categories would be slightly below 20% in the Netherlands ([10-20]%) and [30-40]% in Sweden.²⁰¹
- (238) In Annex 26 (section V) of the Form CO, the Notifying Party submits additional estimates of the market share for the contract channel. The approach is similar to the one described in recital (235), but with an additional step that excludes the estimated percentage of the contract segment accounted for by specialist suppliers for all categories of office supplies. The Notifying Party only uses EUR 1 000 of annual spending per office worker. In this case, the combined share of the merged entity for the contract channel for the all categories would be slightly below 20% in all overlapping countries, except in Sweden with a [20-30]% market share.²⁰² In addition, the Notifying Party uses EUR 300 of annual spending per office worker to estimate the market size for the traditional product categories (stationery, ink & toner, and paper). Under this scenario, the combined share of the Parties is below 20% in all overlapping countries, except in France ([20-30]%), Netherlands ([20-30]%), and Sweden ([40-50]%).

7.2.1.1.1.2. *The Commission's assessment*

- (239) The Commission considers that, while the different approaches proposed by the Notifying Party are not unreasonable in general, in the context of this Decision, a significant number of assumptions have to be combined to obtain those estimates, each of which is subject to significant uncertainty. Moreover, the accuracy of those assumptions was either impossible to verify for the Commission or was not verified by the results of the market investigation and other evidence (for instance tender data to assess the credibility of alternatives suppliers). The assessment of the different approaches proposed by the Notifying Party is discussed in recitals (240) to (258).
- (240) As regards assessing the first approach, the Commission considers that it relies on at least two critical assumptions (see recitals (223)-(224)):²⁰³
- (a) The estimate of EUR 300 of annual spending per office worker;
 - (b) The assumption that 90% of the public workers work in organisations with at least 250 employees.

¹⁹⁹ Form CO, Annex 24, Table 2.

²⁰⁰ Form CO, Annex 24, Table 5.

²⁰¹ Form CO, Annex 24, Table 7.

²⁰² Form CO, Annex 26, Table 4.

²⁰³ See recitals (223) - (226). As regards the proportion of workforce comprised of office workers, the Notifying Party combined employment data provided by Eurostat and occupational data provided the International Labor Office to determine the proportion of office workers in each country (see Annex 30 of the Form CO, section 3). The Commission considers that the estimated proportion of office worker for each country is reliable since it does not rely on any particular assumption.

- (241) As regards the first assumption, the results of the market investigation indicated a significantly lower annual spending per office worker with an average spending of EUR 188 and a median spending of EUR 119 based on 50 responses²⁰⁴. Due to the importance of the heterogeneity in the annual spending in office supplies (from EUR 50 for the first quartile to EUR 230 for the third quartile, with a minimum spending of EUR 7 and a maximum spending of EUR 1 200), the Commission considers that the median spend is more appropriate since it is less sensitive to outliers than the average spend. Using an annual spending of EUR 119 instead of EUR 300, the combined market shares of the Parties would be multiplied by a factor of almost three.
- (242) As regards the second assumption, when providing the market shares for large organisations with more than 250 employees, the Notifying Party assumes that 90% of the public workers are working in organisations with at least 250 employees. This is based on statements from the Office of National Statistics in the United Kingdom and the Irish 2009 and 2010 National Employment surveys that more than 90% of workers in the public sector are working in large organisations.²⁰⁵
- (243) This is an important assumption since it results in an equivalent or larger estimated employment in large public organisation than in large private organisations.²⁰⁶ In other words, the assumption that 90% of the public workers are working in organisations with at least 250 employees implies that more than half of the employees in large organisations are from the public sector. The Commission was not in a position to verify the validity of this implication.
- (244) The Commission also considers that the lack of detailed data on the size of the different public employers per country (namely how many public employers have more than 250 employees) is an important shortcoming and source of uncertainty. For example, assuming instead that 50% of public workers are working in organisations with more than 250 employees reduces significantly the estimate of the market size, for example from EUR 408 million to EUR 284 million in Belgium (-30%), from EUR 3743 million to EUR 2 767 million in Germany (-26%), from EUR 791 million to EUR 560 million in the Netherlands (-29%), from EUR 424 million to EUR 310 million in Sweden (-27%).
- (245) Moreover, the Commission examined data obtained from the Notifying Party about the 100 largest employers by country. On those lists, in the United Kingdom and Ireland, at most 23 and 33 firms are public entities respectively. This suggests that public sector employees are likely less than half of the workforce in large organisations, which illustrates the uncertainty surrounding the market shares estimates provided by the Notifying Party.²⁰⁷
- (246) In addition, public sector entities account for only [...] of Staples' sales to large organisations (including international customers, large private organisations, and

²⁰⁴ Agreed minutes of calls with customers; replies to Phase I Questionnaire Q4 to customers (contract) – Question 18 and replies to Phase I Questionnaire Q5 to customers (international contracts) – Question 23.

²⁰⁵ Form CO, Annex 30, page 9.

²⁰⁶ Form CO, Annex 21, Table 4.

²⁰⁷ As discussed in recital (243), the assumption that 90% of public workers are working in large organisations implies that in each overlapping country approximately more than 50% of the employees in large organisations are from the public sector.

large public entities),²⁰⁸ which is significantly lower than 50% as implied by the underlying assumptions of the Notifying Party.²⁰⁹ While Staples' distribution of sales within large customers is not necessarily representative of the overall distribution, this casts further doubt on the market shares estimates provided by the Notifying Party.

- (247) Finally, the analysis of employment data from the UK Office for National Statistics also illustrates the uncertainty about the Notifying Party's assumption that 90% of public employees are working in large organisations, and therefore the uncertainty surrounding the market shares estimates provided by the Notifying Party. Table 5 shows the number of public firms per employment size ranges. Assuming that average employment in public organisations below 250 employees is in the middle of the respective size class and using the figure of 9 million employees in the public sector in the UK provided by the Notifying Party,²¹⁰ the resulting share of public employees in large organisations is merely 60%.²¹¹ Furthermore, data on public employment statistics in the UK show that in Q1 2015, total public sector employment was 5.36 million, instead of 9 million used by the Notifying Party.²¹² Using the figure of 5.36 million employees in the public sector in the UK would lead to a proportion of 31% of public employees working in large organisations, instead of the 90% proportion used by the Notifying Party.

Table 5: Number of enterprises/local units by Employment size band, Legal status – UK 2013

Legal status	Employee size class							Total
	0-4	5-9	10-19	20-49	50-99	100-249	250+	
Public Corp. / Nationalised Body	1,165	1,485	1,035	600	245	220	220	4,970
Central Government	5,265	3,680	4,455	6,770	4,390	4,635	2,200	31,395
Local Authority	24,210	8,070	9,785	16,245	8,505	3,700	1,500	72,015

Source: UK Office for National Statistics dataset ID "UKBAE", title: "Enterprise/local units by Employment size band, Legal status and Region".

- (248) As regards the second approach proposed by the Notifying Party (see recitals (227)-(229)), the MPA data used refers to the market situation eight to six years ago and the market has undergone serious changes in the meantime. The Parties submitted that in the recent years, due to digitisation of the workspace there is

²⁰⁸ See Excel file "Retrieval EMG (annex 7)_v4_local.xlsx", provided in the response to the Request For Information dated 02/09/2015. The four categories are: international customers, large private organisations, large public entities, and smaller entities. The analysis of Staples' sales data in 2014 shows that public entities accounts for [...] of the total sales, large private organisations account for [...], international customers accounts for [...], and smaller entities account for [...]. Once the [...] of sales to smaller entities are excluded, public entities represent [...] of the sales to large organisations (including international customers, large private organisations, and large public entities).

²⁰⁹ If the assumption of the Notifying Party that 90% of public workers are working in large organisations were correct, which drives the Parties' estimate according to which more than half of the employees in large organisations are from the public sector, one would expect to see that public entities represent a large proportion of Staples' sales to large private organisations and public entities, around 50%.

²¹⁰ According to the Notifying Party, the total public sector employment in the UK is assumed to be 9,081,332 employees (see Form CO, Annex 21, Table 1).

²¹¹ For example, for size class 5-9 employees this corresponds to assuming 7 employees on average, in size class 15-19 employees it corresponds to assuming 17 employees on average.

²¹² Office for National Statistics - "Public sector employment, Q2 2015" accessible at http://www.ons.gov.uk/ons/dcp171778_416567.pdf.

a strong trend to reduce the use of stationery and increase the use of electronic equipment (for instance PCs and tablets) (see recital (18)). Therefore, the Commission considers that the use of old sets of data might not therefore be accurate to represent the current situation on the European market for office supplies.

- (249) In the second approach, in order to consider only the B2B ("Business to Business") sales, the Notifying Party also reduces by 20% the MPA figures to remove the B2C ("Business to Customers") sales. In other words, the Notifying Party considers that 80% of the MPA figures are related to B2B customers. However, the Commission's investigation focuses on B2B contract sales. Based on Staples' sales data, [...] of sales in Europe are related to contract customers.²¹³ Applying a [...] proportion instead of 80% would multiply by a factor of [...] the combined market share provided by the Notifying Party. The Commission also notes that a [...] proportion is also consistent with Table 1 of Annex 24 of the Form CO, where the proportion of contracts sales for the ten overlapping countries is estimated in the range of 32%-53%, depending on the country considered. While Staples' distribution of sales across the different channels may not be necessarily representative of the overall distribution of sales across the different channels among all industry participants, this casts further doubt on the market shares estimates provided by the Notifying Party.
- (250) The third approach (see recitals (230)-(233)) proposed by the Notifying Party also relies on assumptions subject to a significant uncertainty: (i) a reduction of the market size figures by 20% to remove the B2C sales, and (ii) as regards large organisations, the market size for each product is reduced by the estimated proportion of office workers in large organisations (which relied on the assumption that 90% of public workers are working in large organisations). As discussed in recital (249), the proportion of B2B contract sales in Europe is [...] in Staples' sales data, which implies that the market size should be reduced by [...] instead of 20%. This would increase the combined market share by a factor of [...]. Moreover, as discussed in recitals (243)-(247), the assumption that 90% of public workers are working in large organisation is also subject to uncertainty.
- (251) As regards the fourth approach proposed by the Notifying Party, the Commission considers that the estimates of competitors' sales values provided by the Notifying Party are also subject to uncertainty, where the resulting market shares are sensitive to errors in the estimates, which the Commission considers to be possibly large. In particular, during the market investigation the Commission has collected sales data from some competitors to verify figures provided by the Notifying Party.
- (252) For Germany (see Table 4 of Annex 26 of the Form CO), the Notifying Party has overestimated the sales data for two cooperatives (MGW and Soennecken). The sales of those two cooperatives are significantly below the sales data provided by the Notifying Party. Moreover, as regards Buromix, Kaut Bullinger, and Plate, their turnovers are also significantly overestimated by the Notifying Party. Last, the turnover of Lyreco was also overestimated.
- (253) The Commission also asked several market participants to estimate the revenue of their main competitors in various member States.²¹⁴ A comparison of estimated

²¹³ See Excel file "Retrieval EMG (annex 7)_v4_local.xlsx", provided in the response to the Request For Information dated 02/09/2015. Staples' advantage, which is the division of Staples responsible for contract sales, represents [...] of Staples' sales in 2014 in Europe.

²¹⁴ Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – question 9 asking "To the best of your knowledge, which are the firms offering the full range of traditional office supplies

revenues of competitors by different firms in the market illustrates a large degree of uncertainty in the estimates. Indeed, the resulting estimates show very large variation, with a gap between the highest and lowest estimate for the estimated revenues of the same firm often exceeding 200%. The Commission also compared those estimated sales values of competitors to those provided in the Parties' submission,²¹⁵ and found that the respondents' estimates for the sales value of competitors in various countries differ very significantly from those indicated in the Parties' submission in both directions, with up to nearly fourfold deviations between the estimated sales values of the respondents and the Parties.²¹⁶

- (254) Therefore, the Commission considers that the fourth approach proposed by the Notifying Party to reconstruct market shares relying on estimating competitors' revenues is not sufficiently reliable.
- (255) As regards the fifth approach, the Notifying Party uses an annual spending of EUR 400 per office worker. As discussed in recital (235), this figure was not supported by the results of the market investigation, with a median of annual spending per office worker around EUR 119. Using EUR 119 instead of EUR 400 would multiply the combined market share of the Parties by a factor of almost four. Moreover, using EUR 300 of annual spending for traditional supplies seems even more subject to uncertainty given the results of the market investigation (see recital (241)).
- (256) Finally, in order to assess the importance of the Parties in supplying large contract customers, the Commission collected data from the Parties about their sales of traditional office supplies to the top 100 employers in the ten overlapping countries.
- (257) Table 6 shows that the merged entity would be an important supplier to the largest employers in seven of the 10 overlapping countries for stationery, supplying for example [50-60]% of the top 100 employers in France, [50-60]% in Germany, [60-70]% in the Netherlands, [80-90]% in Sweden, [40-50]% in the UK. The proportion of the top 100 employers supplied by the Parties is lower in Belgium ([20-30]%), Italy ([10-20]%), and Spain ([30-40]%). As regards paper, the Parties supply more than 50% of the top 100 employers in France ([50-60]%), Germany ([50-60]%), Netherlands ([50-60]%), and Sweden ([70-80]%). As regards ink & toner, the Parties supply more than 50% of the top 100 employers also in France ([50-60]%), Germany ([50-60]%), Netherlands ([50-60]%), and Sweden ([70-80]%).

(Stationery, Paper, Ink & Toner) in the EEA and in the other selected countries indicated in the sub-questions? Please also provide estimates for their annual sales of such products and / or their estimated market shares. Please provide country specific information only if your company is active in such country (or countries)".

²¹⁵

Table 2 in the Parties' note on "*Market shares of full range contract suppliers*".

²¹⁶

Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – Questions 9.1-9.4.

Table 6: Number of top 100 employers that are customers with the Parties, by country - 2014

	Stationery			Paper			Toner/ink		
	Customer of...								
	Staples	Office Depot	Either (or both) Parties	Staples	Office Depot	Either (or both) Parties	Staples	Office Depot	Either (or both) of the Parties
AT	[30-40]	[10-20]	[40-50]	[30-40]	[10-20]	[40-50]	[30-40]	[10-20]	[40-50]
BE	[10-20]	[5-10]	[20-30]	[10-20]	[5-10]	[20-30]	[10-20]	[5-10]	[20-30]
FR	[10-20]	[50-60]	[50-60]	[5-10]	[50-60]	[50-60]	[5-10]	[40-50]	[50-60]
DE	[40-50]	[30-40]	[50-60]	[30-40]	[20-30]	[50-60]	[30-40]	[20-30]	[50-60]
IE	[10-20]	[30-40]	[40-50]	[10-20]	[30-40]	[40-50]	[10-20]	[20-30]	[30-40]
IT	[5-10]	[5-10]	[10-20]	[5-10]	[5-10]	[10-20]	[5-10]	[0-5]	[10-20]
NL	[40-50]	[30-40]	[60-70]	[30-40]	[20-30]	[50-60]	[30-40]	[20-30]	[50-60]
ES	[0-5]	[30-40]	[30-40]	[0-5]	[20-30]	[20-30]	[0-5]	[20-30]	[30-40]
SE	[30-40]	[70-80]	[80-90]	[30-40]	[70-80]	[70-80]	[30-40]	[60-70]	[70-80]
UK	[20-30]	[20-30]	[40-50]	[10-20]	[20-30]	[40-50]	[20-30]	[20-30]	[40-50]

Source: data provided by the Parties'. A firm was assumed to be customer with the Parties in 2014 in a particular product category if the annual sales value of the Party to that firm was positive in 2014.

(258) The top 100 customers list for each country includes international customers. As the Parties have a stronger position with international customers than with national customers, those lists are likely to overstate the Parties' market position as regards non-international contracts in some instances. The Commission took this into account when assessing the top 100 customer lists in the respective sections of the competitive assessment. That issue notwithstanding, the analysis of the top 100 customer lists indicates stronger market positions of the Parties than the low combined market shares figures provided by the Notifying Party, casting further doubt on the reliability of those market share estimates.

7.2.1.1.1.3. Conclusion

(259) The Commission concludes that the market shares provided by the Notifying Party are subject to significant uncertainty due to the assumptions used in the different approaches. In particular, based on the market investigation, the Commission could not confirm the estimated combined market shares of the Parties. Moreover, the results of the market investigation indicate that the estimates provided by the Notifying Party are not sufficiently reliable and that they are likely to significantly understate the combined market shares of the Parties.

(260) The Commission considers that the nature of the industry makes it impossible to engage in a complete and reliable market reconstruction due to the large number of individual products included in each product category, the large and disperse customer base and the large number of suppliers which, according to the Notifying Party, make significant sales. Even if all of those firms and customers could be contacted, different recording practices make it difficult to obtain precise estimates for sub-segments such as large customers. In addition, the absence of contemporaneous independent third party estimates of the market size on the contract channel for large national customers is an important obstacle to obtain reliable market shares.

(261) The Commission has therefore examined alternative ways to assess the competitive positions of the Parties and the credibility of alternative suppliers, in particular for large contract B2B customers. The Commission presents its assessment of the bidding data and the qualitative evidence gathered during the market investigation in the framework of the competitive assessment, suggesting that the Parties are close competitors for international contracts and for domestic contracts in Sweden and the Netherlands.

7.2.1.1.2. Market shares at the international level

7.2.1.1.2.1. *The Notifying Party's estimates*

- (262) The Notifying Party also provided market shares for customers who purchased office supplies via contract in multiple EEA countries. The Notifying Party presents four methodologies, mentioning that each of them is subject to a large degree of uncertainty.²¹⁷
- (263) The first approach proposed by the Notifying Party is based on bidding data. The Parties calculate the relative importance of Lyreco and Office Depot in the international tenders lost by Staples and the relative importance of Lyreco and Staples in the international tenders lost by Office Depot (see also section 7.2.2 for the analysis of bidding data). This is used to calculate the relative size of those three suppliers in the hypothetical international customers market, to which an estimate of the importance of other (local/specialist) suppliers from the tender analysis is applied in order to calculate overall market shares. With this approach, the combined share of the Parties is [50-60]% (Staples: [20-30]%; Office Depot: [20-30]%), Lyreco has a [30-40]% market share, and local and specialist suppliers have a market share of 11%.
- (264) The second approach proposed by the Notifying Party is largely based on national market shares discussed above in recitals (239)-(261). From a database of Staples' international customers, the Parties calculate the proportion of customers with centrally managed and with locally managed purchasing— [30-40]% and [70-80]% respectively. First, the Parties assume that all centrally managed customers are served by either Staples, Office Depot or Lyreco and apply their relative importance weights from the international tender analysis to find combined centrally managed market shares. Second, the Parties assume that the Parties' shares for locally managed international customers will reflect the Parties' weighted average national market shares for customers with 250+ employees. The "centrally managed" shares and the "locally managed" shares are then weighted by the respective proportions of customers to arrive at the final market shares for the Parties. This approach does not allow for any competitor's market shares to be estimated. With this approach, the combined market share of the Parties is [20-30]% (Staples: [10-20]%; Office Depot: [10-20]%).
- (265) The third approach proposed by the Notifying Party uses the 2013 international survey. This approach is based on the responses to the following question of the 2013 international survey, which covers Staples and [...] customers: "*Did a single vendor win the tender across all the product categories? If yes, who?*" According to the Notifying Party, the drawback of this methodology is that it is likely to favour Staples and [...], given that the sample of the 2013 international survey covers mainly Staples and [...] customers (as well as some prospective customers).

²¹⁷ See the submission "Competitive Assessment – International Customers", dated 18 May 2015.

Conversely, this is also likely to underestimate Office Depot's market share. With this approach, the combined market share of the Parties is [40-50]% (Staples: [30-40]%; Office Depot: [10-20]%), Lyreco has a market share of [30-40]%, and local and specialists suppliers have a market share of 17%.

- (266) The fourth approach is based on data provided by the Parties to their external economic advisors showing the identity of the main provider(s) of office suppliers for the top 100 European companies. The Parties claim that given those customers' size, it is likely that most of them source office supplies internationally. In order to determine the combined international market share, the number of customers which are served by both Parties separately was added to the number of clients served by both Parties. This, in turn, was divided by the number of customers in the sample. With this approach, the combined market share of the Parties is [30-40]%.

7.2.1.1.2.2. *The Commission's assessment*

- (267) The Commission agrees with the claim of the Notifying Party that the various approaches used to establish market shares are subject to a degree of uncertainty.²¹⁸ This is the case because the office supply industry is characterised by a large and disperse customer base, the absence of contemporaneous independent third party estimates of the market size for international contracts, as well as large ranges of individual products in each product category. However the Commission considers that some of the approaches proposed by the Notifying Party are not as uncertain.
- (268) In particular, the Commission considers that the first approach relying on bidding data is subject to a lower degree of uncertainty. Data on tender values, participants and winners stem from the competitive interactions between the Parties and other firms, and therefore provide useful information on the competitive constraints faced by each of the Parties.²¹⁹ The analysis of bidding data is further discussed in sections 7.2.2 and 7.2.3. Bidding data analysis is particularly useful to assess the competitive strength of the various suppliers when competing against the Parties. The market share calculations based on bidding data (yielding a combined market share of [50-60]% for the Parties) therefore also captures the competitive strengths of the different suppliers. Moreover, contrary to market shares provided on a national basis (see recitals (239)-(261)), that approach does not rely on any assumption on the size of the market which is not possible for the Commission to verify.
- (269) The Parties argue that this first approach would underestimate the importance of local suppliers as national tenders by international customers are excluded, and that this analysis is unlikely to capture fully the use of specialist suppliers. The Commission disagrees with the Parties for the following reasons. First, national contracts are not part of the relevant market, which concerns international contracts. Second, if specialist suppliers were able to win an important number of tenders against Staples or Office Depot, the approach used by the Notifying Party would lead to a high market share for the specialist suppliers. The low market share of specialist suppliers is just the reflection that they did not win a high number of tenders against each of the Parties.

²¹⁸ See the submission "Competitive Assessment – International Customers", dated 18 May 2015, RBB Economics, page 7.

²¹⁹ Such data may involve some subjective elements. While the Parties may not know with certainty the participants and the winner in some tenders, the bidding data provided by the Parties is based on their competitive intelligence and perception on who participated and won in tenders, and therefore still provides useful information on the competitive constraints faced.

- (270) The Commission therefore considers that this first approach is less uncertain than market shares provided at national level.
- (271) As regards the second approach proposed by the Notifying Party, the Commission notes that it relies mainly on market shares provided at national level. In particular, for [70-80]% of the international customers with locally managed purchasing, the Parties have used the Parties' weighted average national market shares for customers with more than 250 employees. As discussed in recitals (239)-(261), the Commission considers those market shares to be subject to an important degree of uncertainty. Therefore, the Commission considers this approach as not being sufficiently reliable.
- (272) As regards the third approach based on the 2013 international survey, the Commission found slightly higher market shares for the Parties, compared to ones provided by the Parties.²²⁰ The Commission finds that the Parties have a combined market share of [50-60]% (Staples: [30-40]%; Office Depot: [10-20]%) and Lyreco has a market share of [30-40]%. Other alternatives, like local suppliers and specialists, have a lower market share of [10-20]% (Bruneau: [0-5]%; Fiducial: [0-5]%; Wulff Supplies: [5-10]%). The Commission notes that it was not possible to carry out a similar analysis with the 2015 international survey since the relevant question was not asked to the respondents.
- (273) The Commission notes that market shares calculated on the basis of the 2013 international survey are very similar to the market shares calculated on the basis of bidding data. Moreover, if local or specialist suppliers were winning a significant number of tenders, one would have expected to see a higher market shares for the category "others", which is not the case. Moreover, contrary to market shares submitted on a national basis, the market shares from the 2013 international survey do not rely on any assumption on the market size. The Commission therefore considers that this third approach is subject to a lower uncertainty than market shares provided at a national level.
- (274) As regards the fourth approach proposed by the Notifying Party, and described at recital (266), the Commission notes that the combined market shares of the Parties is close to [40-50]%.

7.2.1.1.2.3. *Conclusion*

- (275) The Commission concludes that while the market shares provided by the Notifying Party are subject to some uncertainty, the level of uncertainty is lower for the market shares relying on bidding data and on the 2013 international survey compared to market shares provided in relation to the Parties' position on a national level. The Commission also considers the market shares provided under the fourth approach. Overall, the combined market share of the Parties for international contract would be in the range of [40-50]% to [50-60]%.
- (276) The Commission has also examined alternative ways to assess the competitive positions of the Parties and the credibility of alternative suppliers. The Commission presents its assessment of the bidding data and the qualitative evidence gathered during the market investigation within the competitive assessment.

²²⁰ See Annex A.1 of the submission "Competitive Assessment - International Customers", dated 18 May 2015, question 24.

7.2.1.2. Margin analysis

7.2.1.2.1. The views of the Notifying Party

- (277) The Commission received data from the Parties on product margins submitted on 3 September 2015. The submitted data states that in the contract channel margins on stationery (Staples: [...] in Europe, Office Depot: [...] in Europe) are higher than on the other traditional office supply product categories of paper (Staples: [...] in Europe, Office depot: [...]) and ink & toner (Staples: [...] in Europe, Office depot: [...] in Europe) for both Parties. This holds in all EEA countries as well as in the EEA as a whole.
- (278) The Parties argued that data on product margins does not include distribution costs which are variable in nature and therefore affect economically relevant margins. The Parties further argued that distribution costs are a more important cost factor for stationery than for paper and ink & toner. Therefore, ignoring distribution costs in the margin calculation overestimates margins on stationery vis-à-vis those on other product categories.²²¹ However, the Parties consider that due to some variable costs being common to products of all types, it is not possible to attribute distribution costs specifically to a single product category.²²² The Commission followed up with the Parties with multiple information requests to clarify the information on margins and distribution costs.²²³

7.2.1.2.2. The Commission's assessment

- (279) On 12 October 2015 the Commission followed up with questions to the Parties and asked them to provide information about the magnitude of distribution costs, as well as to estimate the avoidable distribution costs if their sales across the three traditional products categories (that is to say stationery, ink & toner, paper) were hypothetically reduced by 5% and 10%, while the sales of other products remained unchanged.
- (280) Based on the responses received, the Commission revised the initial margins calculation by adding estimated distribution costs, and allocated those costs to various product categories by two methods: first, by allocating all costs to product categories proportionately to sales value and second, by allocating distribution costs using the obtained information on avoidable distribution costs by product category.
- (281) Taking distribution costs into account reduced the margins significantly compared to the product margins excluding those costs. However, regardless of the method chosen to allocate distribution costs to various product categories, margins on stationery (Staples: around [...] in Europe, Office Depot: around [...] in Europe) remained significantly higher than those on ink & toner (Staples: around [...] in Europe, Office Depot: around [...] in Europe) as well as paper (Staples: around [...] in Europe, Office Depot: around [...] in Europe).
- (282) In correspondence with the Parties, the Commission learned that in addition to distribution costs, certain revenues were also excluded from the product margins that are of variable nature and should therefore be included in the margins calculation. On 20 and 23 October 2015 the Commission requested further information on

²²¹ See the submission "Staples/Office Depot, Margin Analysis", RBB Economics, dated 10 December 2015, slide 10: "[...]".

²²² Among other occasions this was raised in the meetings with RBB Economics on 8 October 2015, 28 October 2015 and 18 November 2015.

²²³ This included information requests sent on 12, 16, 20 and 23 October 2015 as well as on the 20th of November 2015.

various variable costs and revenues that were not taken into account in the initially submitted product margins. In particular, the Commission found that the underlying data for margin calculations presented earlier exclude variable revenues such as cash discounts, which are relatively large in magnitude. The resulting margins are presented in Table 7 and Table 8. Omitted variable revenues such as cash discounts are also taken into account in the calculation of margins essentially entirely offsets the downward effect of distribution costs. The resulting margins in Table 7 and Table 8 are very close to the product margins when distribution costs were ignored in recitals (277) and (278).

Table 7: Staples 2014 margins in the contract channel including all variable costs/revenues. Distribution costs were allocated to product categories according to avoidable costs, other variable costs and revenues allocated according to the product category's sales share

Staples	EU	AT	BE	DK	FI	FR	DE	IE	IT	NL	PT	ES	SE	UK
Ink & toner	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %
Paper	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %
Stationery	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %

Source: Commission's calculations based on the response to the Request for Information of 20 November 2015.

Table 8: Office Depot 2014 margins in the contract channel including all variable costs/revenues. Distribution costs were allocated to product categories according to avoidable costs, other variable costs and revenues allocated according to the product category's sales share

Office Depot	EU	AT	BE	DK	FI	FR	DE	IE	IT	NL	PT	ES	SE	UK
Ink & toner	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %
Paper	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %
Stationery	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %	[...] %

Source: Commission's calculations based on the response to the Request for Information of 20 November 2015.

7.2.1.2.3. Conclusion

(283) In conclusion, the analysis of data concerning margins suggests that the margins for stationery are relatively higher than margins for other traditional product categories, namely paper and ink & toner. The fact that stationery margins are higher than those for paper and toner/ink holds regardless of whether distribution costs were taken into account or not, and which method the Commission applied to allocate costs and revenues to product categories.²²⁴ Those findings may support the qualitative

²²⁴ The Parties conducted further analysis on margins across various product categories, the results and the underlying data of which has been provided to the Commission in the submission "Staples/Office Depot, Margin Analysis", RBB Economics, dated 10 December 2015. In this submission the Parties argue that [...].

evidence available to the Commission for the competitive assessment, indicating that specialist suppliers may exert some competitive pressure on the Parties' pricing of the product categories also sold by specialists (paper, ink & toner), but significantly less for stationery.

7.2.1.3. Office supplies contract markets as differentiated product markets

7.2.1.3.1. The views of the Notifying Party

- (284) According to the Notifying Party, the factors affecting the customers' choice of supplier mainly include price, service and product range but that none of those factors differentiate the suppliers in the market to any significant extent.
- (285) First, according to the Notifying Party, office supplies are homogeneous, unsophisticated and commoditised products with limited scope for products differentiation, which allows customers to force prices down to competitive levels. The Notifying Party argues that the products are simple and commoditised, making prices on the market very competitive.
- (286) Second, the Notifying Party submits that although certain suppliers are specialised in a particular product, for instance paper or ink & toner, the services provided by those specialist suppliers are the same as the corresponding services provided by other suppliers including the Parties.²²⁵ Furthermore, according to the Notifying Party, the service demanded by customers includes an efficient delivery system and low transaction costs which can be easily outsourced to third parties.
- (287) Third, the Notifying Party contends that most customers do not utilise or require one-stop shopping and hence a wide range of products and that most suppliers offer a wide range of products or can simply adjust the range of products offered to meet the customers' demands.²²⁶
- (288) Finally, the Notifying Party claims that there are a number of competitors in the market which are able to meet all the specific requirements of large contract customers.²²⁷

7.2.1.3.2. The Commission's assessment

- (289) The Commission agrees with the Notifying Party that office supplies as such are rather homogeneous and most suppliers on the market offer a number of similar individual products of the same brands sourced from the same manufacturers or wholesalers.²²⁸
- (290) However, the Horizontal Merger Guidelines set out that products may be differentiated in various ways.²²⁹ In particular, the Commission's assessment in this Decision does not concern the overall market for all B2B sales of office supplies (which according to the Notifying Party is the correct market definition)²³⁰ but focuses on the specific market for distribution of traditional office supplies through contracts to large customers. This particular market presents certain specificities and a differentiation of the suppliers in terms of the product range and services offered as

²²⁵ Form CO, paragraphs 200-201.

²²⁶ Form CO, paragraph 203.

²²⁷ "Note on customer requirements and competitor capabilities", submitted by the Notifying Party on 25 October 2015.

²²⁸ Agreed minutes of a call with a competitor of 28 July 2015.

²²⁹ Horizontal Merger Guidelines, footnote 32.

²³⁰ Form CO, paragraph 154.

well as in terms of the pricing strategies used. Those factors differentiate the suppliers from one another and may make the Parties particularly close competitors of one another in some of the relevant markets. For this reason, contrary to the Notifying Party's claim, it is necessary to assess how closely the Parties and other competitors compete in each of those assessed markets.

- (291) With regard to the product range, in *Buhrmann/Samas Office Supplies* the Commission found that small dealers are at a disadvantage when competing with larger suppliers because "*[s]mall dealers cannot match the large contract stationers in terms of ability to supply a full range of products (such a range can include some 8000 product types) from their own stock*".²³¹ Customers do not only compare individual products offered by different suppliers, which may be the same from supplier to supplier, but they compare the range of products available. A large proportion of customers confirmed the significant value attached to a supplier's wide product range and indicated in the market investigation that one of their main requirements when selecting a supplier is a wide range of products.²³²
- (292) The Parties have the advantage of being able to offer a wide overall range of traditional office supply products which offers customers one-stop-shop sourcing and a wide range of specific private label products which are not offered in the same breadth by some of their competitors.
- (293) One-stop-shop supply based on a wide available range of products is an important factor when selecting a supplier for many customers: "*When a European company buys office supplies, it often thinks that by pooling its purchases together, it will get the best price. This is not always true, however, as specialized suppliers can sometimes offer better prices on individual products. Nevertheless, it is very difficult for large companies to split the contract, and it may eventually not lead to savings as large suppliers can offer better prices across the whole range of products, thus offsetting any better price offered by single-product suppliers on certain products (for instance companies supplying paper)*".²³³
- (294) As regards the private label products, Office Depot offers on average [2000-2500] private label stock keeping units ("SKUs") per country and Staples offers on average [1500-2000] private label SKUs per country.²³⁴ While a number of competitors do not have their own private label products at all, out of the competitors replying to the market investigation who have a private label offer, only one has a comparable range of private label products, three competitors have around 1200-1300 SKUs and the remaining competitors offer below 1000 SKUs.²³⁵ A competitor explained in this context: "*The Parties have their own private label sourced in large part from Asia. This gives them a strong advantage when it comes to prices, which smaller suppliers cannot match, as they have to depend on traditional brands of office supplies.*" Similarly, a customer underlined the importance of private label products: "*[...] has a preference for private label*

²³¹ See Case M.2286 – Buhrman/Samas Office Supplies, recital 33.

²³² Replies to Phase I Questionnaire Q4 to customers (contract) – Question 12.

²³³ Agreed minutes of a phone call with a customer of 29 September 2015.

²³⁴ See reply to the Commission's request for information submitted on 19 October 2015. Office Depot offers between [1000-1500] and [3000-3500] private label SKUs and Staples between [500-1000] and [2500-3000] SKUs, depending on the country.

²³⁵ Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – questions 26.

products as they are equivalent at lesser pricing. [...] It is important that a supplier can offer a range of private label products."²³⁶

- (295) Contrary to the Notifying Party's arguments on the simplicity of expanding the product range,²³⁷ the competitors indicate that in general, it is possible to expand a limited range of products within an already existing product category. Expanding the existing range by a substantial number of items could be very cost intensive, however, as it requires additional warehouse storage, more advanced logistic solutions, marketing activities and additional trainings for sales people. Expanding the product range to new categories requires research, start-up investment and additional personnel and is difficult to carry out.²³⁸ Further details on expansion and entry will be discussed in the assessment of the problematic markets in sections 7.2.2 to 7.2.7 .
- (296) As regards the service levels in the market, the argument of the Notifying Party that the service expected by the customers only includes efficient delivery and low transaction costs was not supported by the results of the market investigation. The customers participating in the market investigation list a very broad list of services they require from their suppliers, including: desktop delivery, stock control and replenishment of office supplies cupboards, unpacking upon delivery, standard and customised reporting, dedicated or designated customer support, regular business reviews/meetings, shipping cost management, a formal return process, technical support, development for customisations of interfacing with the customer's systems, emergency deliveries, Key Account Managers dedicated to the company, a progress plan for the future allowing for cuts in cost, management information and product quality evaluations.²³⁹
- (297) The customers indicate that only the largest distributors present on the market have the necessary tools and scale to provide those specific services: "*Price and quality of the products and services are the main critical factors in selecting a supplier. Furthermore, large customers require the suppliers to be able to offer specific reporting on the consumption broken down by year, product categories and company divisions. They also require delivery of the products to many locations. Only the larger suppliers have the logistics to serve a significant number of locations and the IT capabilities to provide comprehensive statistics on invoices and consumption.*"²⁴⁰
- (298) Some customers explicitly indicate that they do not pay for the product as such, but for the additional tailored services offered by the suppliers. A customer explained: "*Stationery as such is a dying industry, what is important are not the products and prices as such, but the distribution model. The products are secondary, what mainly counts are the logistic capabilities and IT systems of the suppliers.*"²⁴¹
- (299) The results of the market investigation further indicated that there are considerable differences in pricing strategies between the suppliers. One former competitor explained that it had to step out of business as it was impossible to match the pricing

²³⁶ Agreed minutes of a phone call with a customer of 16 October 2015.

²³⁷ See also the Horizontal Merger Guidelines, paragraph 30.

²³⁸ Replies to Phase II questionnaires Q8a-j to customers – Question 23.

²³⁹ Replies to Phase II questionnaires Q8a-j to customers – Question 23.

²⁴⁰ Agreed minutes of a phone call with a customer of 15 July 2015.

²⁴¹ Agreed minutes of a phone call with a customer of 23 November 2015.

strategy of the Parties²⁴². Another one stated: "*it is very difficult / impossible [...] to win the largest public tenders, due to very low prices offered by the Parties*".²⁴³

- (300) Furthermore, the Parties are able to use sophisticated pricing models allowing them to analyse the individual customer's preferences and to tailor their pricing individually across the range of products offered. More specifically, when the customer starts the tender, the customer will provide a list of specific SKUs and ask suppliers to prepare a price for that list of items. That list is known as "the core list", or "the basket". As the Parties review the basket provided by the customer, an opinion is formed about how much of the customer's total purchase potential is represented by the basket. Generally, the pricing and margins on the items in the basket are lower than the pricing and margins on "non-core" items. With the overall goal of winning new customers and achieving a certain level of overall profitability, the supplier can decide how aggressive to be on the price of the core items, based on an assumption of how many non-core purchases will also be made by the customer. The assumption formed about the non-core business potential of a customer is based on market knowledge, past experience with similar customers, and any other knowledge about that specific customer. The results of the market investigation indicated that certain smaller suppliers may be less capable of using such strategies due to inferior market knowledge or inferior risk-taking abilities.
- (301) Against that background of differentiating factors, when requested to list the closest competitor of Staples, 67% of the customers named Office Depot, 22% named Lyreco and 10% named a different supplier.²⁴⁴ Similarly, when requested to list the closest competitor of Office Depot, 60% of the respondents indicated Staples, 24% pointed to Lyreco and 16% named a different supplier.²⁴⁵ The criteria that the customers took into account when assessing the closeness of competition included prices, distribution networks, product range, customer supports and IT tools (especially the IT ordering system which is compatible with the customer's own platform as well as advanced reporting).²⁴⁶ Further details on the closeness of competition and the availability of strong competitors will be discussed in the assessment of the individual markets in sections 7.2.2 to 7.2.24.
- (302) In conclusion, the market for the supply through contracts of at least the traditional office supplies categories is a differentiated market. Determining whether the Parties are close competitors is relevant to the assessment of the transaction, contrary to the Parties' opinion. The Parties compete closely with each other and with Lyreco. The remaining suppliers active on the market may be more distant competitors depending on the national market under consideration. In particular, smaller or more specialised competitors are not able to compete closely with the Parties in terms of product range, services and pricing strategies. The specificities will be discussed in the individual sections 7.2.2 to 7.2.24.

7.2.2. *International contracts - Traditional office supplies*

7.2.2.1. Market structure

- (303) The market for international contracts is characterised by customers with a demand for office supplies in different countries in the EEA. Such customers tender their

²⁴² Agreed minutes of a phone call with a competitor of 11 June 2015.

²⁴³ Agreed minutes of a phone call with a competitor of 9 September 2015.

²⁴⁴ Replies to Phase I Questionnaire Q4 to customers (contract) – Question 29.

²⁴⁵ Replies to Phase I Questionnaire Q4 to customers (contract) – Question 30.

²⁴⁶ Replies to Phase I Questionnaire Q4 to customers (contract) – Questions 29 and 30.

supply needs for some or all of those countries together in order to cover them under a single contract. This generates benefits for international customers, and in particular the benefits stemming from direct savings (due to volume rebates) as well as indirect savings which reduce the total cost of ownership of the supply contract (for instance the need to manage one single contract for supplies in different countries, single invoicing system, and uniform purchasing platform).

- (304) The Parties both sell office supplies under framework contracts which cover deliveries in more than one country in the EEA. Staples' sales under international contracts in the EEA amounted to EUR [...] in 2014, while Office Depot's sales amounted to EUR [...] (joint sales of EUR [...]). The Parties are capable of supplying customers in almost all EEA countries thanks to their wide geographic footprint, which is complemented by partnership agreements and third party distribution in those countries where they are not themselves present, but where the customer may require supplies (see Table 4 above).
- (305) A similar model is run by Lyreco, a French-based contract stationer which has operations in several EEA countries.²⁴⁷ Lyreco is capable of entering into international contracts for the provision of traditional office supplies to large business customers in the EEA.
- (306) As discussed in section 7.2.1.1, the Notifying Party submitted²⁴⁸ market shares based on different approaches. Based on those findings, the Commission concluded²⁴⁹ that market shares based on the 2013 international survey and on bidding data present a lower level of uncertainty than market shares provided for the position of the Parties at national level. Market shares estimate according to those two methodologies are presented in Table 9.

Table 9: Market share data submitted by the Parties according to international tenders data and the 2013 international survey

Company	International tenders	Customer survey
Staples	[20-30]%	[30-40]%
Office Depot	[20-30]%	[10-20]%
Combined	[50-60]%	[40-50]%
Lyreco	[30-40]%	[30-40]%
Local/specialist suppliers	11%	17%

- (307) According to the data in Table 9Table 9: Market share data submitted by the Parties according to international tenders data and the 2013 international survey, the transaction would result in the combination of two of the three main competitors in the market for international contracts for traditional office supplies to large business customers in the EEA. By merging the second leading and third leading suppliers on that market, the transaction would result in the creation of a market leader with

²⁴⁷ Lyreco offers office supplies to business customers in Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden and the UK; reply to Phase I Questionnaire Q1 – Question 5.

²⁴⁸ Most of the Parties' arguments are spelled out in a submission made by RBB Economics for the Parties on 18 May 2015, and attached as Annex 22 to the Form CO.

²⁴⁹ See recitals (267) to (276).

market shares near to, or exceeding, [50-60]%, with only one comparable competitor left.

- (308) In the course of the market investigation in Phase II, the Commission gathered data on the revenues of those companies from international contracts for the provision of traditional office supplies. The revenue data confirm the relative position of the Parties and Lyreco. Lyreco is the largest supplier by turnover in the EEA international contracts market, followed by the Parties. In its market investigation, the Commission has not identified any other supplier which has comparable operations or turnover in this market.

7.2.2.2. Competitive constraints faced by the Parties and closeness of competition

7.2.2.2.1. The views of the Notifying Party

- (309) The Notifying Party submits that other suppliers active in the supply of traditional office products, or specialist suppliers, exert a competitive constraint on the Parties. In particular,²⁵⁰ it argues that the Parties face competition not only from Lyreco, but also from national suppliers and specialist suppliers, to whom international customers would also be able to switch following the transaction.

7.2.2.2.2. The Commission's assessment

- (310) The Commission assessed the effective constraints faced by the Parties on the relevant market based on qualitative evidence from the market investigation, on the bidding data submitted by the Parties, and the basis of the surveys submitted by the Parties. The findings resulting from each of those sources, also examining the closeness of competition, will be presented in the present section.
- (311) The likelihood of customers' switching behaviour as regards national contracts has already been assessed for the purposes of the definition of the relevant market. In its competitive assessment of the transaction, however, the Commission also verified whether national suppliers do exert competitive pressure on the Parties within the relevant market by participating in international tenders.
- (312) Similarly, while the possibility of switching between full range contracts and special products contract has been discussed within the definition of the relevant market, the Commission also assessed whether specialist suppliers exert a competitive constraint on the Parties within the relevant market.

7.2.2.2.2.1. *Qualitative evidence from the market investigation*

- (313) On the basis of the market investigation the Commission 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 specialist suppliers and other suppliers having a very limited presence on this market.
- (314) Customers labelled as international by the Parties provided information on bidders in their last tenders for traditional office supplies. Within the replies received to the market investigation, it was possible to identify 45 tenders by international customers where information about bidders and winners was available.²⁵¹

²⁵⁰ Form CO, Annex 22, section 4.

²⁵¹ Replies of international customers to Phase II questionnaires Q8a-j to customers – Question 8.

Table 10: Bidding information by customers on tender participants

Only Lyreco, Staples, Office Depot	29
All three participated	17
Only both Parties	3
One Party and Lyreco	5
Only One Party	3
Only Lyreco	1
At least one other competitor	16

- (315) In almost two-thirds of instances, the Parties and Lyreco were the only participants to tenders by international customers. Only in one-third of cases did a different supplier other than the Parties and Lyreco submit a bid. Those resulted in only four wins or partial wins for other suppliers.
- (316) The bidding information submitted by the Parties is in line with the qualitative feedback from customers regarding the market participants that they consider as viable suppliers for their office supplies need.²⁵² Customers were asked to indicate the actual or potential suppliers that could satisfy a number of criteria relating to their sourcing of traditional office supplies, including portfolio size, ability to supply the full range of products, quality of the products, logistics capability, IT ordering system, account management. For all those criteria, almost 90% of customers indicated the Parties and Lyreco as the only actual or potential suppliers capable of satisfying them.
- (317) Information received from customers is in line with the replies of competitors to the market investigation in Phase II. Among responding competitors,²⁵³ a large majority replied that they only target national contracts, and occasionally contracts for two countries. Only two competitors replied they target also contracts for three or more countries. Among all of those suppliers, only Lyreco offers specific services or account management support to international contract customers that are not typically offered to national customers, in a similar way to the Parties.
- (318) The evidence gathered by the Commission thus confirms that the Parties and Lyreco are the only viable suppliers of traditional office products to large business customers through international contracts in the EEA. The Parties and Lyreco are also seen by market participants as closest competitors with regard to any parameter assessed.

7.2.2.2.2. Analysis of bidding data in tenders with international customers

- (319) The Parties provided tender data for Staples and Office Depot on tenders involving international customers.²⁵⁴ The data on tenders confirm the findings of the Commission during the market investigation, and in particular indicate that in tenders involving international contracts, only the Parties and Lyreco compete with each

²⁵² Replies of international customers to Phase II questionnaires Q8a-j to customers – Question 10.

²⁵³ Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – Questions 28 and 29.

²⁵⁴ See the annexes of the submission "*Competitive Assessment – International Customers*", RBB Economics, dated 18 May 2015.

other effectively. Other suppliers do not exert a significant competitive pressure on the Parties. This is also in line with the analysis submitted by the Notifying Party.²⁵⁵

- (320) As regards the tenders where Staples participates, it loses mainly to Lyreco which accounts for [40-50]% of Staples' losses ([50-60]% in terms of value) and to Office Depot which accounts for [30-40]% of Staples' losses ([40-50]% in terms of value) (see Table 11 below). The Notifying Party acknowledges that '*when Staples loses international tenders, Lyreco is the most frequent winner, followed by office Depot*'. As regards the tenders where Office Depot participates, it loses mainly to Lyreco which accounts for [50-60]% of Office Depot's losses and to Staples which accounts for [40-50]% of Office Depot's losses (see Table 12). This is also recognised by the Notifying Party, which acknowledges that '*Office Depot loses the majority of its international tenders for which the winner is known to Lyreco, followed by Staples. Only a small number of tenders are won by other competitors*'.²⁵⁶
- (321) The findings are the same, regardless of whether one focuses on tenders with known winners only or includes those with unknown winners. In particular, the Parties found that in tenders which Office Depot loses, the winner is Lyreco and Staples in respectively [30-40]% and [20-30]% of cases respectively. The winner is unknown in [30-40]% of tenders. Other firms very rarely win, with "various", Office Max, Wulff, SCA and Office Express emerging as winner in a total of [10-20]% of tenders Office Depot loses (see Table 12).²⁵⁷

Table 11: International tenders lost by Staples

[...]

Source: Table 3 of submission "*Competitive Assessment – International Customers*" dated 18 May 2015, RBB Economics.

Table 12: International tenders lost by Office Depot

[...]

Source: Table 4 of submission "*Competitive Assessment – International Customers*", dated 18 May 2015, RBB Economics.

- (322) The international bidding data of Staples also contained information on the identity of the previous suppliers (or "incumbents"). The Commission therefore assessed from which incumbent Staples won international tenders, and found that in most cases the incumbents were Lyreco and Office Depot.²⁵⁸ In particular, out of

²⁵⁵ See the submission "*Competitive Assessment – International Customers*", RBB Economics, dated 18 May 2015, section 3.2.

²⁵⁶ See "*Competitive Assessment – International Customers*", dated 2015 May 18, RBB Economics, pages 9-10.

²⁵⁷ Looking at values instead of number of tenders leads to similar findings. In terms of value share of tenders lost by Office Depot, Staples and Lyreco captured respectively [20-30]% and [20-30]%. Unknown winners received [40-50]% of the value of tenders Office Depot lost, and a handful of other winners (such as "various", Office Max, Wulff, SCA and Office Express) captured in total less than [5-10]% of the value of tenders lost by Office Depot.

²⁵⁸ Tenders may have multiple winners in different product categories. Furthermore, the same tender may have multiple winners within each product category. Throughout this Decision, in its analysis of tender data the Commission regards tenders with multiple winners in the same product category or across different product categories as distinct observations. These are counted and reported separately. The same applies to the analysis of bidders in tenders. For example, if a single tender had two winners in any product categories, those are reported and referred to as two tenders won. In case a tender had

[...] tenders where Staples won and where the incumbent is known, the incumbent was Lyreco and Office Depot in [...] and [...] tenders respectively. Other suppliers appear significantly behind: the incumbent was "local" in [...] tenders, "Other" appeared as incumbent in [...] tenders, and Fiducial, Gullberg and JM Bruneau were incumbents in [...] each.²⁵⁹ In terms of value, the gap between Office Depot/Lyreco and other suppliers is even more important: the tenders where Office Depot (respectively Lyreco) was the incumbent represent [40-50]% of the value (respectively [30-40]%) of the tenders won by Staples where the incumbent is known, while the tenders where the incumbent is coded as "local" represent only [5-10]% in value.

- (323) The Commission also looked at participants and winners of tenders in which the Parties participated. In the bidding data submitted by Office Depot, which concerns all tenders where Office Depot participated, no firm other than Staples and Lyreco could be identified as a significant participant against Office Depot.²⁶⁰ Among the [...] international tenders where Office Depot participated, Staples participated in [...] and Lyreco in [...] tenders. The next firm is coded as "various", with only [...] participations.^{261 262}
- (324) Looking at winners of international tenders, an analysis of Office Depot's bidding data shows that out of [...] tenders where data on the winner was available, Office Depot, Lyreco and Staples won [...], [...] and [...] tenders respectively.²⁶³ Other winners appear only occasionally, namely "various" ([...] wins), Office Max ([...] wins), Office Express, SCA and Wullf ([...] each).²⁶⁴ In Staples' international bidding data, the winners could be identified in [...] tenders.²⁶⁵ Out of those, Staples won [...] tenders, followed by Lyreco and Office Depot, with [...] and [...] wins respectively. Other winners appear significantly behind, with "other" and "local" winning in respectively [...] and [...] tenders, while Office Discount, Abraham and Errebian/Felian each won in [...] each.
- (325) To conclude, the analysis of the bidding data confirms that the Parties are close competitors and exert a significant competitive pressure on each other for the following reasons: (i) they participate against each other in an important number of international tenders, (ii) Staples loses a significant number of tenders against Office Depot and vice-versa, and (iii) Office Depot was an incumbent in a significant number of tenders won by Staples. Moreover, the analysis of bidding data also suggests that other firms, except Lyreco, do not exert a significant competitive pressure on the Parties in international tenders (due to few participations and few wins). Overall, on the basis of the analysis of the bidding data, the Commission considers that there are three credible and close competitors for international tenders, namely the Parties and Lyreco.

multiple winners in a particular category, the Commission followed RBB Economics in its assumption to split the value won equally among winners.

²⁵⁹ In [...] tenders Staples won, the incumbent was "unknown."

²⁶⁰ The data provided by the Parties on international tenders do not allow for separating tenders by product categories.

²⁶¹ In [...] tenders, the bidder that participated against Office Depot is coded as "unknown".

²⁶² Staples' data on international tenders did not contain usable information on the identity of participants other than winners. Therefore, this analysis cannot be carried out with bidding data provided by Staples.

²⁶³ In the calculations for tenders with multiple winners, the Commission followed RBB's approach and treated these as one win for each winner.

²⁶⁴ The winner was unknown in [...] tenders.

²⁶⁵ The winner is unknown in [...] tenders.

7.2.2.2.3. *Analysis of the survey evidence on participants and shortlisted bidders in international tenders and on price benchmarking*

- (326) The data from the 2013 international survey also contain information on participants and shortlisted bidders in international tenders launched in the last two years. This corresponds to [...] tenders (that is [...] respondents from a sample of [...] respondents in total).²⁶⁶ Among those [...] tenders, Staples, Office Depot and Lyreco are the suppliers that participated the most often, with [...], [...], and [...] participations respectively. The other suppliers appear significantly behind: a combination of local vendors with [...] participations, Fiducial with [...] participations, Wulff Supplies with [...] participations, and specialised ink & toner vendors with [...] participations.²⁶⁷ Those findings suggest that suppliers other than the Parties and Lyreco do not exert a significant competitive pressure in international tenders and that there are essentially three competitors in international tenders, namely the Parties and Lyreco.
- (327) Among the [...] tenders where Staples participated, the other two main participants are Office Depot (with [...] participations) and Lyreco (with [...] participations). Other suppliers appear significantly less frequently: a combination of local vendors with [...] participations, Wulff Supplies with [...] participations, Fiducial and specialised ink & toner vendors with [...] participations, and specialised paper vendor with [...] participations.²⁶⁸ Those findings suggest that the Office Depot is a close competitor to Staples, as is Lyreco, while other suppliers are more distant competitors.²⁶⁹
- (328) Among the [...] tenders where Office Depot participated, the other two main participants are Staples (with [...] participations) and Lyreco (with [...] participations). The other suppliers appear significantly less frequently: a combination of local vendors with [...] participations, Fiducial with [...] participations, specialised ink & toner vendors with [...] participations, and specialised paper vendor with [...] participations.²⁷⁰ Those findings suggest that Staples is a close competitor to Office Depot, in addition to Lyreco, while other suppliers are more distant competitors.
- (329) The 2013 international survey also contains information on shortlisted suppliers in tenders. Staples, Office Depot and Lyreco are the suppliers who are the most often shortlisted: Staples with [...] shortlists, Office Depot with [...] shortlists and Lyreco with [...] shortlists. The other suppliers appear significantly less frequently: a

²⁶⁶ See question 19 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015.

²⁶⁷ See question 23 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015.

²⁶⁸ Commission's calculations based on question 23 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015.

²⁶⁹ This analysis was carried out based on the raw data of the 2013 survey. The Notifying Party provided the raw data on 16/11/2015 (see Excel file "*2013 survey (national and international customer - final raw data in rows.xlsx)*"). However, the raw data was requested on 02/09/2015, but in response only tables of descriptive statistics were provided ("*M.7555 – Annex 2 - 2013 survey (national and international customers) - final raw data.xlsx*", response from the Notifying Party on 03/09/2015). Another Request for Information, dated 02/10/2015 (question 32), was sent to the Notifying Party asking to provide the raw data for the 2013 survey. The Parties replied on 09/10/2015 that "*Nothing in addition to the file submitted on 3 September is available – results were provided in the form of the frequency tables submitted*".

²⁷⁰ Commission's calculations based on question 23 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015.

combination of local vendors with [...] shortlists, Wulff Supplies with [...] shortlists, Fiducial with [...] shortlists.²⁷¹ Those findings confirm that suppliers other than the Parties and Lyreco do not exert a significant competitive pressure in international tenders and that there are essentially three competitors in international tenders, namely the Parties and Lyreco.

- (330) The analysis of the 2013 international survey data also shows that the Parties are often shortlisted against each other in international tenders. Among the [...] tenders where Staples is shortlisted, Office Depot and Lyreco are shortlisted in [...] and [...] tenders respectively, while other suppliers appear significantly behind. Among the [...] tenders where Office Depot is shortlisted, Staples and Lyreco are shortlisted in [...] and [...] tenders respectively, while other suppliers appear significantly less frequently.²⁷² Those findings confirm that the Parties are close competitors.
- (331) The 2013 international survey also contains information on the suppliers included in the price benchmarking done by customers in international tenders.²⁷³ The question on price benchmarking was designed for the respondents that did not launch a tender in the last two years. Therefore it provides additional information on the competitive landscape for international contracts by considering those customers who were not included in the previous analysis of participation data in recitals (327)-(328).
- (332) Among the 56 respondents, 34 indicated that they conducted a price benchmarking exercise in the last couple of years. Staples, Office Depot, and Lyreco were the main firms included in the price benchmarking exercise: Staples was mentioned by [80-90]% of those respondents, Office Depot by [40-50]%, and Lyreco by [70-80]%. In contrast, other suppliers appear significantly behind: a combination of local vendors is mentioned by only [5-10]% of those respondents, Amazon by only [5-10]%, Fiducial by only [5-10]%, specialised paper vendor by only [5-10]%, and specialised ink & toner vendors by only [0-5]%.²⁷⁴
- (333) Those findings confirm that there are essentially three close competitors in international tenders, namely the Parties and Lyreco, and that other competitors appear more distant and less credible.
- (334) The Commission notes that it was not possible to carry out the same analysis of participants, shortlisted bidders and price benchmarking in international tenders using the 2015 international survey [...]. This is because the relevant questions were not included in the survey.

7.2.2.2.2.4. *Analysis of survey evidence on the credibility of the different alternatives*

- (335) The 2013 international survey also contains information on the credibility of the different suppliers. In particular, a list of suppliers was provided to the respondents and the respondents were asked to indicate how likely they would switch to each of this vendor on a scale from 1 (very unlikely) to 5 (very likely).²⁷⁴

²⁷¹ See question 25 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015.

²⁷² Commission's calculations based on question 25 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015.

²⁷³ See question 20 and question 21 of Annex A.1 of the submission "*Competitive Assessment - International Customers*", RBB Economics, dated 18 May 2015. The questions were: "Did you conduct a price benchmarking in the marketplace in the last couple of years?" and "Which of the following companies did you include in your price benchmark?".

²⁷⁴ The scale used is the following: 1 = very unlikely, 2 = unlikely, 3 = neutral, 4 = likely, 5 = very likely. Question 33 of Annex A.1 of the submission "*Competitive Assessment - International Customers*",

- (336) For Staples, Office Depot, and Lyreco, the Commission calculated the proportion of respondents selecting options "4" (likely) or "5" (very likely). This leads to the following proportions: [30-40%] for Office Depot, [30-40%] for Lyreco, and [30-40%] for Staples. In order to assess the credibility of other suppliers in international tenders, the Commission compares the lowest of those three proportions, which is [30-40%], with the corresponding proportions for each of the alternative suppliers. If the proportion for an alternative supplier is close to (respectively distant from) [30-40%], this supplier can be considered as being as credible as (respectively less credible than) the Parties and Lyreco.
- (337) The corresponding proportions for the alternative suppliers are the following:²⁷⁵
- (a) For many suppliers, no or very few respondents answered the question. This concerns for example many national suppliers such as AB Supplies, Alter Buro, Fiducial, Hedera, Kontorab, Lekolar, Nyblogruppen, Papyrus, Procurator, Quantore, RKV, Wulff Suppliers.
 - (b) Other alternatives have proportions which are at least significantly lower than the benchmark of [30-40%]: a combination of local vendors has a proportion of [10-20]%, specialised ink & toner vendor has also a proportion of [10-20]%, specialised paper vendor has a proportion of [20-30]%, Amazon [5-10]%, all online
 - (c) retailers (not Amazon) [10-20]%, Mass market retailer (who sell office supplies) [10-20]%
- (338) The significant gap between the three international suppliers (that is to say Staples, Office Depot and Lyreco) and other alternatives - such as national suppliers, a combination of local vendors, specialist suppliers and Amazon -, suggest that those alternatives are significantly less credible for international tenders.²⁷⁶ The 2013 international survey data thus confirms the above findings on market structure and the closeness of competition in the international contract market.
- (339) The Commission also notes that it was not possible to carry out the same analysis of participants, shortlisted bidders and credible alternatives in international tenders using the 2015 international survey [...]. This is because the relevant questions were not included.

7.2.2.2.3. Conclusion

- (340) On the basis of the feedback from 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, the Commission considers that there are only three suppliers active on the traditional office supplies market through international contracts with large business customers, that is to say the Parties and Lyreco. Those three suppliers are the closest competitors to each

dated 18 May 2015: "*For each of the alternatives vendors below, considering all features that important to you, please indicate how likely (on a scale from 1 = very unlikely to 5 = very likely) you would be to switch to this vendor*".

²⁷⁵ See Excel file "M.7555 - Annex 2 - 2013 survey (national and international customers) - final raw data".

²⁷⁶ In the submission "*Staples/Office Depot – economists' meeting*", RBB Economics, slide 13, the Notifying Party essentially argues that the proportions used for benchmarking should also include the respondents that are "neutral" (see footnote (276)). Taking this comment into account (which is equivalent to use the proportion of respondents replying "unlikely" and "very unlikely") leads to similar findings.

other, and account for almost all sales on the relevant market. The remaining suppliers account for fewer participations in the international contracts market, have marginal sales and do not exert a significant constraint on the Parties.

7.2.2.3. Competitive conditions following the transaction

7.2.2.3.1. The views of the Notifying Party

(341) The Notifying Party submits that the merged entity would be constrained by other suppliers and would not have the ability to raise prices. In particular, the Notifying Party submits that customers will have the ability to switch all or part of their requirements of traditional office supplies:

- (a) to national suppliers;²⁷⁷
- (b) to Lyreco;²⁷⁸
- (c) to specialist suppliers.²⁷⁹

(342) The Notifying Party also submits that there would be no significant barriers to expansion of existing suppliers, and that other suppliers, such as Amazon, are about to or could potentially enter the market to supply B2B customers of any size and exert a competitive constraint on the Parties, particularly because of its wide existing online and physical presence in the EEA.²⁸⁰

7.2.2.3.2. The Commission's assessment

7.2.2.3.2.1. *Framework of the analysis*

(343) As regards the likelihood that the transaction would lead to higher prices, economic models of oligopolistic competition predict that in mergers between firms producing differentiated products the merged entity would have an incentive to increase prices after the transaction. This incentive arises from the ability of the merged entity to recapture, through the sales of the merger partner's products, some of the sales that would otherwise be lost as a result of such price increase. This effect is stronger if the transaction brings together close competitors and if the concentration on the market is already high (that is if there will be few remaining rivals).²⁸¹ In practice, the degree of substitutability (or the degree of closeness) between the products of the Parties can be evaluated through the diversion ratio.²⁸² As discussed in the present

²⁷⁷ Form CO, Annex 22, section 4.1.

²⁷⁸ Form CO, Annex 22, section 4.2.

²⁷⁹ Form CO, Annex 22, section 4.3.

²⁸⁰ Form CO, paragraphs 52-60, and 'Note on Amazon' submitted by the Notifying Party on 20 October 2015.

²⁸¹ This conclusion does not hold in the very specific context of so-called Bertrand models which predict perfectly competitive outcomes with prices at marginal cost even with only two firms operating in the market. This outcome depends on rather extreme assumptions, such as the firms being identical, selling homogeneous products at identical marginal cost and facing no capacity constraints. Relaxing any of these extreme assumptions changes the prediction that perfectly competitive prices can arise with just two competitors. Even in markets where prices are set through bidding-like processes, it is only under very specific conditions that significant further concentration through a merger may have limited impact on prices, such as firms having perfect information on the offers made by rivals and on how the customer values these offers (see also footnote 284). This is also mentioned in the Horizontal Merger Guidelines, paragraphs 24-25, paragraph 27, and paragraph 31.

²⁸² The diversion ratio from product A to product B measures the proportion of the sales of product A lost due to a price increase of A that are captured by product B. See Horizontal Merger Guidelines, paragraph 29.

section, this reasoning extends to markets where prices are determined through bilateral negotiations/bidding-like processes.²⁸³

- (344) In tenders, firms typically compete against each other by proposing a bid which is unknown to other firms ("sealed"). Auctions are best characterised as sealed-bid environments where firms are paid according to their bid (if they are ultimately selected as the winner) and when they face uncertainty on the conditions offered by competing bidders, for example on the quality of competing products or the prices at which they are offered, or on how the buyer will evaluate different characteristics of each bid.²⁸⁴
- (345) With uncertainty on what is required to submit a winning bid, each firm will face a trade-off between the probability of winning the tender and the margin earned in the event of winning the tender. A higher bid will reduce the probability of winning the tender but will increase the margin if the bid is successful. This trade-off is equivalent to the standard trade-off between quantity sold and price in an ordinary differentiated goods market, with the difference being that in the case of a tender it is the expected quantity sold (that is to say the probability of winning the auction) rather than actual quantity sold which enters the trade-off.
- (346) The primary difference between the tender environment and an ordinary differentiated product market is that in the former, the diversion of sales between competing firms should be understood in terms of the expected sales (that is to say the probability of winning the tender) rather than actual sales. In a tender environment prior to the merger, if one of the merging firms (Firm A) raised its price, the other merging firm's probability (Firm B) of winning would have increased, in particular if Firm B was a close competitor of Firm A. This induced Firm A to bid more aggressively pre-merger, in order to increase its chances of winning a tender. A merger between firms A and B would remove this direct competitive constraint between the Parties, resulting in both firms bidding less aggressively, for example by submitting higher prices or lower quality offers. This effect is stronger the closer the two Parties are to each other.²⁸⁵

²⁸³ See case M.7278 – General Electric/Alstom (Thermal Power – Renewable Power & Grid Business), recitals 252-263, and Annex 1 for a detailed discussion of the competitive effects for mergers in bidding markets. See also case M.6950 – UPS/TNT Express, Recital 722.

²⁸⁴ See Annex 1 of the decision in case M.7278 – General Electric/Alstom (Thermal Power – Renewable Power & Grid Business) for a detailed discussion on competitive effects in bidding market. The other leading alternative auction process is called a second-price auction. In a procurement procedure, a second-price auction can be approximated by a descending auction, where the price is lowered by rivals until only one competitor remains. In this framework, the price paid by the winner is the lowest price that any other competitor was willing to offer before dropping out of the tender. This auction format provides a good description of how a tender actually operates under fairly strict assumptions, namely that each bidder can fully observe the characteristics and customer valuation of offers made by rival bidders before submitting its own final offer. In that framework, the only determinant of the winning price is indeed the price proposed by the number 2 ranked bidder (that is to say the runner-up bidder). The Parties did not put forward this auction framework. Moreover, the uncertainty in this industry with respect to the identity of competitors as illustrated by the large number of missing information relative to the incumbents, rivals and winners in bidding databases suggests that a sealed bid auction framework is more appropriate (for example, see recital (618), and footnotes 259, 261, 264, 265).

²⁸⁵ In a tender environment, the diversion ratio between Firm A and Firm B is therefore determined by the fraction of the reduction in Firm A's winning probability that is captured by Firm B, and vice versa for the diversion ratio from Firm B to Firm A. A merger between Firm A and Firm B will induce each firm to bid less aggressively, since a higher bid by Firm A will increase the probability of Firm B winning, and thus increase its profits (in proportion to its pre-merger margin). Similarly, less aggressive bidding by Firm B will make it more likely that Firm A will win the tender, and thus increase its profit. The

- (347) The effects of mergers in tenders with imperfect information are likely to affect a relatively broad class of buyers, rather than being targeted on customers for whom the Parties are the two preferred bidders. This follows from the fact that bidding incentives will change for all tenders where the Parties consider that the winning probability of one of the merging firms would be affected by the bid of the other merging firm (and vice versa). This also includes tenders in which the two merging firms are not the two best-placed firms, if firms cannot identify those tenders ex ante, and adapt their bidding behaviour only for those tenders.²⁸⁶ In practice, all bids where the Parties would have met absent the merger (which can be proxied by bids where the parties have actually met in the recent past) are apt to be affected by merger effects.
- (348) Similar to ordinary markets with differentiated products, the non-merging firms can also benefit from the reduction of competitive pressure resulting from the merger. In other words, incentives to increase prices are likely to also apply to non-Parties, since the merged entity would be less aggressive in its bidding behaviour. The Commission's Horizontal Merger Guidelines specify that "*mergers in oligopolistic markets involving the elimination of important competitive constraints that the Parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition*".²⁸⁷ In this case, non-merging firms, in particular Lyreco, can also benefit from the reduction of competitive pressure that results from the merger, since the merged firms' price increase may switch some demand to the rival firms, which in turn may find it profitable to increase their prices.²⁸⁸

7.2.2.3.2.2. *Effects of the transaction*

- (349) Based on the results of the market investigation the Commission finds that Staples, Office Depot, and Lyreco are the main suppliers active on the relevant market for international contracts.
- (350) The Notifying Party's claim that customers could be supplied by national suppliers found no support in the available evidence. While national suppliers are more successful in securing national contracts, they are almost not present on the market for international contracts. Even if they do participate in a few international tenders, they cannot typically satisfy the supply needs of international customers through international contracts. The Parties and Lyreco, different from those other suppliers, can avail themselves of a network of national operations through which they can supply and offer services directly or through partnerships in a wide number of EEA countries. For several customers tendering internationally for several locations, this means that the Parties and Lyreco are effectively the only available choice, as testified by the large number of tenders where only those three suppliers, or even only one or two of them, submit bids for international contracts.
- (351) Also the potential switch to specialist suppliers is not supported by the results of the investigation, nor is it decisive in order to evaluate the effects of the transaction. In particular, very few international tenders were partly allocated to specialist suppliers

incentives to increase prices are thus determined by the level of diversion between the merging firms (evaluated in terms of winning probabilities) and by the level of pre-merger margins.

²⁸⁶ See also Case M.6950 – UPS/TNT Express, recital 722.

²⁸⁷ See Horizontal Merger Guidelines, paragraph 25.

²⁸⁸ See Horizontal Merger Guidelines, paragraph 24.

for the specific category of office supplies they can provide. The existing barriers for specialist suppliers to establish themselves as full range suppliers, including stationery, and which will be further discussed in section 7.2.2.4, exclude them from the range of competitors that could constrain the merged entity after the transaction.

- (352) Therefore, following the transaction, the only alternative to the merged entity in the supply of traditional office supplies to large business customers would be Lyreco, thus reducing the range of potential suppliers from three to two.
- (353) The transaction would thus lead to a reduction in the already limited number of alternatives available to customers. In this specific market, this is also in line with the expectation of customers as regards the minimum number of bidders that would ensure a competitive outcome for the tenders. In the framework of the market investigation in Phase II, most responding customers indicated that three or more bidders is the minimum number normally invited to submit an offer in order to have a sufficient competition.²⁸⁹ It is also of particular significance that, in the context of tenders reported by those respondents, when they obtained bids from more than two companies, in the majority of cases these were bids by Office Depot, Staples and Lyreco. As underlined by one customer, *'There are only three companies than can respond to our need. This merger will reduce this number to two. (...) Prices could increase and the level of service could decrease.'*²⁹⁰
- (354) In this context, 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. The removal of Office Depot would remove a close competitor of Staples. As discussed in recital (348), on top of the difficulty for customers of the Parties to switch because of the absence of a sufficient number of alternative suppliers, the only remaining competitor, Lyreco, may itself become less aggressive in its bidding behaviour as it benefits from the reduction of competitive pressure resulting from the transaction.
- (355) This assessment is in line with the perception of a large number of customers who purchase under international contracts²⁹¹ who indicated that the transaction would impact on the possibility of having a sufficient number of potential bidders and potentially result in price increases. As summarised by one customer: *'The transaction will create one very large player; therefore it will be difficult to have strong competition when running a tender. Currently, the main companies (e.g. Lyreco, Office Depot and Staples) bid against each other allowing customers to reach the best purchasing price, it is questionable what will be the situation after the merger. (...)'*²⁹²

7.2.2.4. Barriers to entry and potential competition

7.2.2.4.1. The views of the Notifying Party

- (356) The Notifying Party submits that the market for the B2B distribution of office supplies is highly contestable irrespective of the exact market definition. In the

²⁸⁹ Replies of international customers to Phase II questionnaires Q8a-j to customers – Question 10.3.

²⁹⁰ Non-confidential reply of one customer to Phase I Questionnaire Q5 – Question 56.1.

²⁹¹ Replies of international customers to Phase II questionnaires Q8a-j to customers – Question 10.4 and 53.1, and replies to Phase I Questionnaire Q5 – Questions 55, 56 and 56.1.

²⁹² Reply of a customer to Phase I Questionnaire Q5 – Question 55.

Notifying Party's view there are no significant barriers between different customer segments, distribution channels or product categories.²⁹³

- (357) The Notifying Party puts forward three main arguments to support its claim regarding the absence of barriers to entry.
- (358) First, it submits that suppliers who do not yet offer contracts can easily do so, such as Amazon who already has penetrated the B2B segment, as this only requires a limited investment in personnel.²⁹⁴ According to the Notifying Party, the term "*contract*" is very misleading. In the view of the Notifying Party, those agreements are essentially framework agreements without any detailed contractual provisions. The main parameter that is covered in those agreements is the price including any discounts. Contracts very rarely include customised offerings or other customer-specific services that cannot be provided by online suppliers. Therefore, the fact that online suppliers do not offer "contracts" does not mean that they cannot, or do not compete against the Parties. Online competitors can easily set up individualised e-catalogues allowing them to customise their offerings for specific customers (and offer volume rebates and other special offers to specific customers).²⁹⁵
- (359) Concerning in particular the ability to serve contracts with large customers, the Notifying Party submits that there are no significant expansion or entry barriers for existing stationery suppliers, such as online suppliers, that would prevent them from becoming even more active in the segment for the largest customers, either through direct sales or contract sales.²⁹⁶ Moreover, the Notifying Party submits that there are no insurmountable barriers that would prevent even a relatively small supplier from serving large customers, as it requires only minimal investments.²⁹⁷
- (360) Second, according to the Notifying Party, specialist suppliers can easily extend their product range into traditional office supplies, as is evidenced by various examples, including for example, Manutan, which has recently expanded its offer from office furniture to stationery, paper, ink & toner and office machines. As regards stationery more particularly, the Notifying Party submits that suppliers which are active in neighbouring markets face low barriers to entry into stationery and can easily add stationery to their existing product portfolio.²⁹⁸
- (361) Third, in the Notifying Party's view, in a market that is characterised by relatively homogeneous products with limited scope for differentiation, a key issue is whether suppliers can easily increase output in response to price increases. It is self-evident that there are no significant constraints that prevent suppliers from increasing their sales swiftly against minimal cost.²⁹⁹ In this regard, the Notifying Party claims that any supplier that already wins a small number of large tenders for the supply of stationery can exert a competitive constraint on large suppliers since they would only

²⁹³ Form CO, paragraph 237.

²⁹⁴ *Ibid.*

²⁹⁵ Note on the reduction in the number of key suppliers for stationery, submitted on 23 October 2015, paragraph 22.

²⁹⁶ Note on the reduction in the number of key suppliers for stationery, submitted on 23 October 2015, paragraphs 14-21.

²⁹⁷ Note on customer requirements and competitor capabilities, submitted on 25 October 2015, paragraph 7.

²⁹⁸ Note on the reduction in the number of key suppliers for stationery", submitted on 23 October 2015, paragraphs 14-21.

²⁹⁹ Form CO, paragraph 238.

need to increase their levels of purchases of office supplies in order to increase output.³⁰⁰

- (362) As regards potential entry, the Notifying Party submits that the Parties clearly view online suppliers such as Amazon as a significant threat, as is evidenced by numerous internal documents. In the Notifying Party's view, the important question for the competitive assessment is whether the Parties' competitive behaviour would be influenced by the threat of such expansion or entry.
- (363) In this regard, the Notifying Party repeatedly mentions Amazon as a supplier capable of posing a significant competitive threat to the traditional office supplies companies.³⁰¹ The Notifying Party submits that "Amazon Business", which was launched in the United States in April 2015, is set to become a viable competitor in the European contract business. According to the Parties, Amazon Business is currently operating in B2B office supplies in the United States and there are no significant barriers to entry in the EEA. The development of Amazon Business from the simpler predecessor system AmazonSupply is seen by the Parties as an initiative to capture the contract business.³⁰²
- (364) The Notifying Party further submits that Amazon has always been very aggressive in expanding into the B2B office supply business and that with its recent launch of Amazon Business it intends to capture business office supplies accounts.³⁰³ According to the Notifying Party, Amazon already targeted large customers with the launch of AmazonSupply in 2012,³⁰⁴ and is currently aggressively expanding to compete for this customer category with "Amazon Business"³⁰⁵. The Notifying Party further supports this argument by referring to a number of job vacancies for Amazon Business positions in the US that Amazon is advertising publicly and some B2B positions in the EEA, in particular in Germany and in France.³⁰⁶
- (365) As regards the contract market particularly, the Notifying Party also claims that Amazon is threatening to disrupt the entire contract business model, by offering customers the possibility to quickly and easily set up free Amazon Business accounts. According to the Notifying Party, this would allow Amazon to put itself in a similar position to a traditional office supplies dealer that has gone through the tendering process and has won a contract with a business customer.³⁰⁷ Moreover, the Notifying Party indicates that there are no barriers to entry that would prevent a supplier like Amazon who do not yet offers contracts to easily do so, since it has already penetrated the B2B segment and expansion into contracts only requires a limited investment in personnel.³⁰⁸

7.2.2.4.2. The Commission's assessment

7.2.2.4.2.1. *Barriers to entry*

- (366) Regarding the argument that entry into the contract market is very easy, the Commission considers on the basis of the market investigation that, contrary to the

³⁰⁰ *Ibid.*

³⁰¹ Form CO, paragraphs 53, 59 and submission on Amazon of 20 October 2015.

³⁰² Form CO, paragraphs 53-60.

³⁰³ Note on Amazon, submitted by the Notifying Party on 20 October 2015, paragraph 16.

³⁰⁴ Note on Amazon, submitted by the Notifying Party on 20 October 2015, paragraphs 18-20.

³⁰⁵ Note on Amazon, submitted by the Notifying Party on 20 October 2015, paragraphs 21-27.

³⁰⁶ Note on Amazon, submitted by the Notifying Party on 20 October 2015, paragraphs 23-27.

³⁰⁷ Note on Amazon, submitted by the Notifying Party on 20 October 2015, paragraphs 46-49.

³⁰⁸ Note on Amazon, submitted by the Notifying Party on 20 October 2015, paragraph 51.

Notifying Party's claims, the tender contract market suffers from high barriers to entry.

- (367) According to a Dutch supplier that tried to (unsuccessfully) enter this market "these barriers are not only related to the size and the capacity needed to serve the customers, but also to endogenous strategies pursued by the incumbents. Moreover, special systems are needed in order to be an effective competitor in the tendering market. Despite the fact that Quantore satisfies the technical features to serve big customers, it does not have the business knowledge and intelligence to bid against the incumbents".³⁰⁹
- (368) Moreover, the Notifying Party attempts to compare the infrastructure and the full-range of services provided by contract stationers such as the Parties and Lyreco with the capabilities that online suppliers may offer (individualised e-catalogues allowing them to customise their offerings for specific customers and to offer volume rebates and other special offers to specific customers). The results of the market investigation allow the Commission to conclude otherwise:³¹⁰ large contract customers need very specific requirements which suppliers that are not active in this channel cannot offer.
- (369) Finally, since any new supplier in the contract market would have to compete with the prices offered by the merged entity, which is one of the most important criteria for customers, new potential entrants to this market would face substantial barriers to entry. According to the results of the market investigation a new supplier cannot easily enter this market, mainly because of a lack of access to products at competitive prices, in conjunction with the low margins that the declining sector of office products has to offer.³¹¹
- (370) Second, as regards the Notifying Party's arguments on the ease of expanding the product range offered, the majority of competitors indicate that in general it is possible to expand a limited range of products within an already existing product category. Expanding the existing range by a substantial number of items could be very cost intensive, however, as it requires additional warehouse storage, more advanced logistic solutions, more marketing activities and additional trainings for sales people. Expanding the product range to new categories requires research, start-up investment and additional personnel and is difficult to carry out.³¹² Based on the results of the market investigation, it seems that smaller or more specialised competitors would not be able to compete with the Parties in terms of the products range.
- (371) More specifically on the international contracts market, as discussed in recital (144) and following, the results of the market investigation indicate that setting up contract distribution operations in a new EEA country or entering into an international business alliance are options that are not available in the short term to national suppliers without incurring significant costs or risks. The investment required would exceed several million EUR and take several years. The specific difficulties for national suppliers to expanding to new countries are related to factors such as local demand, market knowledge, the need to build a local presence and setting up suitable logistic operations.

³⁰⁹ Non-confidential minutes of the conference call with Quantore of 11.06.2015, paragraph 8.

³¹⁰ See recitals (164) and following.

³¹¹ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Questions 58 and 59.

³¹² Replies to Phase I Questionnaire Q1 Questionnaire to Competitors (Contract) – Question 52.

7.2.2.4.2.2. *Potential competition*

- (372) According to the results of the market investigation Amazon Business in the US targets only small and medium-sized businesses. Large businesses use Amazon Business for occasional purchases at most and not for their regular requirements of office supplies, because, as Amazon itself indicated, Amazon Business is not yet able to fulfil large customers' requirements.³¹³ The results of the market investigation confirmed that the vast majority of Amazon Business' customers are individual employees at companies who have created their own Amazon accounts or small business owners that use individual credit cards. In Amazon's own words "purchasing in the Amazon Business marketplace involves an experience similar to purchasing through Amazon retail site".³¹⁴
- (373) Amazon is currently not active in the contract channel and there is no business plan in place to expand into this segment and to participate in tenders in the EEA. Hence, contrary to the Notifying Party's view, Amazon is not in a position to start competing in the near future with the Parties for long-term contracts with customers, either for international contracts or at national level.³¹⁵ Contrary to the Notifying Party's claim that expansion into the contract channel is very easy as it only requires a limited investment in personnel, the results of the market investigation reveal that there are a number of gaps (in terms of requirements and capabilities needed to be active in the contract market) that prevent Amazon (or any other supplier not active already in the contract market) from being able to serve large customers under contract in the near future.
- (374) Finally, as regards the Notifying Party's argument that Amazon's postings for B2B positions in some countries in Europe reveal its clear intentions to compete for the large customers in the EEA, it became apparent during the market investigation that all those postings are for business unrelated to Amazon Business, namely Amazon Web Services and Amazon Payment Europe. As regards the potential entry of Amazon on the international contract market, in light of its geographical spread and its online and physical assets, the results of the market investigation showed that this entry is not planned nor likely in the immediate future. Thus, the Commission finds that Amazon cannot be considered as an immediate constraint on the merged entity's ability and incentive to raise prices.

7.2.2.5. Conclusion on international contracts for the supply of traditional office products to large business customers in the EEA

- (375) The Commission concludes that the transaction would lead to a significant impediment to effective competition on the market for international contracts for the supply of traditional office products to large business customers in the EEA in light of: (i) the elimination of an important competitive force from the market and a close competitor; (ii) the absence of significant alternative suppliers in addition to Lyreco; and (iii) the existence of high barriers for national suppliers to enter the international market.
- (376) In particular, the Commission finds that by reducing the range of credible potential suppliers for international contracts from three to two, the transaction would result in

³¹³ Non-confidential minutes of the call with a competitor.

³¹⁴ Amazon's reply to the Commission's request for information, submitted on 26 November 2015.

³¹⁵ Non-confidential minutes of the call with a competitor; competitor's reply of 26.11.2015 to Commission's request for information.

the removal of an important competitive force from the market and a close competitor. The reduction to two credible bidders for international contracts would be such as to significantly reduce competition for those contracts, providing the merged entity as well as the remaining competitors with the incentive and ability to raise prices in international contracts concluded with large business customers for the supply of traditional office products. This is corroborated by the majority of international customers responding to the market investigation, which indicate a critical reduction of competition and a risk of price increases as a result of the transaction.

7.2.3. *International contracts - Stationery only*

7.2.3.1. The Notifying Party's arguments

- (377) The Notifying Party submits³¹⁶ that there is little scope for differentiation among suppliers of stationery, and that any supplier could thus be deemed as equally close as a competitor to any other supplier. All suppliers offer private label products and this should not be seen as a differentiating factor.
- (378) As regards service, the Notifying Party indicates that other suppliers can provide the same service as the Parties, and have a track-record of winning large tenders involving stationery.
- (379) Finally, the Notifying Party submits that no significant barriers exist to expanding existing stationery supplies because of the lack of product differentiation and capacity constraints. In particular, competitors who are already successful in securing wins on stationery tenders, could also win other large national or even multinational tenders. This would be true not only for existing stationery suppliers, but also for suppliers in neighbouring markets, which could expand into stationery. The Notifying Party provided a list of examples of specialist suppliers or competitors active in neighbouring markets and who expanded into stationery.³¹⁷

7.2.3.2. The Commission's assessment

- (380) The structure of the market for full range supplies of traditional office products through international contracts is not materially different when assessing the market for supply of stationery products only. The Parties and Lyreco are the only suppliers of such products with a wide international reach. Therefore, in principle, the same findings apply as regards the competitive assessment of such a market.
- (381) The transaction would lead to the creation of the market leader in the supply of stationery through international contracts, with only one credible alternative competitor available post-transaction. The loss of a close competitor in such a concentrated market would lead to a significant loss of competition and critically affect the capability of customers to obtain a sufficient number of bids to run competitive tenders for the supply of stationery. Moreover, the removal of such a constraint would also reduce the competitive pressure on the only remaining competitor, Lyreco.
- (382) The Notifying Party could not provide the Commission with a breakdown of data for international tenders by product category. The Commission could thus not analyse the bidding and survey data separately for stationery.

³¹⁶ Form CO and 'Memo on the Commission's concerns as regards stationery' ('Memo on Stationery') submitted on 23 October 2015.

³¹⁷ See Memo on Stationery, paragraphs 31 and following.

- (383) However, other findings from the market investigation support the general findings on the market for traditional office supplies also more specifically as regards stationery. If a limited competitive pressure may exist on certain product categories (particularly ink & toner and paper) because of the possibility of obtaining those supplies from specialists, such a possibility does not exist for stationery, so that the competition concerns could only be aggravated for this specific product category. These findings are corroborated by the analysis of the margin data provided by the Parties, as further described in section 7.2.1.2.
- (384) The Parties and Lyreco are the only suppliers of stationery with a strong international presence enabling them to offer stationery through international contracts in the EEA. The scale of their operations in the EEA is such that the stock of products, including private label products that those companies can provide across the EEA is not matched by any competitor. Contrary to what the Notifying Party argues, it is not the abstract capability of stocking and offering private label products but the very wide numbers of products offered as well as the capability of doing so in several countries that is crucial for the assessment of the closeness of competition. The Parties and Lyreco can thus be regarded as close competitors even when considering the supply of stationery products alone.
- (385) The Notifying Party's suggestion that suppliers active at national level and that won large contracts for stationery could be able to supply also customers through international contracts cannot be confirmed on the basis of the market investigation. The same consideration on geographical presence and market knowledge which have been detailed for full range contracts for traditional office supplies³¹⁸ apply also in this respect.
- (386) An additional finding concerns the effective possibility of companies active in neighbouring market, as well as specialist suppliers, to expand to stationery. When responding to the market investigation, such companies stressed the difficulties of expanding their business to stationery. This is mainly due to the different focus of their activity, and to the fact that the delivery of paper and provision of MPS services require different logistics arrangements than stationery distribution.³¹⁹ As regards suppliers active in neighbouring markets, while some of them may have some stationery sales, they indicated that those are add-ons to orders for other items on which they specialise, and that they would not be capable to service large and complex stationery contracts, particularly at the international level. This is also the case for companies specifically indicated by the Parties as examples of entry into the stationery market. Some of them clarified that they purchase some stationery products from the Parties to complement their offer to customers.³²⁰

³¹⁸ See recital (366) and following.

³¹⁹ See for instance agreed minutes of a conference call with a specialist supplier, 21 October 2015: *'The supply of other traditional office products such as stationery is a mature market which requires big scale and significant investment (...) Logistics is generally a barrier to expansion for this market. (...) In order to compete with the Parties, a company should be able to sell and deliver small quantities of product, and have efficient logistic arrangements in place to achieve this at a low cost. Setting this up can be very difficult'*. Replies to Phase II Questionnaire Q10 – Questions 15 to 15.2.

³²⁰ See agreed minutes of a conference call with a competitor, 5 November 2015, '[competitor] does not see itself to be a competitor of Staples and Office Depot. [it] sells some of the products they offer, but it channels sales in a different way. (...) Staples and Office Depot could be considered [competitor name]'s partners, as [competitor] buys and sells some of their products. (...) If the customers only need office supplies they would generally go directly to Staples and Office Depot.

7.2.3.3. Conclusion on international contracts - Stationery only

(387) In light of the arguments set out in recitals (380) to (386) and also for the reasons set out in recitals (375) and (376), the Commission concludes that the transaction would lead to a significant impediment to effective competition on the market for international contracts for the supply of stationery to large business customers in the EEA.

7.2.4. Sweden - Traditional office supplies

7.2.4.1. Market structure

7.2.4.1.1. The views of the Notifying Party

(388) According to the Notifying Party, a number of suppliers of office products are present in the Swedish market, providing supplies to large corporate customers. Those include Lyreco Sweden, Nyblomgruppen, Ocaj, Papyrus, Procurator, RKV, Tingstad Papper and Wulff Supplies.³²¹ In addition, the Parties allege that MPS providers exert intense competitive pressure on the Parties in Sweden. Finally, in relation to large contracts for public sector institutions, the Notifying Party makes reference to the strict regulation to which tendering is subject; this, according to the Notifying Party prevents the discrimination of tender participants based on smaller size and geographical coverage, providing this way even smaller local suppliers rivals with extensive scope for competing in the market.³²²

(389) In the Response to the 6(1)(c) Decision, the Notifying Party alleges that specialist suppliers such as Atea are frequently outperforming the Parties in the individual categories of ink & toner and paper.³²³ Furthermore, the Notifying Party infers from the bidding data that smaller suppliers such as Ocaj, UTEC, Papyrus, Antalis, Konotrsspecial, Kontorab (members of RKV) and Wulff have won tenders with values above EUR 100 000 lost by the Parties.³²⁴ Finally, the Notifying Party states that half of Staples' and Office Depot's largest customers are neutral or positive about the transaction.³²⁵ The Notifying Party in its note on customer requirements and competitor capabilities,³²⁶ restated that Ocaj, RKV, Nyblomgruppen, Wulff and Procurator all have the capabilities required to supply large customers.³²⁷

7.2.4.1.2. The Commission's assessment

(390) The Commission conducted an extensive market investigation in Sweden, both in Phase I and Phase II. According to the results of the market investigation, some of the suppliers named by the Parties as competitors are in fact not active in the market for contract sales of office supplies to customers of more than 100-200 office workers or 250 employees.

7.2.4.1.2.1. Suppliers identified by the Parties which are not active in the relevant market

(391) Some of the suppliers mentioned by the Parties are not contract stationers offering at least the traditional office supplies categories (stationery, paper, ink & toner). Some

³²¹ Form CO, paragraph 283; Response to the 6(1)(c) Decision, paragraph 26.

³²² Form CO, paragraph 283.

³²³ Response to the 6(1)(c) Decision, paragraph 25.

³²⁴ Response to the 6(1)(c) Decision, paragraph 26.

³²⁵ Response to the 6(1)(c) Decision, paragraph 27.

³²⁶ Note on customer requirements and competitor capabilities, submitted by the Notifying Party on 25 October 2015.

³²⁷ Note on customer requirements and competitor capabilities, submitted by the Notifying Party on 25 October 2015, table 12 and paragraph 58.

others which qualify as contract stationers for the provision of traditional office supplies are not in a position to serve large customers of more than 100-200 office workers or 250 employees. In some instances both circumstances concur.

- (392) More precisely, Procurator is a company mainly dedicated to industrial supplies, offering work clothing, and work protective equipment, cleaning and hygiene products, catering and packaging products. In supplying traditional office supplies to large size corporate contract customers, Procurator appears constrained because of lack of sufficient assortment.³²⁸ Its sales of stationery are marginal.³²⁹ Procurator admits that larger business customers (with more than 100-200 office workers) in the contract business have special requirements, in that they require significant rebates, a broader range of office supplies, as well as significant effort in running tenders.³³⁰ For this reason, unlike the Parties, Procurator targets only small to medium size customers, from those with less than 50 office workers, to those with up to 100-200 office workers.³³¹ Furthermore, Procurator does not sell customised office products (own-brand).³³² On that basis, the Commission takes the view that Procurator is not active in the market for contract sales of office supplies to customers with more than 100-200 office workers.
- (393) ATEA Sverige AB sells “printer-supplies and IT-accessories”³³³. Although ATEA Sverige AB states that it targets all sizes of business customers, (from those with less than 50 office workers to those with more than 1000 office workers),³³⁴ and all types of business customers (from those with a local – smaller than national – presence, to those with a multinational presence), ATEA Sverige AB does not supply stationery,³³⁵ and does not intend to do so in the near future.³³⁶ More specifically, ATEA Sverige AB focuses “on Printer-supplies, Printer-hardware, Scanning and Printer-accessories, [n]ot traditional office products such as paper, pens and stationery”.³³⁷ ATEA Sverige AB does not sell customised office products (own-brand). On that basis, the Commission takes the view that ATEA Sverige AB is not active in the market for contract sales of traditional office supplies to customers with more than 100-200 office workers.
- (394) Papyrus does not supply stationery or ink & toner,³³⁸ but rather focuses on “Office and Graphical paper”.³³⁹ Papyrus supplies some smaller suppliers, such as RKV with paper.³⁴⁰ On that basis, the Commission takes the view that Papyrus is not active in the market for contract sales of office supplies to customers with more than 100-200 office workers.

³²⁸ Replies to Phase II Questionnaire Q9 – Questionnaire to Competitors (Contract Stationers) – Question 15.

³²⁹ Replies to Phase II Questionnaire Q9 – Questionnaire to Competitors (Contract Stationers) – Question 2.

³³⁰ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 19.1.

³³¹ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 17.

³³² Replies to Phase II Questionnaire Q9 – Questionnaire to Competitors (Contract Stationers) – Question 26.

³³³ Replies to Phase II Questionnaire Q10 – Questionnaire to Specialists – Question 2.1.

³³⁴ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 17.

³³⁵ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 2 ; replies to Questionnaire Q10 – Questionnaire to Specialists – Question 2.

³³⁶ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 51.

³³⁷ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 52.1.

³³⁸ Replies to Phase II Questionnaire Q10 – Questionnaire to Specialists – Question 2.

³³⁹ Replies to Phase II Questionnaire Q10 – Questionnaire to Specialists – Question 3.

³⁴⁰ Replies to Phase II Questionnaire Q10 – Questionnaire to Specialists – Questions 16.1 and 16.2.

- (395) Antalis is a paper and packaging supplier. It distributes paper products, including printing paper to printing companies (60% of activities) and office paper (accounting for approximately 20% of its business). Antalis appreciates that the main problem that all paper suppliers (including Antalis) encounter is associated with selling only one product category, namely paper, and not more product categories within the range of office supplies. According to Antalis, customers are more likely to place an order with Office Depot than with an ordinary paper supplier, as Office Depot can offer special services, such as cupboard delivery, floor delivery, and desktop delivery. This is one of the competitive disadvantages for Antalis when competing with the large suppliers of office products. In addition, large suppliers selling more product categories of office supplies, often sacrifice margins in paper in order to win customers. On that basis, the Commission takes the view that Antalis is not active in the market for contract sales of office supplies to customers with more than 100-200 office workers.³⁴¹
- (396) Tingstad Papper AB does not consider itself a competitor of either Staples or Office Depot. Tingstad Papper AB supplies restaurants with napkins, food packaging, paper cups and plastic cutlery, and shops with plastic and paper bags. Tingstad Papper AB also supplies its customers with a limited range of office supplies (approximately 1000 stock keeping units ("SKUs")) to be able to serve as a one-stop-shop. Those products are included in the cash and carry part of the business, and Tingstad Papper AB does not have any customers who only purchase office products. Furthermore, Tingstad Papper AB does not participate in any tenders in the office supplies sector, and office products represent only 2.7% of its annual turnover. The company has no plans to expand its business in relation to office supplies. Finally, Tingstad Papper AB does not conclude any contracts for office supplies.³⁴² On that basis, the Commission takes the view that Tingstad Papper AB is not active in the market for contract sales of office supplies to customers with more than 100-200 office workers.
- (397) Other suppliers mentioned by the Parties but not offering a full range of products including at least the three categories of traditional office supplies are UTEC, Dustin, Ricoh, Despec Despec/Büngers, InkClub and Isolda.

7.2.4.1.2.2. Suppliers identified by the Parties which are active in the relevant market but have limited capacity to supply large customers

- (398) Nyblomgruppen is a contract stationer active in the B2B distribution of traditional office supplies through contracts in Sweden. Although it might occasionally participate in tenders for contracts with customers with more than 250 employees, the results of the market investigation indicate that either they are not known or not perceived as suitable suppliers by the larger customers.³⁴³
- (399) RKV is a dealer group operating in Sweden. The organisation consists of 25 members that are small and medium sized independent suppliers, often family owned. The main role of RKV is to negotiate purchasing agreements with suppliers based on the combined volume and purchasing power of RKV as a group. RKV's members operate in the market with their own names, each of them organising warehousing, transportation and logistics independently. RKV's members are not able to participate in large private tenders, because they are not able to service such

³⁴¹ Agreed minutes of a phone call with a specialist supplier, 21 October 2015.

³⁴² Email exchange with Tingstad Papper of 3 September 2015; minutes of a conference call with Tingstad Papper AB.

³⁴³ Replies to Questionnaire Q9 – Questionnaire to Competitors (Contract Stationers) – Question 9.2.

large accounts.³⁴⁴ RKV members, including Kontorsspecial and Kontorab are therefore mostly focused on small business customers,³⁴⁵ with a local (smaller than national) presence³⁴⁶ (90% of its members' contracts are local – smaller than national – in scope)³⁴⁷, of 50-100 office workers,³⁴⁸ without having separate business divisions dealing with customers of different sizes.³⁴⁹ The reason for this in the words of RKV is that “[their] members are local, family owned businesses with a strong focus on the local customers”.³⁵⁰ Neither RKV nor its individual members can therefore be considered as credible competitors in the relevant market.

7.2.4.1.2.3. *Competitive Landscape*

- (400) On the basis of the market investigations the Commission is able to confirm that apart from the Parties, only Lyreco, Ocaj and Wulff Supplies offer the full range of traditional office supplies (stationery, paper, ink & toner) in Sweden in the market for non-international contracts with customers with more than 250 employees.³⁵¹ However Ocaj and Wulff Supplies are much smaller suppliers than the Parties and Lyreco.
- (401) Ocaj states that its competitive advantage is an overall flexible customer service, resulting in proximity to customers and decentralised business acumen. Those qualities are targeted at small and medium customers, rather than large corporations. Ocaj's capability of supplying traditional office supplies to large-size corporate contract customers appears constrained.³⁵² In addition, Ocaj states that the pricing of the Parties is very aggressive and sometimes Staples, for instance, is able to offer prices 30-40 % cheaper than Ocaj. Therefore Ocaj is a distant competitor to the Parties. This is also confirmed by the analysis of the bidding data in section 7.2.4.2.
- (402) Wulff Supplies is a Swedish company with a product portfolio including at least the three traditional office supplies categories. However, its focus is on small and medium-sized customers and only rarely manages to win larger tenders because it cannot compete on prices with the Parties.³⁵³ Wulff targets small and medium as well as large-size corporate customers. However, it has only a handful of contracts with large customers. Purchasing prices is a key constraint for Wulff Supplies in order to be able to serve large-size customers.³⁵⁴
- (403) Based on data submitted by the Notifying Party, Staples' sales under non-international contracts in Sweden amounted to approximately EUR [...] in 2014 while Office Depot's sales amounted to approximately EUR [...]. For large

³⁴⁴ Agreed minutes of a phone call with a competitor, 9 September 2015.

³⁴⁵ Agreed minutes of a phone call with a competitor, 28 July 2015.

³⁴⁶ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 20.

³⁴⁷ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 27.

³⁴⁸ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 17.

³⁴⁹ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 18.

³⁵⁰ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Question 20.1.

³⁵¹ Replies to Phase II Questionnaire Q9 – Questionnaire to Competitors (Contract Stationers) – Question 9.2 (Ahsell named also Kontorab, however, in paragraph (399) the Commission took the view that RKV, as well as its members individually (including Kontorsspecial and Kontorab) are not active in the market for contract sales of office supplies to customers of more than 100-200 office workers or 250 employees).

³⁵² Replies to Questionnaire Q9 – Questionnaire to Competitors (Contract Stationers) – Question 15.

³⁵³ Agreed minutes of a phone call with a competitor, 28 July 2015.

³⁵⁴ Agreed minutes of a phone call with a competitor, 11 December 2015.

customers, Staples' sales of traditional office supplies in 2014 amounted to approximately EUR [...] and Office Depot's sales in 2014 amounted to EUR [...].³⁵⁵

Table 13: Parties' sales of traditional office supplies through contracts in Sweden, EUR 000s

Category	Party	All customers	Large customers
<i>Traditional office supplies</i>	<i>Staples</i>	[...]	[...]
Stationery	Staples	[...]	[...]
Ink & toner	Staples	[...]	[...]
Paper	Staples	[...]	[...]
<i>Traditional office supplies</i>	<i>Office Depot</i>	[...]	[...]
Stationery	Office Depot	[...]	[...]
Ink & toner	Office Depot	[...]	[...]
Paper	Office Depot	[...]	[...]

Source: Parties' replies of 22 December 2015 and 7 January 2016 to requests for information on contract sales data.

- (404) Staples is currently the leading supplier followed by Lyreco, Office Depot is the third supplier and Ocaj comes fourth with approximately half the sales of Staples. Wulff Supplies less than half of Ocaj's sales and it is the fifth supplier, although very small.
- (405) The transaction would combine the leading and third leading suppliers in terms of revenues. It would reinforce Staples' current position as market leader. In particular, the merged entity would be more than three times larger than each of Lyreco and Ocaj in terms of sales of traditional office products through contracts. Lyreco and in particular Ocaj and Wulff Supplies will be lagging far behind with significantly lower turnover.
- (406) A similar picture arises when considering the number of the top largest employers in Sweden (both public and private) to whom the Parties and their competitors supply to. Following an assessment of how many of those top 100 employers are purely national entities and therefore only have non-international contracts in place for office supplies (in order not to overestimate the Parties market power for non-international contracts in Sweden), the Commission concludes that 65 of those entities are purely national customers.³⁵⁶ Out of those 65 entities, [70-80]% currently have contracts in place with Office Depot and [20-30]% with Staples.³⁵⁷ Lyreco,

³⁵⁵ See the Parties' replies of 22 December 2015 and 7 January 2016 to requests for information on contract sales data.

³⁵⁶ The Commission assessed how many of the top 100 largest employers in Sweden currently have international contracts in place with the three suppliers that are currently able to offer international contracts: Staples, Office Depot and Lyreco. The source of this information is the document provided by the Notifying Party as Annex 23 to the Form CO and the information provided by Lyreco in its reply of 29.10.2015 to the Commission's request for information on the top 100 customers.

³⁵⁷ Top 100 companies in terms of numbers of employees.

which is the second supplier in terms of revenues, has contracts with only [10-20]% of the top 65 purely national employers in Sweden, some of which overlap with the Parties. Ocaj serves only [...] out of the top 65 national employers in Sweden, some of which overlap with those supplied by the Parties. In terms of the value of the contracts that those suppliers have with the customers from the top employers list, Staples is the clear leader, followed by Office Depot.

- (407) Furthermore, according to Office Depot's bidding data analysis on national tenders for office supplies³⁵⁸, in the tenders lost by Office Depot, the main winners were Staples and Lyreco, and to a lesser extent Ocaj. Data from Staples on tenders to which it participates show a similar pattern, especially when restricting attention to the largest customers. The vast majority of tenders in which Staples participated were won by the Parties, as well as Lyreco. Ocaj and Wulff Supplies won on a handful of occasions, tenders of a smaller total value than the Parties.

7.2.4.1.3. Conclusion

- (408) On the basis of the above, the Commission considers that only Staples, Office Depot, Lyreco, Ocaj and Wulff Supplies are active competitors in the Swedish market for distribution of office supplies to customers of more than 100-200 office workers or 250 employees. The transaction would reinforce Staples' leading position, increase the distance between the leading and the second leading suppliers and would reduce the market to two large suppliers, the Parties and Lyreco, with another two of them, Ocaj and Wulff Supplies lagging far behind.

7.2.4.2. Competitive constraints exerted by the Parties on each other

7.2.4.2.1. The views of the Notifying Party

- (409) According to the Notifying Party, office supplies are highly commoditised products with limited scope for product differentiation, both Parties selling often the same products. The Notifying Party claims that the limited scope for product differentiation allows customers to force prices down to competitive levels even with only a limited number of suppliers in the market.³⁵⁹ The Notifying Party further claims that since products are relatively homogeneous, the closeness of competition is of less importance.³⁶⁰
- (410) Furthermore, the Notifying Party claims that according to an analysis of the Parties' bidding data in Sweden, assessing which suppliers win the tenders they lose, the strength of the competitors is demonstrated, and therefore all rivals need to be taken into account when assessing the competitive constraints that the Parties face.³⁶¹

7.2.4.2.2. The Commission's assessment

- (411) As explained in section 7.2.1.3, although the products sold by the Parties are generally homogeneous products, the contract market is a market differentiated in terms of customer service and scope of the product range Staples, Office Depot and Lyreco are close competitors. Ocaj and Wulf are more distant competitors.

³⁵⁸ Annexes to the submission by RBB Economics, "Relevance of bidding data for the competitive assessment", dated 18 May 2015. For the review, for Staples the Commission used raw data submitted by the Parties on 28 September 2015 ("RE: M.7555 – STAPLES/OFFICE DEPOT - RFI concerning RBB papers "Relevance of bidding data" and "Competitive assessment-International customers") including updates and additional information compared to the RBB Bidding data analysis.

³⁵⁹ Form CO, paragraph 366.

³⁶⁰ Form CO, paragraph 368.

³⁶¹ Form CO, paragraph 370.

- (412) This is clearly reflected in Staples' internal documents of the Parties. A few examples are described below:
- (a) Staples monitors core and non-core/tail prices of Office Depot and Lyreco. More specifically, Staples has price comparison on [...] items on Office Depot and [...] items on Lyreco. Staples calculates [...], and concludes that Staples is very competitive vis-à-vis Office Depot and Lyreco.³⁶²
 - (b) In a presentation setting forth Staples' pricing strategy for the period 2013-2017, Staples Advantage, Lyreco and Office Depot are [...] together in the Swedish pricing landscape, the rest of suppliers being far away. In the same presentation, Staples sets out the base prices today, and in the future. In relation to base prices today, and more specifically as far as the Advantage channel (Contracts) is concerned, Staples characterises its business as [...], comparing to Lyreco and Office Depot only.³⁶³ The latter slide entitled "Staples Sweden - Pricing" features in various presentations of Staples.³⁶⁴
 - (c) In an email exchange initiated by the Tender Manager for Staples Sweden and Denmark, Staples is shaping its tender strategy in relation to four large tenders that [...]. The email discusses the approach that Office Depot and Lyreco are likely to adopt: [...].³⁶⁵ This suggests that, according to Staples, there are no other competitors able to win those tenders in the Swedish market and that Ocaj is a less close competitor to the Parties than Lyreco.³⁶⁶
 - (d) In a presentation for a Staples management meeting, entitled Staples Sweden/Denmark and dated 18 March 2014, Staples discusses its pricing and (product) extended range. Among other action points, Staples specifically refers to price comparison between Staples on the one hand and Office Depot and Lyreco on the other hand. The presentation reads: [...].³⁶⁷
- (413) On the basis of the results of the market investigation, the Commission considers that the Parties are close competitors. All eight customers that responded to the market

³⁶² Staples internal document entitled "VB: Core & Non-Core/Tail Prices Sweden vs Competition", 24 March 2015.

³⁶³ Staples internal document entitled "Staples Sweden Pricing strategy 2013-2017", page 2.

³⁶⁴ See for instance Staples internal document entitled "Staples Sweden/Denmark, [...], Visit Borås/Sweden", 23 October [2012], page 13; Staples internal document entitled "Transformation of Staples, [...]", 30 September 2013, page 11; Staples internal documents entitled "Transformation of Staples, [...]", 15 August [2013].

³⁶⁵ Staples internal document entitled "VB: Stockholm Office+Paper and Borås+4 Facility - Tender approval - [...] if you agree", 15 November 2014. Staples also refers to OneMed, however in the email exchange it is implied that OneMed sources office supplies from Lyreco.

³⁶⁶ Additionally, in a weekly report of Staples Sweden Advantage (Contract channel) prepared by [...] for [...] on 18 November 2013, Staples underlines the fact that Lyreco and Office Max (Office Depot) won a very large customer that Staples lost. The report reads: [...] (Staples internal document entitled "Staples Sweden Advantage, To: Weekly report - [...]" 18 November 2013). Also, in an email exchange between [...] and [...] discussing Staples Enterprise Q1 review, [...] wishes to obtain open prices from Office Depot and Lyreco, in order to compare Staples' position against theirs. The email reads: [...] (Staples internal document entitled "VB: Bi-weekly - Background to our call of today", 7 May 2014). Also, a [...] presentation for Staples Sweden, Staples Denmark, Staples Norway and Staples Finland, addressed to [...], Staples advertises that only two competitors exist in the Nordic market for office supplies, namely Lyreco and Office Depot. The [...] presentation reads: [...] (Staples internal document entitled "[...]" 12 September 2014).

³⁶⁷ Staples internal document entitled "Staples Sweden/Denmark, Ledningsmöte", 18 March 2014. The presentation originally reads in the Swedish language: [...].

investigation indicated Office Depot as Staples' closest competitor. The majority of customers also referred to Office Depot's as Staples' closest competitor.

- (414) The analysis of the bidding data submitted by the Parties on national tenders for office supplies in Sweden³⁶⁸ confirms that Staples, Office Depot and Lyreco are close competitors. Ocasey and Wulff Supplies are active competitors, but exert a weak competitive pressure on the Parties. This view also emerges from the results presented in the Parties submission on bidding data for Sweden.³⁶⁹
- (415) The Commission assessed Staples' tenders focusing on Enterprise customers. That assessment omitted tenders where the customer was classified by Staples as midmarket (namely small customers) or international (IAT).
- (416) Staples' tender data showed that taking all traditional product categories together,³⁷⁰ Office Depot is the major bidder in tenders where Staples participates, followed closely by Lyreco, as well as Ocasey and bidders classified as local and unknown. In Staples tenders for enterprise customers [...] bids were identified across the three traditional office supplies product categories. Out of those, Office Depot and Lyreco essentially participated along Staples in [...] tenders. Ocasey and local bidders submitted [...] and [...] bids respectively. Other firms have only little participation in those tenders, for example: Antalis ([...] participations), Atea ([...] participations), Kabucco ([...]), Kontorab ([...] participations), Kontorspecial ([...] participations), Papyrus ([...] participations), Wulff ([...] participations), Xerox ([...] participations).
- (417) Among the tenders lost by Staples involving enterprise customers, Office Depot and Lyreco are the main winners. Office Depot is the winner in [30-40]% of those tenders, corresponding to [20-30]% in value. Lyreco won in [20-30]% of those tenders, corresponding to [30-40]% in value. Although Ocasey frequently bids along with the Parties for enterprise customers in Sweden, its share of tenders won among those that are lost by Staples in all traditional office supply categories is merely [5-10]%, corresponding to only [0-5]% of value. Specialist suppliers Atea and Xerox won only occasionally large tenders with total estimated value of above EUR 1 million. Moreover, those tenders involved sales in a single product category only: Xerox won tenders for enterprise customers in paper only, while Atea won [...] large tenders for enterprise customers in the category ink & toner. Onemed won [...] tender covering all traditional office supply categories, but [...] involved a single and rather special customer providing care and health care services, where Onemed appears to be well positioned with its focus on health services that the Parties do not have.
- (418) The Commission also received tender data from Office Depot for national customers in Sweden. This data however does not allow to clearly distinguish different product categories in tenders. In particular, over [...] tenders only [...] tenders seem to have involved sales in the three traditional product categories ([...] tenders with two

³⁶⁸ Annexes to the submission by RBB Economics, "Relevance of bidding data for the competitive assessment", dated 18 May 2015. In its assessment, the Commission used for Staples the raw data submitted by the Parties on 28 September 2015 ("RE: M.7555 – STAPLES/OFFICE DEPOT - RFI concerning RBB papers "Relevance of bidding data" and "Competitive assessment-International customers") including updates and additional information compared to the bidding data analysis included in the submission "Competitive assessment-International customers".

³⁶⁹ See "Relevance of bidding data for the competitive assessment", dated 18 May 2015, RBB Economics, section 4.7.

³⁷⁰ This involves summing up bids submitted in the categories of stationery, ink & toner and paper. See footnote 258.

product categories, [...] tenders with three product categories). Staples participates in [...] of those tenders, Lyreco and Ocaj in respectively [...] and [...]. Other suppliers essentially do not appear, with only Lekolar and RKV participating in [...].

- (419) Office Depot's tender data contain information mainly on stationery products. The analysis of Office Depot's bidding data for stationery tenders shows that Staples and Lyreco constitute the main competitive constraint on Office Depot, and that Ocaj is a more distant competitor exerting a significantly lower competitive pressure on Office Depot than Staples and Lyreco (see section 7.2.5.2 for further details).
- (420) To conclude, those findings suggest that that Office Depot and Lyreco are the main competitive constraints on Staples in Sweden in tenders involving large national customers. Ocaj is another competitor, but it seems more distant, exerting a significantly lower competitive pressure on Staples than Office Depot and Lyreco. As regards Office Depot's tender data for the traditional office supplies, while the small sample size limits the analysis, it is worth noting that only the Parties, Lyreco, and Ocaj participate in those tenders.

7.2.4.2.3. Conclusion

- (421) On that basis, the Commission concludes that the Parties are close competitors in the market for distribution of office supplies to customers of more than 100-200 office workers or 250 employees in Sweden, and therefore the proposed merger would lead to a significant loss of competition.

7.2.4.3. Competitive conditions following the transaction

7.2.4.3.1. The views of the Notifying Party

- (422) The Notifying Party claims that the transaction will not give rise to competition concerns in Sweden, mainly for two reasons. First, the Notifying Party claims that in Sweden the merged entity will continue to face a range of strong competitors, such as Lyreco Sweden, Nyblomgruppen, Ocaj, Papyrus, Procurator, RKV, Tingstad Papper and Wulff Supplies, as well as from providers of MPS, computer supplies, medical supplies and paper (including Dustin, Atea, Ricoh, Despec/Büngers, InkClub and Isoldaare competing with vendors including HP, Canon, Sharp, and Lexmark).³⁷¹
- (423) Second, according to the Notifying Party, given that products and services provided by the various firms active in the market are highly comparable, customers can switch to alternative suppliers and can threaten to switch all or part of their requirements to negotiate competitive terms.
- (424) According to the Notifying Party, customers are able to secure competitive outcomes by splitting their requirements between different distributors, or threatening to do so. Splitting requirements among different suppliers is a very common sourcing pattern in the Swedish market. The Notifying Party further submits that out of its 25 largest customers in Sweden, only [one-five] rely exclusively on Staples, and all others multisource their office supplies requirements from both general and specialist suppliers.³⁷²

³⁷¹ Form CO, paragraphs 286-287.

³⁷² Form CO, paragraphs 288-289.

(425) Finally, the Notifying Party referred to recent examples of both significant (geographical) entry and expansion including several suppliers who have expanded their product offering.³⁷³

7.2.4.3.2. The Commission's assessment

7.2.4.3.2.1. *Structure of the market following the transaction*

(426) In light of the market structure analysis conducted during the market investigation, and presented in section 7.2.4.1, only Staples, Office Depot, Lyreco, Ocase, and Wulff Supplies are active competitors in the Swedish market for distribution of office supplies to customers of more than 100-200 office workers or 250 employees.

(427) Contrary to the Notifying Party's argument that the merged entity would continue to face strong competition from specialist suppliers after the transaction (see recital (422) above), the results of the market investigation provide indications leading the Commission to consider that specialists exert a limited competitive constraint on providers of the full range of traditional office supplies, and usually they do not participate in tenders.³⁷⁴

7.2.4.3.2.2. *Likely reaction of actual competitors following the transaction*

(428) The transaction would thus lead to a reduction of the already limited number of alternatives available to customers in Sweden. The remaining main constraint exerted by Lyreco is likely to be insufficient to constrain the merged entity's incentive and ability to raise prices after the transaction and avoid a significant impediment to effective competition. The removal of Office Depot would remove a close competitor to Staples. As discussed in recital (348), in addition to the difficulty for the Parties' customers to switch because of the absence of a sufficient number of alternative suppliers, the main remaining competitor, Lyreco, may itself become less aggressive in its bidding behaviour, as it benefits from the reduction of competitive pressure resulting from the merger. A similar reasoning may apply to the incentives of Ocase or Wulff Supplies to compete aggressively after the transaction although they are already significantly more distant competitors to the Parties than Lyreco.

(429) Furthermore, the smaller competitors may find it difficult to compete with the merged entity. Pre-transaction, on the basis of the qualitative and quantitative evidence set out above, the Commission considers that Staples/Office Depot/Lyreco on the one hand and other smaller suppliers (like Ocase and Wulff Supplies) on the other hand are not close competitors. Ocase is targeting small and medium customers rather than large corporations and its capability to supply traditional office supplies to large-size corporate contract customers appears constrained.³⁷⁵ Ocase is significantly smaller than each of the Parties, representing, pre-merger, approximately half the sales of Staples, and Wulff Supplies representing less than half of Ocase's sales.³⁷⁶ Ocase also achieves relatively low win rates pre-merger against each of the Parties, suggesting that Ocase faced significant impediments to be successful in tenders where the Parties participate, for example because it may not be able to meet the tender's requirements or suffer from a perceived lack of product or

³⁷³ Form CO, paragraph 285.

³⁷⁴ See agreed minutes of a phone call with a competitor, 28 July 2015, paragraph 10.

³⁷⁵ See recital (401).

³⁷⁶ See recital (404).

commercial fit.^{377 378} Those findings are in line with the important price difference of around 30-40% between Ocay's and the Parties' products.³⁷⁹ Therefore, the Commission considers that, post-merger, smaller suppliers like Ocay and Wulff Supplies would likely remain a weak competitive constraint to the merged entity.

- (430) This lack of competitiveness of smaller suppliers is also confirmed by Ocay and Wulff Supplies themselves.^{380 381} That finding is also supported by RKV – which does not compete in the Swedish market for distribution of office supplies to customers of more than 250 employees. According to RKV, the purchasing power that Staples has, mainly because of its large and diverse customer portfolio, enables Staples to adopt sophisticated commercial strategies, taking risks that smaller suppliers cannot afford to take, given that office supplies contracts are non-exclusive.³⁸²
- (431) That purported gap in competitiveness in winning contracts with customers of more than 250 employees in Sweden, as expressed by the national competitors and summarised in recitals (429) and (430), has been confirmed by the Commission's analysis of the turnover data, top 100 customers and tender data set out in recitals (404)-(405), (406) and (414)-(420) respectively. The smaller competitors are much less successful in winning contracts with customers of more than 250 employees. That evidence, coupled with the evidence on their disadvantages in terms of commercial strategies, suggests that the remaining competition exerted by the smaller Swedish suppliers would be unlikely to offset the loss in competition arising from the transaction.

7.2.4.3.2.3. *Likely reaction of potential competitors following the transaction*

- (432) At first sight, entry in the market of traditional office supplies to large business customers through (framework) contracts appears easy. As the Notifying Party claims, low product differentiation, low-cost switching for customers, and low sunk cost, could in theory accommodate new market entry. However, since a new supplier would have to compete with the merged entity on price, one of the most important criteria for customers, new entrants to the market of office products to large business customers through (framework) contracts will face substantial barriers to entry.
- (433) According to Procurator, a new supplier could not easily enter that market, mainly because of lack of access to products at competitive prices in conjunction with the low margins that the declining sector of office products has to offer. For those reasons Procurator does not expect any market entry in the next two to three years.³⁸³
- (434) In addition, Lyreco sees capital expenditure and workforce with expertise on large customers business as blocking factors.

³⁷⁷ Ocay achieves a relatively low win rates against Staples pre-merger (see recital (417)), suggesting that Ocay has a lower probability than Office Depot to be successful against Staples.

³⁷⁸ Ocay also achieves a relatively low win rates against Office Depot pre-merger (see recitals (418) and (450)), suggesting that Ocay has a lower probability than Staples to be successful against Office Depot.

³⁷⁹ See recital (401)

³⁸⁰ See agreed minutes of a phone call with a competitor, 9 September 2015, paragraph 11.

³⁸¹ See agreed minutes of a phone call with a competitor, 28 July 2015, paragraph 11.

³⁸² See agreed minutes of a phone call with a competitor, 28 July 2015, paragraph 10.

³⁸³ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Questions 58 and 59.

- (435) Finally, none of the Swedish respondents to the market investigation expects any new market entry into the supply of office products to large business customers through (framework) contracts in the next two to three years.³⁸⁴
- (436) In addition, customers are not aware of any new supplier that entered the office supplies market in Sweden during the last five years. Six out of eight customers answered in the negative, and the remaining two did not provide any new supplier or commented on whether such supplier constitutes a viable supply option for their office supplies requirements.³⁸⁵
- (437) On the basis of recitals (432) to (437), potential competitors would find it fairly difficult to enter the market, and are unlikely to pose a competitive constraint to the merged entity after the transaction.

7.2.4.3.2.4. *Likely reaction of customers following the transaction*

- (438) Large businesses that purchase traditional office supplies through (framework) contracts may face difficulties switching to other suppliers after the transaction because there are few alternative suppliers that can cover their requirements.³⁸⁶ As seen in section 7.2.4.1 above, the merged entity and Lyreco would be the only available options for large customers after the transaction and, to a lesser extent, Ocaj and Wulff. Those two suppliers have difficulties at present in competing with the Parties because of the different scale and pricing. Such difficulties will increase after the transaction, hence their capacity to constrain the Parties will be limited. Therefore, Lyreco would be the only supplier in a position to constraint the Parties.
- (439) The reduced options available will limit customer's bargaining power in the context of the bidding process making customers' switching threats less credible.
- (440) In addition, in light of the large number of customers and the limited value of the individual contracts (even the largest ones)³⁸⁷, compared with the Parties' turnover in Sweden, and the low strategic value of office supplies, customers are not in a position to sponsor new entry and thus their buyer power is, if at all limited.

7.2.4.3.3. Conclusion

- (441) In conclusion, the Commission finds that the transaction would result in the removal of an important competitive force from the market and of a close competitor of Staples. The reduction from three to two large credible bidders for non-international contract with large customers in Sweden would be such as to significantly reduce competition for those contracts, providing the merged entity as well as the remaining competitors with the incentive and ability to raise prices. This is corroborated by the majority of customers responding to the market investigation. More specifically, out of the 43 contract customers who purchase office supplies in Sweden, 25 (58%) expressed concerns that the merger would lead to less competition, price increases and reduced bargaining power.

³⁸⁴ Replies to Phase I Questionnaire Q1 – Questionnaire to Competitors (Contract) – Questions 58 and 59.

³⁸⁵ Replies to Phase I Questionnaire Q4 – Questionnaire to Customers (Contract) – Questions 43 and 43.1.

³⁸⁶ Horizontal Merger Guidelines, paragraph 31.

³⁸⁷ The individual value of Office Depot's top five contracts for traditional office supplies in Sweden ranges between EUR [...] and EUR [...]; as regards Staples, its five largest contracts for traditional office supplies in Sweden have a value between EUR [...] and EUR [...] approximately, accounting for a very small percentage of their total sales in the relevant market.

7.2.4.4. Conclusion on Sweden – Traditional office supplies

(442) On the basis of the arguments set out in section 7.2.4, the Commission concludes that the transaction would significantly impede effective competition on the market for distribution of traditional office supplies to customers of more than 100-200 office workers or 250 employees through contracts in Sweden.

7.2.5. *Sweden - Stationery only*

7.2.5.1. Structure of the market

(443) The structure of the market as described in the previous section 7.2.4 is not materially different when assessing the market for the supply of stationery products only. Therefore, the same findings apply as regards the competitive assessment of such a market.

7.2.5.2. Competitive constraints exerted by the Parties on each other

(444) The analysis of tender data of the Parties for stationery only confirms that Staples, Office Depot and Lyreco are close competitors.³⁸⁸ Ocaj is another competitor, but the competitive pressure it exerts on the Parties is weaker.

(445) Using the tender data provided by Staples, the Commission assessed separately tenders for stationery that involve enterprise customers.³⁸⁹ In tenders where Staples participated, Office Depot, Lyreco and Ocaj, as well as suppliers coded as "local", typically bid along each other for stationery tenders.³⁹⁰ Other suppliers rarely appear: for example Kontorab and Wulff participate in only [...] tenders each.

(446) However, those suppliers differ significantly in their winning patterns. In particular, out of a total of [...] stationery tenders involving enterprise customers (with a total value of EUR [...]), Staples emerged as winner in [50-60]% of those tenders, capturing [60-70]% of stationery value won. Office Depot and Lyreco followed with a share of tenders won respectively of [10-20]% and [10-20]%, and of the value won respectively of [10-20]% and [10-20]%. While Ocaj seems to often participate in tenders along with Staples, Ocaj won in merely [0-5]% of stationery tenders that involve enterprise customers, with a value share of [0-5]% only. Kontorab and Onemed won a handful of larger stationery tenders, but not exceeding [0-5]% of the total stationery value in tenders where Staples participated and involving enterprise customers. No other supplier won more than 1% of stationery value in those tenders.

(447) Focusing on stationery tenders lost by Staples for enterprise customers ([...] tenders), the Commission assessed who emerges as the winner in those tenders. This analysis shows that Office Depot and Lyreco are the main winners in those tenders, with Ocaj and other suppliers lagging significantly behind. In particular, out of the [...] tenders where a stationery lot for an enterprise customer was not won by Staples, the winner was Office Depot and Lyreco in respectively [...] and [...] cases, corresponding to a value share of respectively [30-40]% and [40-50]%. Ocaj won in only [...] of those tenders with a value share of [0-5]%. Other suppliers won even less tenders than Ocaj.³⁹¹

³⁸⁸ See footnote 258 for assumptions underlying the analysis presented in this section.

³⁸⁹ This omits tenders for international and midmarket customers.

³⁹⁰ See Footnote 258.

³⁹¹ Kontorab won in [...] instances, with a value share of [5-10]%, lagging significantly behind that of Office Depot and Lyreco.

- (448) The data provided by Office Depot for Sweden shows a very similar pattern and confirms that in Sweden, for stationery, Staples, Office Depot and Lyreco are the closest competitors, with Ocaj and other suppliers lagging significantly behind.
- (449) In particular, among the [...] tenders involving stationery where Office Depot participated, Staples, Lyreco and Ocaj participates in respectively [...], [...] and [...] tenders. Other bidders appeared only occasionally, such as Kontorab ([...] participations) and Wulff ([...] participations). In addition, among those [...] tenders, only Staples, Office Depot and Lyreco won a significant number of tenders, while other suppliers (including Ocaj) achieved very few wins. In particular, Office Depot, Lyreco, Staples and Ocaj won in respectively [...], [...], [...] and [...] tenders. The only other firms appearing as winners in the data of Office Depot were Kontorab and Kontorspecial with [...] each.
- (450) Looking at stationery tenders lost by Office Depot, Staples appears to be the main competitive constraint, winning [50-60]% of the value in those tenders ([40-50]% of tenders). Lyreco follows by winning [30-40]% of the value of those tenders ([30-40]% of tenders). Ocaj, the third largest winner of stationery tenders lost by Office Depot, captured only [5-10]% of the value in those tenders ([10-20]% of tenders). Other suppliers represent a very small share (less than 3% in value) of stationery tenders lost by Office Depot.
- (451) To conclude, on the basis of the bidding data provided by the Parties the Commission considers that: (i) there are essentially 4 credible suppliers in Sweden, the Parties, Lyreco, and Ocaj, (ii) the Parties and Lyreco are close competitors, (iii) Office Depot (respectively Staples) exerts a significant competitive constraint on Staples (respectively Office Depot) and, (iii) Ocaj is a distant competitor to the Parties and exerts a low competitive constraint on the Parties.

7.2.5.3. Competitive conditions following the transaction

- (452) The merger would reinforce Staples' position as market leader in the supply of stationery through contracts, with only one credible alternative competitor available after the transaction. The loss of a significant supplier competing closely with Staples in such a concentrated market would critically affect the capability of customers to obtain a sufficient number of bids to run competitive tenders for the supply of stationery. Moreover, the removal of such a constraint would reduce the competitive pressure also on the remaining competitors (Lyreco, Ocaj and Wulff).
- (453) The results of the market investigation support the Commission's general findings on the market for traditional office supplies also more specifically as regards stationery. If a limited competitive pressure exists on certain product categories (particularly ink & toner and paper) because of the possibility to obtain those supplies from specialists, such possibility does not exist for stationery, so that the competition concerns could only be aggravated if stationery is assessed separately.
- (454) An additional finding concerns the effective possibility of companies active in neighbouring markets, as well as specialist suppliers, to expand to stationery. When responding to the market investigation, paper and MPS specialists stressed that they have a different business focus and no interest in expanding into the distribution of stationery. They also mentioned as a barrier to expansion the specificities of the logistics arrangements required to distribute stationery products. Other suppliers active in neighbouring markets such as cleaning companies, IT suppliers, etc. may have some stationery sales. However, those are add-ons to orders for other items on which they specialise.

7.2.5.4. Conclusion on Sweden – Stationery only

(455) The Commission concludes that the transaction would lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Sweden.

7.2.6. Netherlands - Traditional office supplies

7.2.6.1. Structure of the market

7.2.6.1.1. The views of the Notifying Party

(456) According to the Notifying Party, the Dutch market for office supplies is very competitive, with Dutch customers being very price conscious.³⁹² The Notifying Party indicates that the overall Dutch market for office supplies is characterised by the existence of a number of strong rivals to the Parties, including Lyreco and several other local suppliers that provide office supplies to large corporate customers. These include Quantore, paper suppliers (such as Canon, Papyrus and Buhrmann Ubbens), providers of MPS (such as Canon, HP, Ricoh, Xerox, Lexmark and Samsung), providers of ink such as 123inkt.nl, online catalogue retailers such as Manutan and providers of facility services (such as Bunzl, King, Sligro, Makro, CWS and Initial)³⁹³.

(457) The Notifying Party further indicates Lyreco, Quantore Europe BV ("Quantore"), Manutan, Bunzl Outsourcing BV ("Bunzl") and Hedera as the Parties' top five competitors in the contract market in the Netherlands.³⁹⁴

(458) The Notifying Party submits that Lyreco has a very strong position in the Netherlands with a focus on major accounts. According to the Notifying Party, Lyreco competes aggressively for new business in the Netherlands and has expanded its sales force to this effect.³⁹⁵

(459) Moreover, the Notifying Party claims that several suppliers in the Netherlands apart from the Parties are able to win large tenders involving stationery. For example, King, which is a provider of facility services, won a contract for the value of EUR [...] in a tender involving stationery for an institution within [...] and Hedera (member of the cooperative Quantore) won a contract for [...] for a value of EUR [...] ³⁹⁶.

(460) Finally, according to the Notifying Party, companies which are active in neighbouring markets have recently easily and successfully expanded into stationery and should therefore be considered as an alternative credible competitor to the Parties in the Dutch market.³⁹⁷ One example would be Manutan, which has not only expanded its geographic scope, but also incorporated stationery to its main product category (office furniture).³⁹⁸ According to the Notifying Party, Manutan is a very

³⁹² Form CO, paragraph 269.

³⁹³ Form CO, paragraph 271. See further references to Manutan and 123inkt.nl in particular in Response to the 6(1)(c)Decision.

³⁹⁴ Contact details provided in response to the request for information of 5 October 2015 – National contracts (part 2) and to the request of information of on 8 October 2015.

³⁹⁵ Form CO, paragraph 271.

³⁹⁶ Note on the reduction in the number of key suppliers for stationery", submitted on 23 October 2015, paragraphs 12 and 13.

³⁹⁷ Note on the reduction in the number of key suppliers for stationery", submitted on 23 October 2015, paragraphs 31-33.

³⁹⁸ *Ibid.*

rapidly growing supplier that has been identified by [10-20]% of customers as a “likely” or “very likely” alternative for Stationery in the 2015 National survey (compared to [10-20]% for Office Depot and [10-20]% for Lyreco).

7.2.6.1.2. The Commission’s assessment

- (461) The Commission conducted an extensive market investigation, both in Phase I and Phase II, to identify the suppliers that are currently active in the contract market and which supply the full range of traditional office supplies in the Netherlands to customers with more than 100-200 office workers.
- (462) On the basis of the results of the market investigation, the Commission considers that of the five suppliers identified by the Notifying Party as the Parties' top competitors in the contract market in the Netherlands, two (Quantore and Bunzl) are not even active in the contract channel. Only Lyreco, Hedera and Manutan are active in the contract market for traditional office supplies but only Lyreco is capable of exerting a credible competitive constraint on the Parties in this market.

7.2.6.1.2.1. Suppliers identified by the Parties which are not active in the relevant market

- (463) As regards Quantore, the Commission preliminarily concluded in the Article 6(1)(c) Decision that it does not constitute a sufficient alternative to the Parties and Lyreco as regards large contracts in the Netherlands. Quantore is a Dutch purchasing cooperative and logistic company operating in the Netherlands (95% of its business) and in Belgium (5% of its business). It has 450 members that are small and medium sized suppliers to end consumers of office products, computer products and technical equipment. Quantore does not sell its products directly to final consumer but acts at wholesale level only providing logistic services to its members delivering products to their warehouses and to the final consumers on behalf of its members³⁹⁹.
- (464) Quantore is mainly active in the B2B retail market and targets small and medium sized businesses.⁴⁰⁰ Despite having tried to (unsuccessfully) enter the contract market between 2011 and 2014, Quantore does not sell office supplies through contracts anymore.⁴⁰¹ During that period, Quantore contracted with medium and large customers, but decided to discontinue those activities in 2015, due to the dominance of the three main suppliers in the Dutch market, Staples, Office Depot and Lyreco.⁴⁰² According to Quantore, the tender contract market suffers from high barriers to entry, which are not only related to the size and the capacity needed to serve the customers, but also to endogenous strategies pursued by the incumbents. Moreover, special systems are needed in order to be an effective competitor in the tendering market. Although Quantore satisfies the technical features to serve large customers, it does not have the business knowledge and intelligence to bid against the incumbents".⁴⁰³
- (465) On the basis of the market investigation the Commission is able to confirm the limited role and the weak perception of Quantore by customers as a supplier for large contracts. One large customer explained during the Phase I investigation that "*However, Quantore was in the last tender (2011) not adequate to (this customer)'s*

³⁹⁹ Agreed minutes of a phone call with Quantore, paragraph 1.

⁴⁰⁰ Quantore's reply of 21.10.2015 to Commission's request for information on the top 100 customers.

⁴⁰¹ *Ibid*, paragraph 8.

⁴⁰² Quantore's reply to Phase I Questionnaire Q1 to competitors – Question 1.

⁴⁰³ Agreed minutes of a phone call with Quantore, paragraph 8.

needs".⁴⁰⁴ Another large customer, when describing the participants in tenders in the Dutch market indicated that "*Quantore cannot be compared to Staples, Office Depot or Lyreco since it is a group of smaller suppliers*".⁴⁰⁵ The results of the investigation in Phase II supported the findings that Quantore plays a limited role in the contract market in the Netherlands. Only two customers (out of a total of 17 Dutch respondents) indicated Quantore as an alternative supplier to the Parties⁴⁰⁶ and only one respondent indicated that it had invited Quantore for a bid that was held in 2011 (therefore when Quantore was still active in the contract market).⁴⁰⁷

- (466) The Notifying Party also indicated Bunzl as a competitor to the Parties in the market for national contracts, although this company is mostly active in the facilities category. Bunzl supplies a diverse customer base with a broad range of internationally sourced products in a variety of market sectors: food services, grocery, cleaning & hygiene, retail, safety, healthcare and other.⁴⁰⁸
- (467) On the basis of the market investigation in Phase II the Commission considers, however, that Bunzl is not active as a contract stationer in the Netherlands for the distribution of full range traditional office supplies. First, Bunzl does not consider itself as a competitor of the Parties since its activities in the distribution of office supplies are very small and cannot in any case be compared to the activities of the Parties. Second, Bunzl's limited sales of office supplies in the Dutch market result from the distribution of a very limited amount (below EUR 250 000) of stationery materials and paper for hotel conference rooms, which represent an insignificant fraction (below 1%) of its Dutch revenues.⁴⁰⁹ Therefore, even if it may supply some stationery and other office products on an ad hoc basis, in addition to the main services it provides, it is evident from the results of the market investigation that the focus and business strategy of this company is different from the one followed by the Parties.

7.2.6.1.2.2. *Suppliers identified by the Parties which are active in the relevant market but have a limited presence*

- (468) The remaining suppliers identified by the Notifying Party as actual competitors of the Parties in the contract market in the Netherlands are Lyreco, Manutan and Hedera. Those three suppliers are active in the contract channel for traditional office supplies. However, Manutan and Hedera supply very few contracts of a limited value. On the basis of the market investigation the Commission considers that these two suppliers exert very limited competitive constraints on the Parties, as will be explained in section 7.2.6.3.
- (469) The Notifying Party repeatedly refers to Manutan as a primarily online supplier which has expanded its product range into traditional office supplies and which is capable of exerting significant competitive pressure over the Parties.⁴¹⁰ According to the results of the market investigation around [30-40]% of Manutan's turnover is

⁴⁰⁴ Agreed minutes of the phone call with a customer.

⁴⁰⁵ Agreed minutes of the phone call with a customer.

⁴⁰⁶ Reply to Phase II Questionnaire Q8i to customers – Question 10.

⁴⁰⁷ Reply to Phase II Questionnaire Q8i to customers – Question 8.

⁴⁰⁸ See Bunzl's Annual Report 2014: <http://www.bunzl.com/~media/Files/B/Bunzl-PLC/reports-and-presentations/ar-2014.pdf>.

⁴⁰⁹ Emails sent by Bunzl on 14 and 15 October 2015 in reply to Phase II Questionnaire – Q9 to competitors (contract stationers).

⁴¹⁰ Response to the 6(1)(c)Decision, paragraph 26; Note on the reduction in the number of key suppliers for stationery", submitted on 23 October 2015, paragraph 25.

generated through sales online and [70-80]% offline via catalogue.⁴¹¹ Manutan only achieves a small percentage of its total revenues through the contract channel (around [10-20]-[30-40]%).

- (470) Manutan operates in 18 countries in Europe where it sells a very large range of products, with a particular focus on office furniture, including office supplies and stationery.⁴¹² even if some of its contracts with large customers may include some traditional office supplies, Manutan's turnover is primarily generated by the sale of office furniture (namely containers and storage equipment), while the revenues achieved by the sale of traditional office supplies products account for an insignificant percentage (around [5-10]-[10-20]%) of its total contract revenues.⁴¹³
- (471) Finally, Hedera is an independent company, member of the cooperative Quantore, which is active in the supply of office supplies, office furniture, printing supplies (traditional & MPS) and Apple products. However, as will be assessed in recitals (477) and (478) below, the results of the market investigation in Phase II revealed that, while it is active in the Dutch contract market for traditional office supplies, it is a very far fourth supplier in this market for a number of reasons.
- (472) Finally, the Notifying Party mentions a number of specialist companies such as paper suppliers (Canon, Papyrus and Buhrmann Ubbens), providers of MPS (such as Canon, HP, Ricoh, Xerox, Lexmark, and Samsung), and providers of ink such as 123inkt.nl, which would be strong rivals of the Parties in the Dutch market for office supplies. However, for the reasons explained in recitals (86) to (90), those suppliers cannot be considered to be active in the market for full range contracts for traditional office supplies, as defined in section 6.1.2.1.
- (473) Therefore, large customers in the Netherlands have very limited alternatives when looking for suppliers which are able to supply traditional office products through contracts.

7.2.6.1.2.3. *Position of the Parties and their competitors active in the contract market for traditional office supplies*

- (474) Both Parties sell traditional office supplies to large customers under framework contracts in the Netherlands.
- (475) Based on the data submitted by the Notifying Party, Staples is currently the market leader in the Dutch contract market for traditional office supplies with sales of approximately EUR [...] in 2014 and EUR [...] for sales of traditional office supplies to large customers. Lyreco is the second largest supplier in terms of contract sales, whereas Office Depot is the third supplier in the contract market with sales of approximately EUR [...] and EUR [...] for sales of traditional office supplies to large customers.⁴¹⁴ Following the transaction, the merged entity would be the clear market leader in the market for non-international contract sales of traditional office supplies with a combined turnover of approximately EUR [...].

⁴¹¹ Agreed minutes of the conference call with Manutan, paragraph 2.

⁴¹² Agreed minutes of the conference call with Manutan, paragraph 1.

⁴¹³ Agreed minutes of the conference call with Manutan, paragraph 4.

⁴¹⁴ See the Parties' replies of 22 December 2015 and 7 January 2016 to requests for information on contract sales data.

Table 14: Parties' sales of traditional office supplies through contracts in the Netherlands, EUR 000s

Category	Party	All customers	Large customers
<i>Traditional office supplies</i>	<i>Staples</i>	[...]	[...]
Stationery	Staples	[...]	[...]
Ink & toner	Staples	[...]	[...]
Paper	Staples	[...]	[...]
<i>Traditional office supplies</i>	<i>Office Depot</i>	[...]	[...]
Stationery	Office Depot	[...]	[...]
Ink & toner	Office Depot	[...]	[...]
Paper	Office Depot	[...]	[...]

Source: Source: Parties' replies of 22 December 2015 and 7 January 2016 to requests for information on contract sales data.

- (476) Apart from the Parties and Lyreco, the Notifying Party indicated Quantore, Manutan, Bunzl and Hedera as competitors active in the contract market in the Netherlands.⁴¹⁵ As explained in recitals (463) to (467), Quantore and Bunzl are not even active in the distribution of traditional office supplies through contracts.
- (477) As regards Hedera, while it is active in the Dutch contract market for traditional office supplies, it positions itself as a very far fourth supplier in the Dutch market. In terms of revenues, its total sales of traditional office supplies in 2014 (of which only half were achieved through contracts) represent a very small percentage of the merged entity's sales,⁴¹⁶ As Hedera pointed out during the market investigation: "*Staples, Office Depot and Lyreco are the biggest and Hedera would be number four. However, it is important to note that there is a big gap between the three large ones and Hedera in terms of revenues generated*".⁴¹⁷
- (478) Moreover, the value of Hedera's ten largest contracts with business customers in 2014 was below EUR [...],⁴¹⁸ therefore lagging far behind the value of the Parties' top 10 contracts in the Netherlands, which range between approximately EUR [...] for Staples and EUR [...] for Office Depot. Therefore, the starting point of Office Depot's top 10 contracts would be the same as value of Hedera's largest contract. Hedera rarely appears in the bidding data provided by the Parties (see section 7.2.6.2) and it does not supply any of the largest 100 companies and entities (both public and private) in terms of number of employees in the Netherlands.⁴¹⁹ Finally, on the basis of the market investigation in Phase II the Commission confirms Hedera's weak position as a contract stationer in the Netherlands. Only one customer

⁴¹⁵ Contact details provided in response to the request for information of 5 October 2015 – National contracts (part 2) and to the request of information of on 8 October 2015.

⁴¹⁶ Hedera's reply to Phase II Questionnaire Q9 to competitors (contract stationers) – question 2.

⁴¹⁷ Agreed minutes of the phone call with Hedera, paragraph 2.

⁴¹⁸ Hedera's reply to Phase II Questionnaire Q9 – question 5.

⁴¹⁹ Top 100 companies in terms of numbers of employees.

(out of a total of 17 Dutch respondents) mentioned Hedera as an alternative supplier to the Parties (fourth supplier)⁴²⁰. This respondent [...] had invited Hedera to submit bids during the last tender, which was held in 2015.⁴²¹

- (479) On the basis of the results of the market investigation in Phase II the Commission confirms that Manutan plays a very limited role in the contract market for traditional office supplies in the Netherlands. Manutan is only mentioned by four customers (out of 17 Dutch respondents) as an alternative supplier to the Parties.⁴²² However, one of those customers confirmed the distance between the Parties or Lyreco and Manutan by indicating that "*as I mentioned the main companies are now Lyreco, Office Depot and Staples. Shaefer and Manutan are at this very moment not the main competitors. I will be difficult to get 4 or 5 competitive suppliers for a new tender*".⁴²³ Of the other three suppliers, one of them indicated that it had not organised any tender for the procurement of office supplies in recent years, and another one did not invite Manutan to bid in its last tender (despite having identified this supplier as an alternative to the Parties).⁴²⁴
- (480) Moreover, Manutan confirmed the wide distance between the Parties' position as large contract stationers in the Netherlands and its own position and business model, which focuses on offering a wide range of products: *Customers that switch from Manutan do not do so to go for Staples and Office Depot instead. Staples and Office Depot specialise in office supplies, which is only one category and a minor part of Manutan's business.*⁴²⁵
- (481) While Manutan makes some ancillary sales through contracts with some of the top 100 companies and entities (both public and private) in the Netherlands, the value of its largest contract with one of those companies represents an insignificant fraction (below 5%) of the value of the contracts that Office Depot has with the same customer, which reinforces Manutan's role as a supplier offering bundles.
- (482) The assessment of the bidding data provided by the Parties demonstrates that apart from Lyreco, the alternative suppliers mentioned by the Parties rarely participate in tenders together with the Parties, especially in those involving larger customers, and even if they do participate, they hardly win any of those tenders. Although there are several competitors for all tenders, when attention is limited to the largest customers, Staples, Lyreco and Office Depot emerge as the main stationery suppliers (see section 7.2.6.2 for a more detailed analysis of the bidding data).

7.2.6.1.3. Conclusion

- (483) In light of recitals (463) to (482), the Commission concludes that only the Parties, Lyreco, Hedera and Manutan are active in the Dutch market for the distribution of full range traditional office supplies through contracts and that the Parties and Lyreco are the clear market leaders, whereas the other suppliers remain smaller suppliers with limited presence in this market.

⁴²⁰ Reply to Phase II Questionnaire Q8i to customers – Question 48.

⁴²¹ Reply to Phase II Questionnaire Q8i to customers – Question 8.

⁴²² Reply to Phase II Questionnaire Q8i to customers – Question 48.

⁴²³ Reply to Phase II Questionnaire Q8i to customers – Question 10.4.

⁴²⁴ Reply to Phase II Questionnaire Q8i to customers – Question 8.

⁴²⁵ Agreed minutes of the phone call with Manutan, paragraph 28.

7.2.6.2. Competitive constraints exerted by the Parties on each other

7.2.6.2.1. The views of the Notifying Party

- (484) According to the Notifying Party, the Dutch office supplies market is very competitive and there are a number of suppliers with a strong presence in the Netherlands which are able to exert significant competitive pressure over the Merged Entity. Moreover, competitors, including local and regional suppliers have increased product ranges and added services to retain large corporate customers.⁴²⁶
- (485) The Notifying Party considers that customers in the Netherlands can use the existence of specialist suppliers to ensure competitive pricing in the market by explicitly and implicitly threatening to split their requirements.⁴²⁷
- (486) Finally, the Notifying Party submits the results of their analysis of the Parties' bidding data in the Netherlands. According to the Notifying Party, that analysis shows that smaller local suppliers win the majority of tenders lost by Staples in the Netherlands ([40-50]% of the tenders were won by "others"). Lyreco is the individual competitor which wins most tenders that Staples loses both in absolute terms and in terms of value.⁴²⁸ As regards, the tenders that Office Depot loses, most of them are lost to Lyreco ([40-50]%), [30-40]% to Staples and [10-20]% of them to "others".⁴²⁹

7.2.6.2.2. The Commission's assessment

- (487) The results of the market investigation in Phase II has confirmed the Commission's preliminary findings that the Parties are close competitors in the market for the distribution of traditional office supplies through contracts in the Netherlands. Moreover, together with Lyreco, the Parties are *de facto* the only suppliers capable of winning tenders with large customers.
- (488) First, the results of the market investigation in Phase II show that the Parties consistently appear, together with Lyreco, as the preferred suppliers invited to bid in tenders and as winners of the tender. Out of 17 Dutch customers that replied to the questionnaire in Phase II, approximately half (8) indicated that the Parties were invited to submit bids in their last tender (of the remaining 9 suppliers, 2 indicated that no tender was organised in relation to the last framework contract, and 5 indicated that such information was not available).⁴³⁰ In all 8 cases, the Parties appear together with Lyreco as bidders in the tender (in one case together with Hedera and in another instance with Quantore).⁴³¹
- (489) The fact that the Parties are two close competitors in the Netherlands, in particular as regards large customers, is further evidenced by the number of the top largest employers (both public and private)⁴³² that the Parties supply to in the Netherlands. Following an assessment of how many of the top 100 employers are purely national entities (namely those which only operate in the Netherlands) and therefore only have non-international contracts in place for office supplies (in order not to over-estimate the Parties market power for non-international contracts in the Netherlands),

⁴²⁶ Form CO, paragraph 269.

⁴²⁷ Form CO, paragraph 273.

⁴²⁸ Form CO, paragraph 278.

⁴²⁹ *Ibid.*

⁴³⁰ Reply to Phase II Questionnaire Q8i to customers – Question 8.

⁴³¹ *Ibid.*

⁴³² In terms of number of employees.

the Commission concludes that 82 of those entities are purely national customers.⁴³³ Out of those 82 entities, [60-70%] ([40-50]) are currently customers of Staples ([30-40]), Office Depot ([20-30]) or both ([5-10]) for either the full range of traditional office supplies or some categories. Lyreco, which is the second supplier in the Dutch contract market in terms of revenues, has contracts with 36 of the top 82 purely national employers in the Netherlands, some of which overlap with the Parties.⁴³⁴

- (490) As regards Manutan, the results of the market investigation revealed that it has contracts in place with [...] of those top 82 national customers⁴³⁵. However, the value of its largest contract with one of those companies represents an insignificant fraction (below 5%) of the value of the Parties' largest contracts with customers from this list, which confirms the ancillary nature of the purchases of office supplies that customers make with this supplier. Finally, Hedera does not have contracts in place for office supplies with any of those top 82 customers. Their activities with the top Dutch employers are limited to the supply of office furniture to only one of the companies included in the list.⁴³⁶
- (491) In an email exchange between Staples representatives in the Netherlands and other regions, including the Regional Managing Director of Staples Advantage Nordic, it is clearly confirmed that competition for large accounts in the Netherlands is limited to the Parties and Lyreco: [...].⁴³⁷
- (492) The current proximity between the main three suppliers in the Netherlands is further evidenced by the fact that Staples monitors [...] of Office Depot and Lyreco particularly closely: [...].⁴³⁸
- (493) Moreover, the internal documents provided by the Parties show that Staples monitors Office Depot's [...] particularly closely, as opposed to other local suppliers: [...].⁴³⁹
- (494) Finally, the Commission reviewed data submitted by the Parties on national tenders for office supplies in the Netherlands.⁴⁴⁰ That assessment focused on large national customers (Enterprise customers) and therefore tenders where the customer was classified by Staples as midmarket or international (IAT) were omitted. The tender data submitted by the Parties for the Netherlands does not allow for the separation of various product categories and therefore involves all traditional office supplies. The main finding, which emerges from both the Parties' submission on tender data as well as the Commission's analysis, is that in the Netherlands Staples, Office Depot and

⁴³³ The Commission assessed how many of the top 100 Dutch employers currently have international contracts in place with the three suppliers that are able to offer international contracts: Staples, Office Depot and Lyreco. The source of this information is the document provided by the Notifying Party as Annex 23 to the Form CO and the information provided by Lyreco in its reply of 29.10.2015 to the Commission's request for information on the top 100 customers.

⁴³⁴ Lyreco's reply to the Commission's request for information on the top 100 customers.

⁴³⁵ Manutan's reply to the Commission's request for information on the top 100 customers.

⁴³⁶ Hedera's reply to the Commission's request for information on the top 100 customers.

⁴³⁷ Staples' internal document entitled "RE: INFORMATION NEEDED - competitive analysis", 7 March 2013.

⁴³⁸ Staples' internal document entitled "Pricing & Margin Staples NL", 13 June 2013.

⁴³⁹ Staples' internal document entitled "[...]", 9 May 2014.

⁴⁴⁰ See footnote 255 for assumptions underlying the analysis presented in this section.

Lyreco are close competitors. Other suppliers appear more distant and exert a limited competitive pressure on the Parties.⁴⁴¹

- (495) Staples' tender data shows that in tenders for enterprise customers, Office Depot and Lyreco are the major bidders along with Staples. Staples participated in [...] tenders for traditional office supplies involving Enterprise customers. Among those [...] tenders, Office Depot and Lyreco appeared to have participated respectively in [...] and [...] tenders. Quantore submitted [...] bids in those tenders, and other suppliers had an even lower number of bids.
- (496) Among the tenders involving Enterprise customers where Staples participated and lost, Office Depot (in addition to Lyreco) is one of the main winners in those tenders. In particular, out of [...] tenders where Staples lost with enterprise customers, Lyreco won [...], followed by Office Depot with [...] wins. King, Canon and Papyrus each won only [...] lost by Staples, but [...] involved large amounts. However, as explained in section 7.2.7 the Commission found that among the tenders lost by Staples that King, Papyrus and Canon won, those suppliers actually did not sell the full range of office supplies, but only paper or ink & toner.
- (497) The Commission concludes from Staples' tender data on Enterprise customers for the Netherlands that Office Depot is a close competitor (after Lyreco) to Staples in traditional office supplies.
- (498) The data submitted by Office Depot for the Netherlands also confirms that competition is mainly between the Parties and Lyreco. In particular, in Office Depot's bidding data, Lyreco and the Parties emerge as winners in respectively [...], [...] and [...] tenders. No further market participant shows more than one win. Focusing on those tenders that are lost by Office Depot, the main winners are Staples and Lyreco with value shares of [40-50]% each. No other market participant captured a significant number or value of tenders that were lost by Office Depot (the next participants captures a value share of less than 4%).
- (499) On the basis of the analysis of bidding data for the full range of the three traditional office supplies, the Commission considers that: (i) Staples, Office Depot, and Lyreco are close competitors, with the Parties exerting a significant competitive pressure on each other, and (ii) no other suppliers appear as credible alternatives to the Parties and Lyreco.
- (500) The results of the Commission's assessment of the bidding data are further supported and illustrated by internal documents from the Parties. The following graph, extracted from Staples' internal documents, shows the strong prominence of the Parties (notably Staples) and Lyreco as the leading suppliers in the market for office supplies (in particular, stationery) and the limited role that Hedera and Quantore play in tenders:

⁴⁴¹ See "Relevance of bidding data for the competitive assessment", dated 18 May 2015, RBB Economics, section 4.6.

Figure: Competitive insights NL

[...]

[...]

Source: Staples' internal document entitled "Staples Advantage Netherlands, FY14 Commercial Budget Review", November 2013, 8 November 2013, page 4.

(501) The fact that the Parties are close competitors capable of winning tenders and supplying large contracts with large customers is explained by the fact that supplier selection appears to be mostly based on prices and on the ability to meet the specific requirements of large contract customers. As regards their ability to price particularly low, Hedera indicated that it cannot compete with the Parties "*due to the aggressive pricing strategy that the Parties engage in (essentially selling below cost)*".⁴⁴²

7.2.6.2.3. Conclusion

(502) On the basis of the above, the Commission concludes that the Parties are close competitors in the market for distribution of office supplies to customers of more than 100-200 office workers or 250 employees in the Netherlands, and therefore the proposed merger would lead to a significant loss of competition.

7.2.6.3. Competitive conditions following the transaction

7.2.6.3.1. The views of the Notifying Party

(503) The Notifying Party submits that the Parties will not be able to increase prices in the Netherlands, where the available evidence from, among other sources, internal documents, the Commission's own market feedback and the 2015 National survey, demonstrate that there will remain intense competition from both traditional suppliers and specialist suppliers.⁴⁴³

(504) According to the Notifying Party, the Commission does not acknowledge the steep revenue decline in ink & toner where competition is exercised not just by MPS suppliers but also by online suppliers such as 123inkt⁴⁴⁴ or Amazon.⁴⁴⁵ The Notifying Party repeatedly mentions that online suppliers such as Amazon are capable of posing a significant competitive threat to the traditional office supplies suppliers.⁴⁴⁶

(505) Moreover, the Notifying Party submits that customers can threaten to issue separate tenders for stationery, paper and printing facilities, which, according to the Notifying Party is a powerful threat because providers of office supplies know that their chances of being successful in tenders for particular products categories (for instance paper only, ink-only) are often low.⁴⁴⁷ In this regard, the Notifying Party submits that in order to find competition concerns in the contract market for office supplies, the Commission would need to dismiss the indirect constraint exerted by specialist suppliers which are not active in the full range of traditional office supplies but offer some product categories. The Notifying Party claims that the Commission would

⁴⁴² Hedera's reply to Phase II Questionnaire Q9 to competitors (contract stationers) – question 15; agreed minutes of the conference call with Hedera, paragraph 6.

⁴⁴³ Response to the 6(1)(c) Decision, paragraphs 7 and 25-26.

⁴⁴⁴ Response to the 6(1)(c) Decision, paragraph 25.

⁴⁴⁵ Form CO, paragraphs 53, 59 and submission on Amazon of 20 October 2015.

⁴⁴⁶ Form CO, paragraphs 53, 59 and submission on Amazon of 20 October 2015.

⁴⁴⁷ Form CO, paragraph 273.

need to set aside the ability of the largest customers to achieve competitive prices for stationery by threatening to switch other categories, often accounting for the bulk of a customer's requirements to specialist suppliers.⁴⁴⁸

- (506) Finally, the Notifying Party repeatedly indicates that it is very easy to enter into the contract segment. Moreover, the fact that online suppliers do not offer "contracts" does not mean that they cannot, or do not compete against the Parties. Online competitors can easily set up individualised e-catalogues allowing them to customise their offerings for specific customers (and offer volume rebates and other special offers to specific customers).⁴⁴⁹
- (507) Finally, according to the Notifying Party, the Commission would have to dismiss the fact that suppliers in other product categories have certain scope to start supplying stationery.⁴⁵⁰

7.2.6.3.2. The Commission's assessment

7.2.6.3.2.1. *Structure of the market following the transaction*

- (508) In section 7.2.6.1, the Commission carried out a detailed assessment of the current competitive landscape in the contract market for traditional office supplies in the Netherlands. The result of such analysis revealed that only the Parties, Lyreco, Hedera and Manutan are active competitors in the Dutch market for the distribution of full range traditional office supplies. However, for the reasons explained in recitals (479) to (481) Manutan plays a very limited role in the contract market for traditional office supplies in the Netherlands, and therefore its role in the market will not be assessed further.
- (509) Following the transaction, the merged entity would be the clear market leader in the market for non-international contract sales of traditional office supplies in the Netherlands with a combined turnover of EUR [...]. The Merged Entity would be followed by Lyreco, which is currently the second largest supplier in terms of sales in the contract market. The Merged Entity and Lyreco would be followed by Hedera, which lags far behind in terms on sales and numbers of contracts with large customers in the Netherlands. In particular, the Merged Entity would be around 20 times larger than Hedera in terms of revenues generated through contract sales.
- (510) Therefore, the transaction, as initially notified, would lead to a 3-to-2 scenario: it would reinforce Staples' number one position in the contract market for traditional office supplies in the Netherlands, it would remove the significant constraint coming from Office Depot, it would increase the distance between the number 1 and number 2 suppliers and would reduce the market to three suppliers, the third lagging far behind.

7.2.6.3.2.2. *Likely reaction of actual competitors following the transaction*

- (511) The Commission considers that, pre-transaction, the Parties and Lyreco are close competitors, and they are the only players capable of exerting a credible competitive constraint on each other, as evidenced in the analysis of internal documents, bidding data and market investigation results (see section 7.2.6.2).

⁴⁴⁸ Note on the reduction in the number of key suppliers for stationery, paragraph 52.

⁴⁴⁹ Note on the reduction in the number of key suppliers for stationery, paragraph 22.

⁴⁵⁰ Note on the reduction in the number of key suppliers for stationery, paragraph 52.

- (512) Indeed, the competitive constraints that the remaining competitor in the contract market (Hedera) may exert on the Parties as regards large customers are, at most, limited.
- (513) Hedera's overall turnover in the contract market represents a very small fraction of the Parties' individual sales in this market, therefore being a significantly smaller player pre-transaction. Moreover, Hedera rarely appears in the bidding data provided by the Parties (see section 7.2.6.2) and it does not supply any of the largest 100 companies and entities (both public and private) in terms of number of employees in the Netherlands.
- (514) This lack of competitiveness was confirmed by Hedera itself in the course of the market investigation. During the market investigation, Hedera indicated that the main competitive advantage that the Parties have over all the other providers of traditional office supplies in the Netherlands is the ability to have aggressive commercial strategies. More specifically, when asked whether they encounter any particular constraints in dealing with large size corporate contract customers, Hedera indicated that they do not face any limitations in their capacity to serve contracts with large customers, but the reality is that they do not win large contracts in tenders with the top employers in the Netherlands (as evidenced by the fact that they do not have contracts in place with any of the top Dutch employers and the fact that they almost never appear in the bidding data provided by the Parties) due to the aggressive commercial strategy that the Parties engage in (essentially selling below cost). Indeed, the prices of the Parties can go 30-40% below Hedera's prices.⁴⁵¹
- (515) The fact that Hedera cannot compete commercially with the Parties, due to its much smaller size, together with the fact that the name of this supplier almost never appears in the replies from Dutch customers to the market investigation and its limited role in tenders, is indicative that this supplier would likely remain a weak competitive constraint to the merged entity post-transaction.

7.2.6.3.2.3. *Likely reaction of potential competitors*

- (516) The Notifying Party specifically refers to online suppliers active in the Netherlands, such as 123inkt, as an important competitive constraint on the Parties, although they are not active in the contract channel.
- (517) According to the results of the market investigation in Phase II 123inkt is a purely online reseller of computer supplies (ink & toner), stationery and printers, which is not active in the contract segment and which only targets small and medium sized enterprises and end-consumers.⁴⁵² While the Commission does not deny that online suppliers may steal some revenues from the Parties in the segment in which both companies are active (that is to say in online sales targeting SMEs and end consumers) and even though some employees of large business contract customers may source some office supplies from online suppliers, this does not support the Notifying Party's argument that the Parties will face strong competition from local online suppliers in the contract market for traditional office supplies after the transaction, when those suppliers are not even active in contracts and do not target large customers.

⁴⁵¹ Response to Questionnaire Q9 to competitors, question 15; Non-confidential minutes of the conference call with a competitor, 16 November 2015, paragraph 6.

⁴⁵² Reply to Phase II Questionnaire Q10 to specialists – Question 5.

- (518) In addition to specific online suppliers active in the Netherlands, the Notifying Party repeatedly mentions Amazon as an online supplier capable of posing a significant competitive threat to the Parties in the EEA, including the Netherlands.⁴⁵³ However, the results of the market investigation revealed that Amazon is currently not active in the contract channel and that there is no business plan in place to expand into this segment in order to compete with the Parties for long-term contracts with customers.⁴⁵⁴ Contrary to the Notifying Party's claims, the market investigation revealed that there are a number of gaps that Amazon or any other supplier not active already in the contract market (that is to say online suppliers).
- (519) Moreover, the Notifying Party considers that specialist suppliers and OEMs which are not active in the full range of traditional office supplies (but only in some product categories) exert (and will continue to do so) an indirect constraint on the Parties, which the Commission cannot ignore. According to the Notifying Party, the largest customers have the ability to achieve competitive prices for stationery by threatening to switch other categories to specialists, often accounting for the bulk of customers' requirements.
- (520) However, according to the results of the market investigation the specialist companies and OEMs that the Notifying Party repeatedly refers to are in fact partners of the Parties for the sale of their products, for instance for the sale of ink and toner as consumables. Moreover, although this part of the market is still not very significant, it was confirmed that there is a growing trend towards MPS, which constitute a separate market, as indicated in recital (83). Finally, customers may use specialists prices as a benchmark and to negotiate better prices with their current supplier.

7.2.6.3.2.4. *Likely reaction of customers*

- (521) Large corporate customers (both private and public entities) that purchase traditional office supplies through contracts may face difficulties switching to other suppliers after the transaction because there are few alternative suppliers that can cover their requirements.⁴⁵⁵
- (522) Some Dutch respondents to the market investigation that expressed concerns about the transaction indicated that it will be difficult to have strong competition when running a tender, since Staples, Office Depot and Lyreco currently bid against each other allowing customers to pay the best purchasing price. As regards the lack of alternative suppliers in the market, one customer indicated that "*they cannot foresee if any other company can get up to speed with the Parties in the future. If not, there will only be 2 alternatives which is not sufficiently competitive*".⁴⁵⁶ Other customers indicated that the transaction would have an impact in their current procurement of office supplies, "*as we only have one real competitor left (Lyreco)*".⁴⁵⁷
- (523) One customer indicates as a potential advantage the increase of the buyer power of the Merged Entity, but questions that this will ultimately benefit the customer:

⁴⁵³ Form CO, paragraphs 53, 59 and submission on Amazon of 20 October 2015.

⁴⁵⁴ Agreed minutes of the call with Amazon; Amazon's reply to the Commission's request for information.

⁴⁵⁵ Horizontal Merger Guidelines, paragraph 31.

⁴⁵⁶ Reply to Phase II Questionnaire Q8i to customers – Question 10.4.

⁴⁵⁷ Reply to Phase II Questionnaire Q8i to customers – Question 10.4.

*because of the lack of competition it is questionable whether the end-user will profit from this advantage.*⁴⁵⁸

- (524) From the customer's side, the Notifying Party claims that large customers of office supplies purchasing under framework contracts are large sophisticated companies and therefore have significant buyer power.⁴⁵⁹ However, in light of the large number of customers that the Parties have in the Netherlands and the limited value of the individual contracts,⁴⁶⁰ compared with the Parties' turnover in the Netherlands, and the low strategic value of office supplies, customers are not in a position to sponsor new entries and thus their buyer power is, if at all, limited.

7.2.6.3.3. Conclusion

- (525) In conclusion, the Commission considers that the transaction would result in the removal of an important competitive force from the market and a close competitor of Staples. The reduction of the number of credible bidders for non-international contracts with large customers in the Netherlands from three to two would be such as to significantly reduce competition for those contracts, providing the merged entity as well as the remaining competitors, with the incentive and ability to raise prices.
- (526) The merger will therefore bring together two close competitors in the Netherlands, reinforcing Staples' leading position and widening the gap between the merged entity on one hand, and Lyreco and Hedera on the other hand who would lag far behind.

7.2.6.4. Conclusion on Netherlands – Traditional office supplies

- (527) On the basis of the arguments set out in this section, the Commission concludes that the transaction would significantly impede effective competition on the market for distribution of traditional office supplies to customers of more than 100-200 office workers or 250 employees through contracts in the Netherlands.

7.2.7. *Netherlands - Stationery only*

7.2.7.1. Structure of the market

- (528) The structure of the market as described in section 7.2.6 is not materially different when assessing the market for supply of stationery products only. Therefore, the same findings apply as regards the competitive assessment of such a market.
- (529) The tender data received from the Parties for the Netherlands does not allow for distinguishing different product categories in tenders. However, narrowing the analysis to stationery products would further strengthen the competitive constraint the Parties exert on each other compared to what has been presented in section 7.2.6. This is because specialist suppliers are only present in paper and ink & toner. In particular, specialists like Canon, Papyrus and King win very specific tenders.
- (530) As for Canon, it captured individually the largest value share of tenders lost by Staples, but this value was generated by [...] large tenders. In particular, Canon won [...] valuing EUR [...] in 2014, for a public administration customer. Based on information in TenderNed and the name of the customer, the Commission understands that this tender did not involve stationery, but printing and copy

⁴⁵⁸ Reply to Phase II Questionnaire Q8i to customers – Question 10.4.

⁴⁵⁹ See Note on buyer power, submitted by the Notifying Party on 25 October 2015.

⁴⁶⁰ The individual value of Office Depot's top five contracts in the Netherlands ranges between EUR [...] and EUR [...]; as regards Staples, its five largest contracts range between EUR [...] and EUR [...].

paper.⁴⁶¹ Canon also won [...] together with Papyrus in 2014, with the customer being a public body, worth EUR [...]. This is the largest tender in Staples' bidding dataset. However, the Commission understands that in the latter tender Canon did not offer stationery.⁴⁶²

- (531) As for Papyrus, the Parties argue that its value share on the tenders lost by Staples is, with [10-20]%, close to that of Office Depot ([10-20]%).⁴⁶³ A review of the submitted tender data revealed however that Papyrus won [...] involving Enterprise customers, namely [...], together with Canon in 2014, with the public body as customer, worth EUR [...]. However, similar to Canon, Papyrus is not selling stationery, as it is selling Office paper, tissue, hygiene products and standard packaging products in the contract, online and wholesale channels.⁴⁶⁴
- (532) The same applies to King, which won [...] in 2013, that covered [5-10]% of the value of all tenders Staples lost in the Netherlands. This tender had a value of EUR [...] with a public organisation as customer. The Commission however understands that this tender involved primarily cleaning tools and products, hygiene and personal care items.⁴⁶⁵
- (533) This leaves Office Depot and Lyreco as the major competitors to Staples for large customers in the Netherlands for stationery. In particular, Manutan and Misco, claimed by the Parties to be key competitors in the Netherlands did not win any tender from those lost by Staples involving large customers, nor did they participate in such tenders along with Staples.⁴⁶⁶ The bidding data of the Parties confirm that in stationery, the main competitors in the Netherlands are Staples, Office Depot and Lyreco.

7.2.7.2. Competitive conditions following the transaction

- (534) The transaction will therefore bring together two close competitors in the supply of stationery through non-international contracts with large customers in the Netherlands, reinforcing Staples' leading position and widening the gap between the Merged Entity on one hand, and Lyreco and Hedera (which is lagging far behind) on the other hand.
- (535) The loss of a close competitor in such a concentrated market would critically affect the capability of customers to obtain a sufficient number of bids to run competitive tenders for the supply of stationery. Moreover, the removal of such a constraint would also reduce the competitive pressure on the remaining competitors (Lyreco, Hedera).
- (536) The bidding data described in the previous section and the market investigation support the general findings on the market for traditional office supplies also more

⁴⁶¹ Based on the name of customer, the Commission tracked that tender and found that it is described under <http://aanbestedingskalender.nl/aankondigingen/detail/download-document/484831/pdf>, retrieved on 09 November 2015.

⁴⁶² Canon indicated that it does not sell stationery products in its reply to Phase I Questionnaire Q1 to competitors (contract) – Question 2.

⁴⁶³ RBB Economics, "Relevance of bidding data for the competitive assessment", dated 18 May 2015, Table 16.

⁴⁶⁴ Papyrus' reply to Phase II Questionnaire Q10 to Specialists – Question 2.

⁴⁶⁵ <http://www.wijgelderland.nl/nieuws-overzicht/king-nederland-uit-tiel-wint-opdracht-defensie-materieel-organisatie/>, retrieved on 9 November 2015.

⁴⁶⁶ See for example slide 9 of the presentation of the Parties in "Case COMP/M.7555 – Staples/Office Depot State of Play Meeting, 06 November 2015."

specifically as regards stationery. If a limited competitive pressure may exist on certain product categories (particularly ink & toner and paper) because of the possibility to obtain those supplies from specialists, such possibility does not exist for stationery, so that the competition concerns could only be aggravated for this product category separately. Indeed, the specialist suppliers participating in tenders in the Netherlands (for instance Canon, Papyrus, King) do not offer stationery products.

- (537) An additional finding concerns the effective possibility of companies active in neighbouring markets, as well as specialist suppliers, to expand to stationery. When responding to the market investigation, paper and MPS specialists stressed that they have a different business focus and no interest in expanding into the distribution of stationery. They also mentioned as a barrier to expansion the specificities of the logistics arrangements required to distribute stationery products. Other suppliers active in neighbouring markets such as cleaning companies, IT suppliers, etc. may have some stationery sales. However, those are add-ons to orders for other items on which they specialise.

7.2.7.3. Conclusion on Netherlands – Stationery only

- (538) On the basis of the above, the Commission concludes that the transaction would lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in the Netherlands.

7.2.8. Austria - Traditional office supplies

7.2.8.1. Market structure

7.2.8.1.1. The views of the Notifying Party

- (539) According to the Notifying Party, the transaction will not give rise to competition issues in the Austrian market. The Notifying Party submits that the contract market in Austria is very competitive with several strong rivals to the Parties, including Lyreco and local suppliers.
- (540) According to the Notifying Party, the top five competitors to the Parties in the contract market in Austria are Büro Handel, Lyreco, TekaeF, Pagro (former e-Plus) and Bürobedarf Strein.⁴⁶⁷ Other suppliers mentioned as important competitors are A. Reinhart and Schäfer Shop.⁴⁶⁸ The Notifying Party claims that several of those competitors have the same capabilities as the Parties, including a full range of supplies.⁴⁶⁹ Further, Pagro, Horn, Kaut Bullinger and TekaeF have all won tenders with a value above EUR 100 000 that were lost by Staples.⁴⁷⁰
- (541) The Notifying Party submits that Office Depot has negligible activities in the contract business in Austria with 2014 revenues of only EUR [...]. Staples' contract revenues were EUR [...] while, according to the Parties' estimates, the Austrian

⁴⁶⁷ Contact details provided in response to the request for information of 5 October 2015 – National contracts (part 2) and to the request of information of on 8 October 2015..

⁴⁶⁸ See for example slide 6 of the presentation of the Parties in "Case COMP/M.7555 – Staples/Office Depot State of Play Meeting, 08 October 2015".

⁴⁶⁹ See the Parties' note on Customer Requirements and Competitor Capabilities, table 4.

⁴⁷⁰ Response to the Article 6(1)(c) Decision, footnote 13.

revenues of Büro Handel and Lyreco are EUR [...] million and EUR [...] million respectively.⁴⁷¹

7.2.8.1.2. The Commission's assessment

- (542) Based on the results of the market investigation, the Commission considers that there are indeed several suppliers active on the contract market in Austria.
- (543) As stated by the Notifying Party, Büro Handel is the market leader in Austria and has a total turnover of more than EUR [...] million in the contract business in Austria.⁴⁷² Although its turnover for only traditional office supplies is lower than that, Büro Handel is the clear market leader in Austria also in the traditional office supplies category.
- (544) Following an assessment of the sales data provided by the Parties, Staples appears to be the second largest supplier in the contract market in Austria with a total turnover of EUR [...] for the national customers. Office Depot's total turnover in Austria for the national customers is very low compared to the two largest suppliers with less than EUR [...].⁴⁷³ Consequently, the combined total turnover of the Parties achieved through contract sales to national customers in Austria is less than EUR [...], reaching not even half of Büro Handel's turnover. The results of the market investigation showed further that the Parties' turnover estimate for Lyreco was exaggerated.
- (545) Thus, the market seems to be characterised by the presence of the two strong suppliers Büro Handel and Staples (of which Büro Handel is the clear market leader) and a number of smaller suppliers (including Office Depot, Lyreco and a number of local suppliers).

7.2.8.2. Competitive constraints exerted by the Parties on each other

- (546) The market structure outlined in section 7.2.8.1 indicates that Office Depot may not compete closely with Staples in the Austrian market for contracts. This is supported by the bidding data submitted by Staples as shown in Table 15.

Table 15: Tenders lost by Staples in Austria

[...]

Source: Bidding data from the report RBB Economics: "Relevance of bidding data for the competitive assessment", dated 18 May 2015.

- (547) The large number of unknown winners makes it difficult to draw firm conclusions from Staples' bidding data. Nevertheless, the majority of tenders lost by Staples which were not won by unknown suppliers were won by Lyreco and Büro Handel, indicating that they are closer competitors to Staples than Office Depot.
- (548) Büro Handel's strong position on the Austrian market is supported by Lyreco's reply to the Commission's questionnaire in which Büro Handel was listed as the closest

⁴⁷¹ Form CO, paragraph 187.

⁴⁷² Turnover information available on the website of Büro Handel, <http://www.buerohandel.net/BHAT/firmeninfo/zahlen-fakten>, (last accessed on December 15, 2015). See also agreed minutes of the conference call with Büro Handel, 8 September 2015.

⁴⁷³ See the Parties' reply of 22 December 2015 to requests for information on contract sales data.

competitor to Staples. Takaef, Pagro, Office Depot and Lyreco are mentioned as other important competitors.⁴⁷⁴

- (549) Büro Handel has confirmed that it is indeed the market leader in Austria. Its business focuses on sales to customers with more than 100 office workers and its contract portfolio includes contracts with annual sales of more than EUR [...] million. Its strong position on the Austrian market is explained by advantages in terms of service and flexibility.⁴⁷⁵ Customers of the Parties generally confirm Büro Handel's strong position, mentioning it as a viable alternative to their current supplier.⁴⁷⁶
- (550) In addition to the competition from Büro Handel, the Parties also compete with Lyreco and smaller regional suppliers in Austria which were listed by some customers and competitors in their replies to the Commission's market investigation.⁴⁷⁷ One of those customers stated that: "*.. there are enough suppliers in the Austrian market, including Buerohandel GmbH, A. Reihard, Schaefer Shop, Tekae and E-Plus.*"⁴⁷⁸

7.2.8.3. Competitive conditions following the transaction

- (551) The Parties will continue to compete with the market leader Büro Handel as well as with Lyreco and smaller suppliers in Austria following the transaction.
- (552) The competitors on the Austrian market do not express particular concerns about the transaction.⁴⁷⁹ One competitor highlighted the fact that the transaction would create a new supplier with more market power than before but also states that it cannot foresee whether the transaction will lead to positive or negative effects on its business.⁴⁸⁰ Similarly, the vast majority of customers did not express any concerns about the transaction for non-international contracts in Austria.⁴⁸¹

7.2.8.4. Conclusion on Austria

- (553) In the light of the above, the Commission concludes that the transaction does not lead to a significant impediment to effective competition in the market for the distribution of office supplies through contracts to large business customers in Austria.

7.2.9. Austria - Stationery only

- (554) The structure of the market and the effects of the transaction as described in section 7.2.8 are not materially different when assessing the market for supply of stationery products only.
- (555) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility of obtaining those supplies

⁴⁷⁴ Lyreco's replies to Phase I Questionnaire Q1 to competitors (contract), Questions 38 and 39.

⁴⁷⁵ Agreed minutes from conference call with Büro Handel.

⁴⁷⁶ Replies to Phase I Questionnaire Q4 to customers (contract) – Questions 29 and 30; replies to Phase II Questionnaire Q8a to Customers (Austria) – Question 48. See further e-mail from a customer of 1 September 2015 and agreed minutes of conference calls with a customer of 15 July 2015.

⁴⁷⁷ Replies to Phase I Questionnaire Q4 to customers (contract) – Questions 29 and 30; replies to Phase II Questionnaire Q8a to customers (Austria) – Question 48. See further e-mail from a customer of 1 September 2015 and agreed minutes of conference calls with a customer of 15 July 2015.

⁴⁷⁸ Agreed minutes of conference call with a customer of 15 July 2015.

⁴⁷⁹ Agreed minutes of conference call with a competitor of 8 September 2015; replies to Phase I Questionnaire Q1 to competitors (contract) – Questions 62-63.1.

⁴⁸⁰ Agreed minutes of conference call with a competitor of 8 September 2015.

⁴⁸¹ Replies to Phase I Questionnaire Q4 to customers (contract) – Questions 51-52 and to Phase II Questionnaire Q8a to Customers (Austria) – Questions 52-53.1.

from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.

- (556) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Austria.

7.2.10. *Belgium - Traditional office supplies*

7.2.10.1. Market structure

7.2.10.1.1. The views of the Notifying Party

- (557) According to the Notifying Party, the Parties are small suppliers in Belgium with 2014 contract revenues of only EUR [...] and EUR [...] respectively. Lyreco is by far the market leader in Belgium with estimated revenues of EUR [...], while there are other suppliers present in the market such as Manutan, AB Supplies and Fiducial with estimated revenues of EUR [...], EUR [...] and EUR [...], respectively. In addition, the Parties argue that there are a large number of smaller local suppliers, like Otto Office, Interoffice, Pandava and Deroanne, who can equally exert competitive constraints over the Parties.⁴⁸²

- (558) The Notifying Party, in its Response to the Article 6(1)(c) Decision underlined Lyreco's leading position as well as the existence of other local suppliers who are able to win large contracts including Deroanne and AB Supplies. The Notifying Party in its note on customer requirements and competitor capabilities⁴⁸³ restated that Fiducial, Manutan, AB Supplies and Deroanne all have the capabilities required to supply large customers.⁴⁸⁴

7.2.10.1.2. The Commission's assessment

- (559) According to the results of the Commission's market investigation some of the suppliers named by the Parties as competitors are in fact not active in the market for contract sales of office supplies to customers of more than 100-200 office workers or 250 employees.

7.2.10.1.2.1. *Suppliers not active in the relevant market*

- (560) Manutan is present in 18 EEA countries, including Belgium. Manutan's business model is based on offering a wide range of product categories, aiming at providing all the products its clients need, and is focused on equipment and consumables to industrial clients. Although Manutan sells the entire range of office supplies (stationery, paper, ink & toner) through contracts, it offers much fewer SKUs, office supplies representing only 5% of Manutan's overall turnover generated through the contract distribution channel. Manutan claims that it does not consider itself to be a competitor of the Parties, because of their different approach and business strategy. Whereas the Parties specialise in office supplies, Manutan's competitive advantage is

⁴⁸² Form CO, paragraph 187.

⁴⁸³ Note on customer requirements and competitor capabilities, submitted by the Notifying Party on 25 October 2015.

⁴⁸⁴ Note on customer requirements and competitor capabilities, submitted by the Notifying Party on 25 October 2015, table 12 and paragraph 43.

the width of its product categories range, without being specialised in any product category in particular. According to Manutan, customers that switch from Manutan do not go to Staples or Office Depot. Manutan's direct competitors are Raja, Kaiser and Kraft and JM Bruno. The Parties could be considered Manutan's partners, as Manutan buys and sells some of their products. For example, Manutan sources certain products (such as office furniture) from Staples, which it then sells to its customers. In short, Manutan offers its customers all they need (not just the office supplies), and therefore it targets a different customer group. If the customers only need office supplies they would generally go directly to the Parties.⁴⁸⁵

- (561) Other suppliers like Otto Office, Interoffice, Pandava, and AB Supplies which specialises in consumables informatics for companies' IT needs, are not considered to be active in the market for non-international contracts with customers with more than 250 employees. Deroanne stated that AB Supplies can be considered as a competitor only in relation to ink & toner, but not in relation to stationery and cut sheet paper.

7.2.10.1.2.2. *Competitive Landscape*

- (562) According to the results of the market investigation, apart from the Parties, Lyreco, Deroanne and Fiducial offer the full range of traditional office supplies (stationery, paper, ink & toner) in Belgium in the market for non-international contracts with customers with more than 250 employees. However Deroanne and Fiducial are lagging behind compared to the Parties and Lyreco.
- (563) Deroanne, as the Parties claim, is a small local supplier in Belgium. Deroanne provides the full range of office supplies (stationery, paper, ink & toner) through contracts.⁴⁸⁶ However, Deroanne states that large business customers (with more than 100-200 office workers) in the contract business have special requirements in comparison with smaller business customers, namely they demand significant rebates, they require national coverage, they require uniform national pricing, and their tenders are more complex and place a high administrative burden on participating.⁴⁸⁷ For this reason Deroanne targets customers that have less than 50 office workers, customers with 50-100 office workers, and customers with 100-200 office workers.⁴⁸⁸ Deroanne has a nationwide presence in Belgium⁴⁸⁹ and according to Deroanne, 30% of its contracts have national coverage.⁴⁹⁰ Deroanne also claims that it is able to compete with its three largest competitors in office supply tenders in terms of pricing only to a certain extent.⁴⁹¹ Finally, Deroanne won three tenders with large customers in 2014.⁴⁹² Deroanne therefore is active in the market for non-international contracts with customers with more than 250 employees, but it is a very small supplier compared to the Parties and Lyreco.
- (564) Fiducial is a large French supplier that recently entered the Belgian market - an exception that is not observed in other markets. Fiducial has a nationwide presence.⁴⁹³ It targets large-size corporate customers, of more than 1000 office workers, and it is capable of supplying those customers with contracts of an annual

⁴⁸⁵ Non-confidential minutes of a conference call with a competitor, 5 November 2015.

⁴⁸⁶ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 2.

⁴⁸⁷ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 19.1.

⁴⁸⁸ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 17.

⁴⁸⁹ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 29.

⁴⁹⁰ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 27.

⁴⁹¹ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 36.

⁴⁹² Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 37.2.

⁴⁹³ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 29.

spending of more than EUR 1 million per annum.⁴⁹⁴ Fiducial is smaller than Lyreco and the Parties but still a significant competitor.

- (565) Based on data submitted by the Notifying Party, Staples' sales under contract in Belgium amounted to approximately EUR [...] in 2014 while Office Depot's sales amounted to approximately EUR [...]. For large customers, Staples' sales in 2014 amounted to EUR [...] and Office Depot's sales in 2014 amounted to EUR [...] respectively.⁴⁹⁵

Table 16: Parties' sales of traditional office supplies through contracts in Belgium, EUR 000s

Category	Party	All customers	Large customers
<i>Traditional office supplies</i>	<i>Staples</i>	[...]	[...]
Stationery	Staples	[...]	[...]
Ink & toner	Staples	[...]	[...]
Paper	Staples	[...]	[...]
<i>Traditional office supplies</i>	<i>Office Depot</i>	[...]	[...]
Stationery	Office Depot	[...]	[...]
Ink & toner	Office Depot	[...]	[...]
Paper	Office Depot	[...]	[...]

Source: Parties' replies of 22 December 2015 and 7 January 2016 to requests for information on contract sales data.

- (566) Lyreco is currently the leading supplier in Belgium followed by the Parties. Fiducial comes next followed by Deroanne.
- (567) The transaction would thus combine the second and third largest suppliers in terms of revenues in the Belgian contract market. It would reinforce Staples' current position as the second largest supplier followed by Fiducial and Deroanne at a significant distance.

7.2.10.1.3. Conclusion

- (568) On the basis of the above, only Staples, Office Depot, Lyreco, Fiducial and Deroanne are active competitors in the Belgian market for the distribution of office supplies through contracts to customers of more than 100-200 office workers or 250 employees. The transaction would bring together the second and third largest suppliers in a concentrated market with only five competitors of which Fiducial and Deroanne are weaker than the Parties.

7.2.10.2. Competitive constraints exerted by the Parties on each other

- (569) According to the results of the market investigation Staples and the market leader, Lyreco, are close competitors. Customers of the Parties who responded in the market

⁴⁹⁴ Replies to Phase I Questionnaire Q1 to competitors (contract) – Question 17.
⁴⁹⁵ RFI of 22/12/2015 and RFI 07/01/2016.

investigation all stated that Lyreco always participated in their tender, submitting a bid, or won part of the contract.⁴⁹⁶

- (570) The Commission reviewed data submitted by the Parties on tenders for office supplies for 2012-2014, focusing on Enterprise customers only, as well as the Parties' bidding data analysis which included all customer types. It emerges from both the Parties' submission on tender data as well as the Commission's analysis focusing only on Enterprise customers only that in Belgium Lyreco and Staples are the main competitors in traditional office supplies, with Office Depot being a small third competitor.
- (571) Tables 15 and 16 are reproduced from the Parties' submission "Relevance of bidding data for the competitive assessment", dated 18 May 2015 (see Tables 9 and 10 in that submission), including tenders involving all customers. Fiducial and Deroanne show as winners only occasionally.

Table 17: Tenders lost by Staples in Belgium, all customers

[...]

Table 18: Tenders lost by Office Depot in Belgium, all customers

[...]

- (572) Given the importance of Staples in Belgium and the smaller importance of Office Depot (see recital (557)), Staples' bidding data are the most important for the competitive assessment. This allows for an assessment of the competitive constraint that Office Depot exerts on Staples.
- (573) The bidding data confirms Lyreco's strong position in Belgium. As regards the tenders where Staples participated and lost, Lyreco is the main winner, representing [90-100]% of the tender value lost by Staples. Focusing on Staples' lost tenders involving Enterprise customers only conveys a similar picture. Out of [...] such tenders, Lyreco won [...], corresponding to [90-100]% of value. Office Depot won only [...] tenders from those Staples lost, amounting to [0-5]% in terms of value.
- (574) Therefore, the Commission considers that competition in Belgium for contracts with large customers mainly exists between Staples and Lyreco, with Office Depot exerting more limited competitive pressure on Staples followed by Fiducial and Deroanne.

7.2.10.3. Competitive conditions following the transaction

- (575) The Parties will continue to compete with the market leader Lyreco, the new entrant Fiducial and to a lesser extent Deroanne. Due to limited turnover of Office Depot and its limited importance as a competitive constraint to Staples, the transaction would not result in significant changes to the competitive landscape in Belgium.

7.2.10.4. Conclusion on Belgium

- (576) In the light of the above, the Commission concludes that, while the market for the distribution of office supplies through contracts to large business customers in Belgium is concentrated, the transaction would not lead to a significant impediment to effective competition because of Office Depot's limited market position and the new entrant Fiducial.

⁴⁹⁶

Replies to Phase II Questionnaire Q8b to customers (Belgium) – Question 8.

7.2.11. *Belgium - Stationery only*

- (577) The structure of the market and the effects of the transaction as described in the previous section 7.2.10 are not materially different when assessing the market for supply of stationery products only.
- (578) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.
- (579) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Belgium.

7.2.12. *France - Traditional office supplies*

7.2.12.1. Market structure

7.2.12.1.1. The views of the Notifying Party

- (580) According to the Notifying Party, Office Depot is one of the leading suppliers in France (with overall contract revenues of EUR [...]) alongside Lyreco and Fiducial, while Staples is by far the smallest of the four with overall contract revenues of [...].⁴⁹⁷ Staples has reduced its contract business in France notably over the recent years due to declining sales of almost [...] between 2011 and 2014.⁴⁹⁸ The Notifying Party claims that it is unable to exert a competitive constraint on the three leading suppliers and that [...]. The Notifying Party further notes that it is not even shortlisted for the majority of held tenders in France.⁴⁹⁹
- (581) According to the Notifying Party, the strongest competitors for traditional office supplies to the Parties in the contract market in France are Lyreco and Fiducial to which Office Depot lost several tenders in 2013 and 2014 with a value above EUR 1 million. Other important competitors are Dactyl Buro Office, Manutan, Raja, Inapa, Osilog, Alter Bureau, BURO+, Majuscule and Officexpress. The Notifying Party claims that several of those competitors have the same capabilities as the Parties, including a full range of supplies.⁵⁰⁰ Further, Majuscules, Osilog, Officexpress and Buro+ have all won tenders with a value above EUR 100 000 that were lost by Staples.⁵⁰¹ According to the Notifying Party, Raja, who is currently the European leader in mail, shipping and packing supplies, is also active in traditional office supplies and plans to expand the segment in the near future.⁵⁰²
- (582) As a result, the Notifying Party submits that the transaction will not give rise to any competition issues in the French market.

⁴⁹⁷ Form CO, paragraph 187.

⁴⁹⁸ Form CO paragraph 45 and footnote 4.

⁴⁹⁹ Form CO, paragraph 187.

⁵⁰⁰ See Form CO, paragraph 301. See further the Parties' note on Customer Requirements and Competitor Capabilities, table 6.

⁵⁰¹ Response to the Article 6(1)(c) Decision, footnote 15.

⁵⁰² Form CO, paragraph 301.

7.2.12.1.2. The Commission's assessment

- (583) The Commission's assessment, based on the results of the market investigation, showed that there are indeed several suppliers active on the contract market in France.⁵⁰³
- (584) As stated by the Notifying Party, the results of the market investigation showed that Lyreco is the clear market leader in France. Office Depot appears to be the second largest supplier in contract sales in France with a total turnover of approximately EUR [...] for the national customers.⁵⁰⁴ Fiducial, who is also a large supplier in the French contract market, appears to be a strong number three. Based on data submitted by the Parties, Staples' total turnover in France for the national customers is very low compared to the three largest suppliers at less than EUR [...].⁵⁰⁵
- (585) The French market appears to be characterised by the presence of the three strong suppliers Lyreco, Office Depot and Fiducial along with a number of smaller suppliers (Staples and others).

7.2.12.2. Competitive constraints exerted by the Parties on each other

- (586) The market structure outlined in section 7.2.12.1 indicates that Staples may not compete closely with Office Depot in the French market for contracts. This is supported by the bidding data submitted by Staples as shown in Table 19. Given the importance of Office Depot in France and the significantly smaller importance of Staples (see recital (585)), Office Depot's bidding data are the most important for the competitive assessment. This allows for an assessment of the competitive constraint that Staples exerts on Office Depot.

Table 19: Tenders lost by Office Depot in France

[...]

- (587) The bidding data from Office Depot shows that the vast majority of tenders lost by Office Depot are won by Lyreco or Fiducial, indicating that they are closer competitors to Office Depot than Staples. Staples only won a small number of tenders from Office Depot alongside national suppliers like Majuscule and Officexpress.
- (588) The strong market position of the three largest suppliers in France is supported by Lyreco's and Fiducial's replies to the Commission's questionnaire in which they both list each other as Office Depot's closest competitors.⁵⁰⁶
- (589) Fiducial confirms that it is a strong competitor in the French market. Its business targets customers of all sizes, even those with more than 1000 office workers, and wins a large number of the tenders for those large customers. This is supported by the fact that Fiducial has at least [...] contracts with a value above EUR 1 million.⁵⁰⁷ In addition, Fiducial has aspirations of expanding its business beyond the countries in which it is currently present (France, Belgium and Luxembourg).⁵⁰⁸

⁵⁰³ Lyreco's and Fiducial's replies to Phase I Questionnaire Q1 to competitors (contract) – Question 38.

⁵⁰⁴ See the Parties' reply of 22 December 2015 to requests for information on contract sales data.

⁵⁰⁵ *Idem.*

⁵⁰⁶ Lyreco's and Fiducial's replies to Phase I Questionnaire Q1 to competitors (contract) – Question 40. See further agreed minutes of conference call with Lyreco of 22 October 2015.

⁵⁰⁷ Fiducial's replies to Phase I Questionnaire Q1 to competitors (contract) – Questions 17, 37.1 and 40 and replies to Phase II Questionnaire 9 to competitors (contract stationers) – Question 5.

⁵⁰⁸ Agreed minutes from conference call with a competitor of 16 October 2015.

(590) In addition to the competition from Lyreco and Fiducial, the Parties also compete with smaller suppliers in France which were listed by some customers and competitors in their replies to the Commission's market investigation.⁵⁰⁹

7.2.12.3. Competitive conditions following the transaction

(591) The Parties will continue to compete with the market leader Lyreco and with Fiducial as well as the smaller suppliers in France following the transaction. Due to limited turnover of Staples, the transaction would not result in significant changes to the competitive landscape in France.

(592) One competitor stated that the transaction could lead to lowered prices and lowered service levels.⁵¹⁰ As regards the first point, the Commission does not perceive lower prices in the French market for office supplies as a negative impact in itself. As regards the second point, the Commission finds that the impact of any potential degradation of the service of the Parties would be offset by the customers' option to change to one of the two strong competitors in France. None of the French, non-international customers who participated in the Commission's market investigation expressed any concerns about the transaction.⁵¹¹

7.2.12.4. Conclusion on France

(593) In the light of the above, the Commission concludes that the transaction would not lead to a significant impediment to effective competition in the market for the distribution of office supplies through contracts to large business customers in France.

7.2.13. France - Stationery only

(594) The structure of the market and the effects of the transaction as described in the previous section 7.2.12 are not materially different when assessing the market for supply of stationery products only.

(595) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery is neutral to the assessment.

(596) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in France.

⁵⁰⁹ Replies to Phase I Questionnaire Q4 to customers (contract), Questions 29 and 30; replies to Phase II Questionnaire Q8e to Customers (France) – Question 48. Lyreco's and Fiducial's replies to Phase I Questionnaire Q1 to competitors (contract) – Questions 38, 39 and 40 and to Phase II Questionnaire 9 to competitors (contract stationers) – Question 9.6.

⁵¹⁰ Replies to Phase I Questionnaire Q1 to competitors (contract) – Questions 62-63.1.

⁵¹¹ Replies to Phase I Questionnaire Q4 to customers (contract) – Questions 50-51.1 and to Phase II Questionnaire Q8e to Customers (France) – Questions 52-53.1. See further agreed minutes of a conference call with a customer of 25 November 2015.

7.2.14. Germany - Traditional office supplies

7.2.14.1. Structure of the market

7.2.14.1.1. The views of the Notifying Party

- (597) The Notifying Party submits that the German market is characterised by a large number of competitors active in the supply of traditional office products through contracts to large business customers.
- (598) The Notifying Party indicates that⁵¹² aside from Lyreco, the Parties face competition from several companies, the most significant of which are Kabuco (Kaut Bullinger), Plate, Soennecken, MGW (Marketing Gruppe West), Bechtle, Horm and MUP.
- (599) In a further submission relating more specifically to full range contract suppliers,⁵¹³ the Notifying Party lists competitors in Germany by order of estimated turnover in the contract supply of full range office products. According to those estimates, the main competitors in order of estimated turnover would be Soennecken, Lyreco, MGW, Plate, Büro Mix, Kaut Bullinger, Buerohandel, Brüggershemke & Reinkemeier, Buerobedarf Haensel.

7.2.14.1.2. The Commission's assessment

- (600) The results of the Commission's market investigation confirmed the existence of a number of suppliers offering traditional office products through the contract channel in Germany. However, their presence and activity on the relevant market may have been overestimated by the Parties.
- (601) First, because of the general methodological approach discussed in section 7.2.1.1, the total size of the German market, as estimated by the Parties appears to overstate contract sales of traditional office supplies. The estimate of a full range contract market exceeding EUR 2.5 billion led the Parties to attribute a very significant part of such revenues (almost two thirds, equivalent to 1.6 billion) to other suppliers than the ones for which they were able to estimate a turnover.
- (602) Second, the Commission was able to obtain actual turnover figures for the sales of several of the Parties' competitors in the relevant market in Germany. Those figures are provided in an aggregated non-confidential version in the Table 20.

Table 20 Turnover of the Parties and their competitors in the relevant market in Germany

Company Name	Turnover	Turnover
	(Notifying Party's estimate)	(Data from Phase II investigation)
	In million EUR	In million EUR
Staples	[...]	[...]
Office Depot	[...]	[...]
Combined	[...]	[...]
Soennecken	[...]	
Lyreco	[...]	

⁵¹² Form CO, paragraph 187.

⁵¹³ Notifying Party's submission: 'Market shares of full range contract suppliers'. Table 4.

Company Name	Turnover (Notifying Party's estimate) In million EUR	Turnover (Data from Phase II investigation) In million EUR
MGW	[...]	
Plate	[...]	
Büro Mix	[...]	
Kaut Bullinger	[...]	
Total 6 largest competitors	870	201 - 350
Buerohandel	[...]	n.a.
Brüggershemke & Reinkemeier	[...]	n.a.
Buerobedarf Haensel	[...]	n.a.
Others	1,600	n.a.

- (603) The range provided in the table is based on possible alternative interpretations of the data received. In particular, some competitors provided both a figure for total contract sales as well as a figure for contract sales to large customers. In view of the difficulty to obtain specific information about the definition of what some of the competitors identified as 'large' contract customers, the upper range, which is the more favourable to the Parties, is calculated by adding total contract sales as reconstructed by the Commission. The upper estimate also takes into account of estimates of total sales for the cooperatives when those are higher than the sum of reconstructed sales of their members. Even in this hypothesis, the Parties appear to have largely overestimated contract sales of their competitors.
- (604) Aside from an overestimation of the sales⁵¹⁴ (or of the contract portion of competitors' sales) the Commission found that the turnover of cooperatives as reconstructed by the Parties may have included turnover of members of those cooperatives, which was also attributed to members themselves. For instance, among the six largest competitors indicated by the Parties, Büro Mix is a member of MGW, while Plate and Kaut Bullinger are members of Soennecken.
- (605) During Phase II the Commission obtained a breakdown of the Parties' sales enabling it to calculate the sales made by the Parties within the relevant market, as detailed in Table 21.

⁵¹⁴ The size of the market is also inflated by the fact that the Parties' own sales include sales to international customers, and so do the sales data attributed to the other competitor active internationally, i.e. Lyreco. In particular, when calculating sales on the basis of a break-down provided by the Parties which distinguishes national and international sales, and only reports sales to large customers (see Reply to RFI of 6 January 2016), aggregated national sales of traditional office supplies would amount to approximately EUR [...] for Staples, and EUR [...] for Office Depot.

Table 21: Parties' sales of traditional office supplies through contracts in Germany, EUR 000s

Category	Party	All customers	Large customers
<i>Traditional office supplies</i>	<i>Staples</i>	[...]	[...]
Stationery	Staples	[...]	[...]
Ink & toner	Staples	[...]	[...]
Paper	Staples	[...]	[...]
<i>Traditional office supplies</i>	<i>Office Depot</i>	[...]	[...]
Stationery	Office Depot	[...]	[...]
Ink & toner	Office Depot	[...]	[...]
Paper	Office Depot	[...]	[...]

Source: Source: Parties' replies of 22 December 2015 and 7 January 2016 to requests for information on contract sales data.

7.2.14.1.3. Conclusion

(606) In conclusion, the Parties and Lyreco are the three most significant competitors on the traditional office supplies market through non-international contracts to large business customers in Germany. The Commission's assessment, based on the results of the market investigation, confirmed that a number of competitors are active within the contract supply of traditional office products to large business customers in Germany. However, their significance has largely been overestimated by the Notifying Party. However, there are up to six smaller contract stationers active on the German market whose sales have been verified with significant market presence.

7.2.14.2. Competitive constraints exerted by the Parties on each other

7.2.14.2.1. Qualitative evidence from the market investigation

(607) Within the market investigation, customers provided data on the bids they received for their most recent tender on traditional office supplies. The competitors most frequently submitting bids, according to customers' replies, were Lyreco and the Parties.⁵¹⁵ Customers reported in much fewer instances of other contract stationers or specialist suppliers. This is partly in line with the result of the bids which will be further analysed in section 7.2.14.2.2.

(608) Customers also provided feedback on the main criteria they assess when selecting their contract suppliers, and on which available suppliers can satisfy those criteria. Replies almost exclusively indicated Staples, Lyreco and Office Depot as suppliers capable of satisfying customer expectations on criteria such as size of portfolio, ability to provide all traditional office products and logistic capabilities.⁵¹⁶ Other

⁵¹⁵ Replies to Phase II Questionnaire Q8c – and replies from German customers to Phase II questionnaires Q8a, Q8b, Q8d, Q8e, Q8f, Q8g, Q8h, Q8i, Q8j – Question 8.

⁵¹⁶ Replies to Phase II Questionnaire Q8c – and replies from German customers to Phase II questionnaires Q8a, Q8b, Q8d, Q8e, Q8f, Q8g, Q8h, Q8i, Q8j – Question 10.

competitors such as Soennecken, Kaut Bullinger, MGW, Schwendy were only mentioned in single instances.

- (609) The findings of recitals (607) and (608) do not materially change when focussing only on purely national customers, that is customers that the Parties do not supply through an international contract or that they do not target as potential international contract customers.
- (610) In order to obtain a proxy for the Parties' strength on the market for non-international contracts with large business customers in Germany, the Commission asked the parties to provide information on the number of firms within Germany's TOP 100 employers that are supplied by the Parties. The information was verified with similar information provided by six of the competitors identified by the Parties.
- (611) Together, the Parties would supply all the three categories of traditional office supplies to more than [50-60] of the top 100 German employers ([50-60] for Stationery, [50-60] for Paper, and [50-60] for Ink & Toner). [80-90]% of those customers buy all three categories of traditional office supplies together from either of the Parties. Moreover, around [80-90]% of those customers do not buy any traditional office product from any other of the competitors which submitted information.
- (612) When excluding international customers from the assessment,⁵¹⁷ the position of the Parties is not materially different. Of the 60 national customers in the data, the Parties supply approximately [50-60]% (i.e. [30-40]); Lyreco indicated that it supplies [...] of the 60 national customers identified, whereas data from the remaining 6 competitors indicate they supply only 10% of those customers (i.e. [...]).⁵¹⁸ However, an important part of the sample (approximately 30%) is not covered by any of the competitors replying within the Top 100 employers exercise. This may indicate that other suppliers that did not reply, even if smaller, are active within the relevant market.
- (613) The strength of the Parties and Lyreco within the market for non-international contracts with large business customers in Germany can be explained by a number of factors.
- (614) First, some of the competitors replying to the market investigation indicated that they do not target or have few customers among large German companies (above 250 employees). One of the competitors identified among the largest competitors by turnover by the Parties expressly indicated that "[competitor] is particularly strong in business with customers with up to 20-100 office employees."⁵¹⁹ Another of those competitors clarified that the majority of its customers have less than 250 employees.⁵²⁰

⁵¹⁷ The Commission excluded those of the top 100 German employers which currently have international contracts in place with the three suppliers that are currently able to offer international contracts: Staples, Office Depot and Lyreco, or that are targeted as potential international customers by the Parties. The source of this information is the document provided by the Notifying Party as Annex 23 to the Form CO and the information provided by Lyreco in its reply of 29.10.2015 to the Commission's request for information on the top 100 customers.

⁵¹⁸ The gross total of entries by competitor is higher than 60 as there are overlap, i.e. certain customers which purchase from more than one supplier.

⁵¹⁹ Agreed minutes of a call with a competitor of 9 September 2015 '[company] ist besonders stark im Geschäft mit Kunden mit bis zu 20 oder bis zu 100 Büromitarbeitern'.

⁵²⁰ Agreed minutes of a call with a competitor of 6 November 2015.

- (615) Second, even those competitors who have large non-international contract customers in Germany point at a competitive advantage of the Parties and Lyreco because they can source significant volumes and thus offer prices that cannot be matched by smaller competitors. For instance, one of the competitors identified by the Parties among their main competitors indicated that largest competitors reported that *'when it comes to price, then Staples, Office Depot and Lyreco can offer lower prices and are therewith very hard to beat. This is because of the high volumes purchased by those companies from the manufacturers. This equally holds irrespective of the customers' purchasing strategy (national vs. international).'*⁵²¹
- (616) Third, because of their size, the range of traditional office supplies on offer and the geographic coverage, the Parties and Lyreco closely compete with each other, as opposed to smaller national or local suppliers in Germany.

7.2.14.2.2. Bidding Data

- (617) The Commission assessed tender data provided by Staples for traditional office supply products in Germany. Office Depot did not provide bidding data for Germany. While the analysis of Staples' tender data is broadly in line with the results of the market investigation, the Commission considers that bidding data provided for Germany should be interpreted cautiously for the following reasons.
- (618) First, tenders with unknown winners constitute a very large proportion of tenders in the data. In stationery, [...] of wins (corresponding to [...] of the total value won) are labelled as "unknown". Second, the assumption proposed by the Notifying Party to split the value won equally between winners in tenders involving multiple winners can affect the value shares won by the Parties and Lyreco.⁵²² In the bidding data for Germany, this assumption frequently allocates a significant values won to unknown bidders.
- (619) During its investigation, the Commission contacted customers in tenders where the winner was indicated as unknown. This resulted in replies from seven customers, and revealed that in four high-value tenders where the data showed Office Depot to have won together with an unknown winner, Office Depot was in fact the only winner. For the remaining three tenders, customers clarified that Office Depot was not the winner. There is hence significant uncertainty stemming from the allocation of wins and associated values, in particularly where the winner is claimed to be unknown.
- (620) From Staples' tender data, it emerges that Office Depot and Lyreco appear to participate most frequently against Staples. Staples participated in [...] tenders involving Enterprise customers and covering at least one of three traditional office supplies, and won [...] of these. Lyreco participated in [...] and Office Depot in [...] of these [...] tenders. The next supplier is significantly behind Office Depot with only [...] participations. The Commission notes that [...] tenders include another participant coded as "unknown".
- (621) Looking at the tenders in which Staples participated but lost, Lyreco wins [...] of the tenders lost by Staples, corresponding to [...] in value. In contrast, Office Depot is significantly behind, by winning [...] of the tenders lost by Staples, corresponding to [...] in value. The winner is unknown in [...] of tenders, corresponding to [...] of

⁵²¹ Agreed minutes of a call with a competitor of 28 October 2015.

⁵²² As explained in Footnote 258, a single procurement process can have multiple winners and cover several product categories. The term "tender" refers to the number of supply contracts awarded in each product category.

value. The remaining tenders were won by more than [...] suppliers, none of which individually comes close to Office Depot in terms of number of tenders or value won. Allocating values won to these firms is furthermore made difficult by the fact that on occasions larger tenders were won jointly by multiple firms, where a precise split of value won was not possible (see footnote 257).

- (622) Ignoring tenders with unknown winners, the share of Lyreco and Office Depot on tender value lost by Staples was respectively [...] and [...], and in terms of tenders won respectively [...] and [...].
- (623) After Office Depot and Lyreco, the next supplier in terms of value stands out as having won large value tenders of EUR [...] across all product categories against Staples. However, nearly all of the value won by this supplier comes from a single large tender involving a public institution as customer, with another supplier as a co-winner. Overall the instances in which firms other than the Lyreco and Office Depot win large value tenders when bidding against Staples are relatively few.
- (624) To conclude, the analysis of Staples' tender data suggests that competition takes place primarily between Staples and Lyreco for Enterprise customers in Germany. Office Depot, while participating frequently in tenders against Staples, achieves a more limited win rate against Staples, suggesting that it exerts a more limited competitive constraint on Staples than Lyreco. Office Depot is nevertheless ahead of a number of smaller competitors who have won a significant number of tenders by Enterprise customers (in full or in part) when bidding against Staples. It also appears that such alternative competitors win large value tenders against Staples only in isolated cases. Moreover, as discussed in recitals (618) and (621), in light of the uncertainty surrounding the bidding data in Germany, and in particular the very large share of unknown winners in the data, its results should be interpreted with caution.

7.2.14.2.3. Conclusion on the competitive constraints exerted by the Parties on each other

- (625) In conclusion, the Commission considers on the basis of the market investigation that Staples and Lyreco are the strongest suppliers, followed by Office Depot, on the German market for non-international contracts. Because of their size, product-range and coverage, those three companies are close competitors on this market.
- (626) A number of other suppliers are active on the relevant market, but the evidence of the market investigation, as well as the bidding data, indicates that each of them lags far behind the Parties in terms of revenues and tenders won, although their turnover may account, taken together, for approximately one third of the relevant market in Germany. This finding would be in line with the results of the analysis of traditional office supplies' spending of the top 100 German employers, if customers that purchase under an international contract are excluded.

7.2.14.3. Competitive conditions following the transaction

- (627) The acquisition of Office Depot by Staples would remove the third supplier on the German market and an existing competitive constraint on Staples and Lyreco alike. This is suggested both by the closeness analysis carried out by the Commission and some replies to the Phase II questionnaires.
- (628) For instance, one national customer with significant spending highlighted that when considering competitors which constrain Staples' strong presence on the market,

'Lyreco, Office Depot, and Soennecken are the only, all others are too small for our purpose'.⁵²³

- (629) However, a number of other elements indicate that while removing a competitive constraint, the transaction would not be likely to create a significant impediment to effective competition.
- (630) First, although Staples, Lyreco and Office Depot compete closely on the German market, the constraint exerted on Staples by Office Depot is less significant than in the case of Sweden and Netherlands.
- (631) Second, the Commission has been able to identify at least six suppliers with a significant market presence on the market, apart from Lyreco and the Parties, although those suppliers lag far behind the three market leaders. In addition, according to the market investigation, there are a number of additional competitors with a track record of supplies of traditional office products under contract to large business customers, for a value that in some cases exceeds EUR 1 million per year,⁵²⁴ and is confirmed by the results of the analysis of the Top 100 data.
- (632) Third, the results of the market investigation suggest that due to its large size, new entries in the German market are more likely than in smaller markets such as the Netherlands and Sweden.
- (633) Finally, as far as customers are concerned, while a majority of the German respondents are concerned about the transaction, this proportion is less than half when only taking into account the respondents to the market investigation who do not purchase under an international contract.⁵²⁵

7.2.14.4. Conclusion on Germany

- (634) In the light of the above, the Commission concludes that the transaction would not lead to a significant impediment to effective competition in the market for the distribution of office supplies through non-international contracts with large business customers in Germany.

7.2.15. Germany - Stationery only

- (635) The structure of the market and the effects of the transaction as described in section 7.2.14 are not materially different when assessing the market for supply of stationery products only.
- (636) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.

⁵²³ Agreed minutes of the call with a customer of 28 August 2015, '*Lyreco, Office Depot, Soennecken sind die einzigen, alle anderen sind zu klein für unsere Zwecke*'.

⁵²⁴ Replies to Phase II Questionnaire Q9 to competitors (contract stationers) – questions 5 and 12, and minutes of conference calls with competitors.

⁵²⁵ Replies to Phase II Questionnaire Q8c – and replies from German customers to Phase II questionnaires Q8a, Q8b, Q8d, Q8e, Q8f, Q8g, Q8h, Q8i, Q8j.

(637) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Germany.

7.2.16. Ireland - Traditional office supplies

7.2.16.1. Market structure

7.2.16.1.1. The views of the Notifying Party

(638) According to Staples, its business in Ireland has shrunk dramatically following the economic crisis, [...].⁵²⁶

(639) The Notifying Party claims that there are several strong competitors in Ireland,⁵²⁷ listing Lyreco, Codex, Spicers, VOW and Boss Novus as its top five competitors.⁵²⁸ It also submits that its other competitors in Ireland include providers of facility services (such as Bunzl and Bidvest 3663) and traditional retailers (such as Eason),⁵²⁹ Supplies Team/Banner, Sundry Supplies.⁵³⁰ In addition, the Parties list local suppliers that have the capabilities to serve very large business customer, including companies such as Bizquip, B2B, Fieldmaster, Ronnie Moore and Kelly Office Supplies.⁵³¹

(640) The Notifying Party claims that several suppliers in Ireland apart from the Parties are able to win large tenders involving stationery. For example, according to the Notifying Party, Lyreco won the second largest tender lost by Office Depot in 2014, worth EUR [...], for [...], and the largest tender lost by Staples, for [...], worth EUR [...] in 2014. Furthermore, Codex, which is an independently owned supplier of office requirements in Ireland, won [...] tenders from Office Depot worth EUR [...] for [...] and [...], and the second largest lost tender by Staples where the winner was known, worth EUR [...] for [...] in 2014.⁵³²

7.2.16.1.2. The Commission's assessment

(641) The Commission's analysis of the Notifying Party's turnover confirmed Staples' submission that it has reduced its operations in Ireland. The revenues from its contract business, its only line of activity in Ireland, have fallen from EUR [...] in 2010 to just EUR [...] in 2014.⁵³³

(642) The reduction in Staples' operations is also reflected in Office Depot's internal documents as shown in Figure 4:

Figure 4: Office Depot internal document entitled "EU OP Market Situational Analysis", March 2015, Annex 8.1 of the Form CO, excerpt taken from page 89

[...]

(643) According to the results of the market investigation the turnover of Lyreco and Codex is higher than that of the Notifying Party, although lower than that of Office

⁵²⁶ Form CO, paragraph 311.

⁵²⁷ Form CO, paragraph 313.

⁵²⁸ See contact details provided in response to the request for information of 5 October 2015 – National contracts (part 2) and to the request of information of 8 October 2015.

⁵²⁹ Form CO, paragraph 313.

⁵³⁰ See further reference to Supplies Team/Banner and Sundry Supplies in the Note on customer requirements and competitor capabilities, Table 8, page 16.

⁵³¹ Note on customer requirements and competitor capabilities, paragraph 50.

⁵³² Form CO, paragraph 313.

⁵³³ Form CO, paragraph 309.

Depot. Accordingly, Office Depot is the largest supplier of office supplies through contracts in Ireland while Staples plays only a more limited role behind Lyreco and Codex.

- (644) Codex is Ireland's largest independently owned office products company, providing its customers with general office stationery products, office furniture, computer consumables or printed stationery. Codex employs over 50 people in its Glasnevin facility.⁵³⁴

7.2.16.2. Competitive constraints exerted by the Parties on each other

- (645) The Notifying Party submits that it has not been an active supplier in the Irish market in the recent years.⁵³⁵ As discussed in section 7.2.16.1, the Commission's analysis confirmed that the Notifying Party's business in Ireland has shrunk in the recent years.
- (646) Due to Staples' reduction in activities, the Parties do not appear to be closely competing in Ireland. This is supported by the limited bidding data submitted by the Parties as shown in Figure 5:

Figure 5: Tenders lost by Staples in Ireland

[...]

Source: Bidding data from the report RBB Economics: "Relevance of bidding data for the competitive assessment", dated 18 May 2015.

Figure 6: Tenders lost by Office Depot in Ireland

[...]

Source: Bidding data from the report RBB Economics: "Relevance of bidding data for the competitive assessment", dated 18 May 2015.

- (647) The very small sample size for the Parties (less than [...] observations each) makes it difficult to draw firm conclusions. However, of Office Depot's [...] largest tenders in 2014, Staples won only [...]. Similarly, in the [...] stationery tenders lost by Staples, Office Depot emerged as winner in only [...].⁵³⁶
- (648) This is consistent with the Commission's analysis showing that the turnover of Lyreco and Codex, which the Notifying Party listed amongst its top five competitors in the contract in Ireland (see recital (640)), is higher than the turnover of the Notifying Party, although it is in both cases lower than the turnover of Office Depot.
- (649) This evidence suggests that Staples is not exerting a strong competitive pressure on Office Depot in Ireland pre-transaction.

7.2.16.3. Competitive conditions following the transaction

- (650) The Parties submit that the transaction will not give rise to competition concerns in Ireland.⁵³⁷ The Notifying Party specifies that its presence in the Irish market has

⁵³⁴ <http://www.codexltd.com/about-us>.

⁵³⁵ Form CO, paragraph 309.

⁵³⁶ For further reference please see the analysis of RBB Economics in the Relevance of bidding data for the competitive assessment of 18 May 2015.

⁵³⁷ Form CO, paragraph 310.

dramatically decreased in recent years, and that the merged entity will continue to face a range of strong competitors.⁵³⁸

- (651) The Parties' customers have not raised substantiated concerns regarding the effect of the transaction on non-international contracts in Ireland. Although one customer expressed concerns that the transaction could possibly eliminate one of the competitors on the Irish market, that customer also acknowledged that five other competitors apart from Office Depot (namely, Banner, Codex OP, Lyreco, Office 26 and Supplies Team) participated in its last tender in 2014.⁵³⁹
- (652) The Commission has found that the Notifying Party does not exert a strong competitive pressure on Office Depot in Ireland pre-transaction. The Commission also identified that the merged entity will continue to face competition from Lyreco and Codex, who are viable alternative suppliers in the contract market in Ireland.

7.2.16.4. Conclusion on Ireland

- (653) In the light of the above, the Commission concludes that the transaction would not lead to a significant impediment to effective competition in the market for the distribution of office supplies through contracts to large business customers in Ireland.

7.2.17. *Ireland - Stationery only*

- (654) The structure of the market and the effects of the transaction as described in the previous section 7.2.16 are not materially different when assessing the market for supply of stationery products only.
- (655) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.
- (656) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Ireland.

7.2.18. *Italy - Traditional office supplies*

7.2.18.1. Market structure

7.2.18.1.1. The views of the Notifying Party

- (657) According to the Notifying Party, the transaction will not give rise to competition issues in the Italian market. The market is characterised by several suppliers acting as main competitors to the Parties. Those include Errebian, Lyreco, Myo, Misco, Buffetti, Adveo, Systemax, GBR Rossetto, Ingros Carta Giustacchini, Gecal, Ugo Tesi, Polyedra, Karnak and Spicers.⁵⁴⁰ The Notifying Party states that several of

⁵³⁸ *Ibid.*

⁵³⁹ Agreed minutes of the conference call with a customer, paragraphs 3 and 13, 7 July 2015.

⁵⁴⁰ Form CO, paragraph 187. See further Annex 7.7 to the Form CO from March 2014 and reply to RFI of 5 October 2015.

those competitors have the same capabilities as the Parties, including a full range of supplies.⁵⁴¹

- (658) The Notifying Party claims that Staples only has a small contract business in Italy. The Parties have revenues in the contract business market of Italy of EUR [...] and [...] respectively, representing very low market shares. According to the notifying Party, the revenues of Lyreco and Errebian are approximately EUR [...] while Myo's revenues are around EUR [...].⁵⁴²

7.2.18.1.2. The Commission's assessment

- (659) As illustrated in recital (658), Staples' turnover and presence on the Italian market is very low. Further, the Parties will, even in combination, be significantly smaller than the two leading suppliers. Thus, the Italian market seems to be characterised by the presence of two very strong suppliers (Lyreco and Errebian) followed by the Parties and a number of smaller suppliers.

7.2.18.2. Competitive constraints exerted by the Parties on each other

- (660) The findings above indicate that Staples is not competing closely with Office Depot in the Italian market for contracts and that Lyreco and Errebian are stronger than the merged entity.
- (661) The strong position of Errebian on the Italian market is confirmed by its replies to the Commission's questionnaires in Phase I and Phase II of the market investigation. Here, Errebian stated that it does not actively target small customers but focuses on sales to customers with more than 100 office workers. This is further supported by the fact that Errebian has several contracts with a value above EUR 1 million. Moreover, Errebian won more than half of the large number of tenders it participated in during 2014. Alongside Lyreco, Errebian considers itself the closest competitor to Office Depot. GBR Rossetto and MyO are mentioned as other important competitors.⁵⁴³ Lyreco's replies regarding the closest competitors replicate those of Errebian; Alongside Errebian, Lyreco considers itself the closest competitors to Office Depot and it further mentions GBR Rossetto and MyO as other important competitors.⁵⁴⁴

7.2.18.3. Competitive conditions following the transaction

- (662) The Parties will continue to compete with the market leaders Lyreco and Errebian as well as smaller suppliers in Italy following the transaction.
- (663) The majority of competitors on the Italian market do not express any concerns about the impact of the transaction.⁵⁴⁵ Similarly, the customers on the Italian market have not raised any substantiated concerns about the transaction.⁵⁴⁶

⁵⁴¹ See the Parties' note on Customer Requirements and Competitor Capabilities, table 9.

⁵⁴² Form CO, paragraph 187.

⁵⁴³ Replies to Phase I Questionnaire Q1 to competitors (contract) – Questions 17, 37.1 and 40 and to Phase II Questionnaire Q9 to competitors (contract stationers) – Question 5.

⁵⁴⁴ Lyreco's reply to Phase I Questionnaire Q1 to competitors (contract) – Question 40.

⁵⁴⁵ Agreed minutes of conference calls with a competitor of 6 August 2014; replies to Phase I Questionnaire Q1 to competitors (contract) – Questions 62-63.1.

⁵⁴⁶ Agreed minutes of conference calls with customers of 26 November 2015 and 29 July 2015; replies to Questionnaire Q4 to customers (contract) – Questions 51-52 and to Phase II Questionnaire Q8a to customers – Questions 52-53.1.

7.2.18.4. Conclusion on Italy

(664) In the light of the above, the Commission concludes that the transaction would not lead to a significant impediment to effective competition in the market for the distribution of office supplies through contracts to large business customers in Italy.

7.2.19. *Italy - Stationery only*

(665) The structure of the market and the effects of the transaction as described in the previous section 7.2.18 are not materially different when assessing the market for supply of stationery products only.

(666) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.

(667) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Italy.

7.2.20. *Spain - Traditional office supplies*

7.2.20.1. Market structure

7.2.20.1.1. The views of the Notifying Party

(668) The Notifying Party claims that Lyreco's estimated revenues are EUR [...], whereas Office Depot achieved only EUR [...] revenue, and the Notifying Party achieved EUR [...] revenue in 2014. In addition, the Notifying Party claims it is only [...] of the size of PMC, with estimated revenues of around EUR [...].⁵⁴⁷

(669) Moreover, the Notifying Party also listed Alpadisa, Montte and Folder Papelerias SA amongst its top five competitors.⁵⁴⁸

7.2.20.1.2. The Commission's assessment

(670) The results of the market investigation provide indications that Lyreco is the clear leader on the Spanish market, followed by Office Depot and at least two other significant competitors, Montte and PMC. Staples is a smaller competitor with a turnover of only EUR [...].

(671) Post-transaction the merged entity will be only one third the size of the market leader Lyreco and will face competition from at least two large competitors. Office Depot competes more closely with PMC and Montte than with Staples.

7.2.20.2. Conclusion on Spain

(672) In the light of the assessment set out in recitals (668) to (671), the Commission concludes that the transaction would not lead to a significant impediment to effective

⁵⁴⁷ Form CO, paragraph 187.

⁵⁴⁸ Contact details provided in response to the request for information of 5 October 2015 – National contracts (part 2) and to the request of information of on 8 October 2015.

competition in the market for the distribution of traditional office supplies through non-international contracts to large business customers in Spain.

7.2.21. *Spain - Stationery only*

- (673) The structure of the market and the effects of the transaction as described in section 7.2.20 are not materially different when assessing the market for supply of stationery products only.
- (674) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.
- (675) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in Spain.

7.2.22. *United Kingdom - Traditional office supplies*

7.2.22.1. Market structure

- (676) According to the Notifying Party, the UK market is currently characterised by a total of five significant suppliers. Apart from the Parties, those include Lyreco, Vasanta/Office2Office (EVO) and the Spicers-OfficeTeam (SPOT) group.⁵⁴⁹
- (677) The Notifying Party claims that it is a relatively small supplier in the contract segment in the UK market, similar in size to SPOT but smaller than Vasanta/Office2Office.⁵⁵⁰
- (678) The Commission conducted an extensive investigation of the market to identify the suppliers that are currently active in the contract in the UK market. The analysis has shown that there are currently 8 to 10 suppliers that operate in the contract business of office supplies in the UK market.⁵⁵¹
- (679) According to the Commission's analysis, the turnover of Lyreco, mentioned by customers as an alternative supplier,⁵⁵² is higher than that of the Notifying Party, although lower than that of Office Depot. This confirms the Notifying Party's submission that Lyreco is a significant alternative supplier (see recital (676)).
- (680) Based on its market investigation, the Commission considers that Vasanta/Office2Office (EVO) is a credible competitor in contract in the UK market. EVO has 5 warehouses in the UK, and 2 in Ireland.⁵⁵³ In 2014 they achieved more than GBP [...] EEA sales of traditional office supplies.⁵⁵⁴

⁵⁴⁹ Form CO, paragraph 322.

⁵⁵⁰ *Ibid.*

⁵⁵¹ See agreed minutes of a conference call with a competitor, 2 September 2015, paragraph 4.

⁵⁵² Replies to Phase II Questionnaire Q8f to customers – Question 48.

⁵⁵³ Replies to Phase II Questionnaire Q9 competitors (contract stationers) – Question 18.1.

⁵⁵⁴ Replies to Phase II Questionnaire Q9 competitors (contract stationers) – Question 2.

(681) According to the results of the market investigation competitors such as Office Team compete with the Parties for large contracts.⁵⁵⁵

(682) On that basis, the Commission's conclusion is that there are viable alternative suppliers on the UK market other than the Parties, including Lyreco, Vasanta/Office2Office (EVO) and Spicers/Office Team (SPOT).

7.2.22.2. Competitive constraints exerted by the Parties on each other

(683) The Notifying Party submits that following a number of mergers and acquisitions in recent years, the already strong local suppliers in the UK market have further gained in strength (such as Vasanta, created by the merger of various companies including VOW, which is the wholesale business, which then merged with Office2Office, which acts under the trade names Supplies teams and Banner). Moreover, the Notifying Party claims that Office Team is one of the Parties' key rivals in the contract business, and it has recently merged with the leading wholesaler Spicers (SPOT).

(684) The Notifying Party claims that Vasanta, Lyreco and SPOT group operate at significant scale and represent credible bidders, including for very large contracts. In particular, the Notifying Party lost bids for [...] (EUR [...]) and [...] (EUR [...]) to what is now Vasanta/Office2Office. The Notifying Party also lost bids for [...] (EUR [...]), [...] (EUR [...]) and [...] (EUR [...]) to Lyreco. The Notifying Party also lost bids for [...] (EUR [...]), [...] (EUR [...]) and [...] (EUR [...]) to what is now the SPOT group.⁵⁵⁶

(685) Moreover, the Notifying Party claims that following completion of integration of Vasanta/Office2Office and the SPOT group, the competitive threat that those rivals pose can only be expected to further intensify.⁵⁵⁷ In particular, it is submitted that the integration between wholesalers and dealers should be expected to allow those firms to compete even more strongly on price.⁵⁵⁸

(686) The Notifying Party brought to the Commission's attention the analysis provided by the CMA in its decision in *Endless / Office2Office* of the suitability and strength of the various contract stationers including the Notifying Party, and other supplier, such as: Vasanta/Office2Office (Supplies Team), SPOT (Spicers), SPOT (Office Team), Lyreco, Office Depot, Vasanta/Office2Office (Banner).⁵⁵⁹ It is claimed that the analysis shows that all those contract stationers are credible competitors and that ratings given to the Notifying Party and Lyreco do not differ much from ratings given to the various local suppliers, with Supplies Team, Banner, now part of Vasanta/Office2Office coming out particularly strongly.⁵⁶⁰ Moreover, the Notifying Party claims that the CMA recognised that the offerings of those suppliers are highly substitutable.⁵⁶¹

(687) The Commission's analysis above (see recital (684)) shows that there are a number of credible competitors such as Vasanta/Office2Office (Supplies Team), SPOT (Spicers) and SPOT (Office Team) in the UK market which are capable of winning bids, including for very large contracts.

⁵⁵⁵ Agreed minutes of a conference call with a competitor of 2 September 2015, paragraph 4.

⁵⁵⁶ Form CO, paragraph 327.

⁵⁵⁷ Form CO, paragraph 328.

⁵⁵⁸ *Ibid.*

⁵⁵⁹ Form CO, paragraph 329.

⁵⁶⁰ Form CO, paragraph 330.

⁵⁶¹ Form CO, paragraph 331.

(688) Moreover, the Commission's analysis (see recital (680)) demonstrates that based on turnover there is a supplier (EVO) which occupies a stronger competitive position than the Notifying Party in the UK market.

(689) On this basis, the Commission concludes that the Parties face competition from at least three credible suppliers in the UK market, and that the Notifying Party is not competing closely with Office Depot in the UK.

7.2.22.3. Competitive conditions following the transaction

(690) According to the Notifying Party, following the transaction, the UK market will continue to have strong suppliers, and the merged entity will face competitive pressure from a number of specialist providers.⁵⁶²

(691) In particular, the Notifying Party submits that the merged entity would continue to face competitive pressure from the three key suppliers in the UK market, namely: Vasanta/Office2Office, Lyreco and the Spicers-Office Team (SPOT) group.⁵⁶³

(692) According to the results of the market investigation (see 7.2.22.2) there will remain a number of credible competitors able to compete for large contacts in the UK market.

(693) Moreover, the Commission found that Office Team, which is competing with the Parties for large contracts, perceives the transaction as an opportunity to gain market shares,⁵⁶⁴ and that the market would remain very competitive after the merger with plentiful competition remaining in the market.⁵⁶⁵

(694) The Commission concludes there will remain credible competitors on the UK market following the transaction.

7.2.22.4. Conclusion on United Kingdom

(695) In the light of the arguments set out in sections 7.2.22.1 to 7.2.22.3, the Commission concludes that the transaction would not lead to a significant impediment to effective competition in the market for the distribution of office supplies through contracts to large business customers in the UK.

7.2.23. *United Kingdom - Stationery only*

(696) The structure of the market and the effects of the transaction as described in section 7.2.22 are not materially different when assessing the market for supply of stationery products only.

(697) Even if the limited competitive pressure existing on certain product categories (particularly ink & toner and paper) due to the possibility to obtain those supplies from specialists, does not exist for stationery, in the previous section the risk of the transaction giving rise to a significant impediment to effective competition in the market for the distribution of traditional office supplies through non-international contracts with large customers has been excluded without taking into consideration such competitive pressure. Therefore, the lack of competitive pressure on the market for the supply of stationery only is neutral to the assessment.

⁵⁶² Form CO, paragraph 323.

⁵⁶³ Form CO, paragraph 326.

⁵⁶⁴ Agreed minutes of a conference call with a competitor of 2 September, paragraph 7.

⁵⁶⁵ Agreed minutes of a conference call with a competitor of 2 September, paragraph 8.

(698) Therefore, the Commission concludes that the transaction would not lead to a significant impediment to effective competition on the market for non-international contracts for the supply of stationery to large business customers in the UK.

7.2.24. *Overlaps due to partnership agreements*

(699) As listed in recital (174), in addition to their direct presence in a number of EEA countries, the Parties have entered into partnership agreements with third party distributors of office supplies to expand their geographic reach. The following partnerships are relevant in this respect:⁵⁶⁶

Country	Staples	Office Depot
Czech Republic	Third party distribution (international contracts only)	Active
Denmark	Active	Third party distribution
Finland	Active	Third party distribution
Norway	Active	Third party distribution
Poland	Active	Third party distribution
Slovakia	Third party distribution (international contracts only)	Active

(700) Those third party distribution agreements could be considered to lead to additional horizontal overlaps in the listed countries or to vertical links (where entering into distribution agreements for the wholesale supply of office supplies would be considered as the upstream market of the distribution of office supplies in the downstream market). In any event, the Commission has been able to verify that the transaction would not lead to competition concerns in those EEA countries due to the third party distribution agreements.

(701) As regards the Czech Republic and Slovakia, Staples' agreement with its distribution partner Activa relates to sales to customers who have entered into international contracts with Staples, including sales of Staples private label products.⁵⁶⁷ Staples' partner in the Czech Republic achieved a turnover of EUR [...] and EUR [...] with international contracts in the Czech Republic and Slovakia respectively.⁵⁶⁸ The turnover generated with international customers thus accounts for a small proportion of Activa's turnover and Activa is not worried about losing those international customers after the transaction.⁵⁶⁹ Furthermore, the competitive effects of the transaction on the market for international contracts have been assessed in section 7.2.2 and 7.2.3 and thus do not have to be assessed further in this section.

(702) As regards the remaining distribution agreements of Office Depot in Denmark, Finland, Norway and Poland, the agreements allow the third party distributors to act independently on the national markets. In particular, the distributors determine their

⁵⁶⁶ According to the submissions in the Form CO, Office Depot [...] where Staples has distribution agreements in place only for the supply of its international customers. For the same reasons set out in recital (701), [...].

⁵⁶⁷ The distribution agreement refers to [...], Annex 27(4) of the Form CO, page 1.

⁵⁶⁸ Form CO, Annex 27, paragraphs 4 and 10.

⁵⁶⁹ Agreed minutes of the conference call with a third party distributor, paragraph 8.

own business strategies for national customers, including pricing⁵⁷⁰, and act on their own account and risk.

(703) The distribution partners explained that Lyreco and Wulff Suppliers are the main competitors of the Parties' distribution partners in the Nordic region (including, Denmark, Finland and Norway) and that Lyreco and smaller Polish purchasing groups compete with Staples and Office Depot's distribution partner in Poland.

(704) As regards potential foreclosure concerns, one of the third party distributors confirmed that it would be able to stay active in the national market even if the merged entity decided to cancel Office Depot's distribution agreement after the transaction:

"In order to continue serving the [...] customers, [third party distributor] will also need to find other partners in [...]. Even though this might be costly and time consuming, [third party distributor] believes that the transition will be feasible since there are numerous suppliers of office products."⁵⁷¹

(705) In contrast, other third party distributors pointed to potential problems of having competitive access to office supplies after the transaction:

"If after the merger [third party distributor] will not be able to distribute the products of Office Depot any more, it will be hard to compete with other companies, including the merged Staples and Office Depot, as many customers wish to purchase Office Depot's stationery and it is difficult to replace it with other products, which would be as attractive for the customers."⁵⁷²

(706) In any event, as discussed in sections 8.3.2.5 and 8.5, the Final Commitments include the divestment of all of Office Depot's activities in the EEA, including its activities in the Czech Republic and Slovakia and its partnership agreements with third party distributors in Denmark, Finland, Norway and Poland⁵⁷³. Subject to the distributors' agreement – if such agreement is necessary – the partnership contracts will be divested and separated from the business of the merged entity. In the light of the divestment of Office Depot's entire activities in Denmark, Finland, Norway and Poland, it can be left open whether the transaction would lead to an additional significant impediment to effective competition with respect to the markets for the distribution of office supplies to large business customers through contracts in Denmark, Finland, Norway or Poland.

7.3. Competitive assessment of the wholesale channel

(707) The Parties are both active in the wholesale channel in Sweden, where they carry out traditional wholesale activities in the sense of distributing office supplies to smaller dealers and resellers. Staples also runs similar wholesale activities in Finland and Norway, where Office Depot has partnership agreements with local suppliers for the supply of products to the international customers of the company with offices in one of those countries (see section 7.2.24). Although from a formal point of view the supply by Office Depot to its partners in those countries fall into the wholesale channel category, the contracts are exclusive and Office Depot does not serve any

⁵⁷⁰ See the agreements between Office Depot and each of Wittusen & Jensen, OFIX Lewandowski, Papierpalvelu Koskimo ja Rännäli, and Paperlinx Scandinavia A/S, Annexes 27(1), 27(2), 27(3) and 27(5) to the Form CO, paragraph 2.2.2.

⁵⁷¹ Agreed minutes of the conference call with a third party distributor of 26 August 2015.

⁵⁷² Agreed minutes of the conference call with a third party distributor of 27 August 2015.

⁵⁷³ The divestment would also include [...], see footnote 566.

customers apart from the partner in the respective country. Therefore, the analysis in section 7.3 only concerns the wholesale channel in Sweden.

7.3.1. *Market structure*

7.3.1.1. The views of the Notifying Party

- (708) The Parties estimate that the total size of the Swedish wholesale market is approximately EUR 165 million (5% of total market value of EUR 3.3 billion). According to the Notifying Party, Staples (active in wholesale under the brand "EMO") has an estimated market share of [10-20]% with sales of EUR [...] and Office Depot has an estimated market share of [5-10]% with sales of EUR [...].
- (709) The Parties argue that there are a number of competitors present on the market. The largest competitors are Actebis/Also with a market share of [10-20]%, Papyrus with a market share of [5-10]% and Despec/Buengers with a market share of [5-10]%. Other smaller wholesalers include according to the Notifying Party Isolda, TechData, Alpha International and Lyreco.
- (710) The Parties further explain that Staples' wholesale revenues represent [...] of its total sales in Sweden and that Office Depot's wholesale revenues represent [...] of total revenues. Staples primarily sells stationery to distributors, in particular smaller dealers and specialised retail stores such as book stores. According to the Notifying Party, those customers are not dependant on Staples, as they also source stationery from other wholesalers (local and other) or directly from the manufacturers.
- (711) The Parties are both active in the wholesale channel in Sweden, offering a full range of products encompassing the traditional office supplies and many other additional categories. Both Parties offer warehouse handling and delivery either directly to the wholesalers or to their end customer. In addition, Office Depot provides a specialised webshop solution which can be tailor-made for each wholesaler. Staples provides to some of its customers a web platform tailored at front end towards the customer.

7.3.1.2. The Commission's assessment

- (712) According to the results of the market investigation there are two groups of purchasers buying from the Parties:
- (a) resellers which have physical shops and often own warehouses, for instance small retailers and bookshops ;
 - (b) online resellers, who do not own warehouses and their business model consists of running 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 and the online reseller charges a commission on every sale it makes.⁵⁷⁴
- (713) Those different customer groups have different requirements with regard to the range of products as well as to the specific services offered by the resellers.
- (714) With regard to the range of products offered, the first group of customers in most cases has some storage capacity and requires that suppliers deliver the goods to their location. Those customers are able to purchase different product groups (namely stationery, paper, ink & toner) separately. The second group of customers identified above however requires the wholesaler to offer a full-range of products, which can

⁵⁷⁴ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Questions 1 and 2; replies to Phase II Questionnaire Q11 to customers (wholesale) – Question 1 and 4.

be then delivered directly to the end-user, as they do not have an own warehouse or storage capacity.⁵⁷⁵ Having multiple deliveries for one order would not be possible, as it would generate too high overall cost for the end-users who would need to pay multiple shipment fees. Secondly, the online resellers underline that having multiple deliveries per order would generate too much burden for their customers and would significantly impair the ability of those resellers to effectively compete and sell goods online.⁵⁷⁶

(715) A customer indicated:

*"Only Staples and Office Depot are able to provide [customer] with the whole range of products it requires (packaging, tech. products, ink and toner, facility products, children toys etc.) as a single supplier. The customers of [customer] require about 8,000 different SKUs and to find an alternative to Office Depot and Staples, [customer] would need about 8 or 9 different suppliers. Having a single supplier is convenient to [customer], as several separate deliveries would raise delivery costs (multiple suppliers mean multiple deliveries). It would be also impossible to have up to 9 separate deliveries for one order, as it would generate unnecessary inconvenience for the customers."*⁵⁷⁷

(716) Regarding the specific IT and logistic solutions, the online resellers indicated that the Parties offer a unique service consisting in offering a dedicated IT system allowing the resellers to directly sell the products of Staples or Office Depot to the final customers, with the Parties taking care of all the logistics and delivery. The business model of many online resellers is fully dependent on this service. The customers belonging to the online reseller group explained:

*"In Sweden the 2 biggest companies working with re-sellers are Staples and Office Depot. They are the obvious 2 options for companies selling online, and are the best option in terms of logistics and warehouse solutions."*⁵⁷⁸

*"Staples and Office Depot are the only two companies capable of offering through the e-platform system a wide range of products that fulfil the needs of [customer]. If they merge, alternatives would be strongly reduced."*⁵⁷⁹

*"At the moment there are no other wholesalers who could offer a similar range of products and delivery arrangements as Office Depot and Staples."*⁵⁸⁰

(717) Whereas in case of the first group of customers, they indeed indicate the ability to source from other suppliers, including wholesalers and manufacturers, the online resellers have specific requirements with regard to the product range and service which to a large extent limits their choice of supplier.⁵⁸¹ Therefore the competitive analysis will concentrate on this second group of customers.

⁵⁷⁵ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 4.1 and to Phase II Questionnaire Q11 to customers (wholesale) – Question 9.2; agreed minutes of the conference calls with customers 1, 2 and 3 on 4 November 2015 and a phone call with a customer, 28 October 2015.

⁵⁷⁶ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 5.2 and to Phase II Questionnaire Q11 to customers (wholesale) – Question 10; agreed minutes of the phone calls with customers 1, 2 and 3 on 4 November 2015.

⁵⁷⁷ Agreed minutes of the phone call with customer 1 – 4 November 2015.

⁵⁷⁸ Agreed minutes of the phone call with customer 3 – 4 November 2015.

⁵⁷⁹ Agreed minutes of the phone call with a customer on 28 October 2015.

⁵⁸⁰ Agreed minutes of the phone call with customer 2 – 4 November 2015.

⁵⁸¹ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 4 and to Phase II Questionnaire Q11 to customers (wholesale) – Question 9.

- (718) The qualitative and quantitative data collected during the market investigation indicates that whereas in the separate sub-segments (stationery, paper, ink & toner and other) there would be still some competition remaining after the merger, the Parties would be dominant in the one-stop-shop segment, or at least stationery, paper and ink & toner supplied together. Furthermore, when the specific IT and logistic service is taken into account, the respondents to the market investigation indicated that the Parties are the only suppliers active on the market with no competitors able to offer a comparable solution.
- (719) Indeed, the participants to the market investigation indicated that the competitors present in the wholesale market in Sweden include Despec, BNT, Isolda, Papyrus, TechData, and Alpha International.⁵⁸² Some also listed Lyreco, RKV, Tingstad and Ocaj. However, those companies are not active at the wholesale level.⁵⁸³ Of those active in wholesale, only Isolda offers the full range of traditional office supplies required by online resells. Nonetheless, this company is not perceived by the customers as a viable supplier on the one-stop-shop segment and only has marginal sales in stationery and paper.⁵⁸⁴ All the other suppliers active in wholesale are specialised in one or several product categories.
- (720) Table 22 presents the activities of the Parties and their competitors in the wholesale market in Sweden:

Table 22: Activities of the Parties and their main competitors in the wholesale market in Sweden

	Stationery	Ink & Toner	Paper	Other
EMO/Staples	X	X	X	X
Office Depot	X	X	X	X
Despec/Bungers	X		X	X
Actebis/Also		X		X
BNT	X			X
Isolda	X	X	X	X
Papyrus			X	X
TechData		X		X
Alpha International		X	X	X

Source: Phase I questionnaire Q2 – question 2, agreed minutes of the calls with competitors, Annex 6 of the reply to the RFI on wholesale in Sweden submitted on 27/10/2015, www.alpha-international.eu.

- (721) In light of the specific needs of online resellers with regard to the one-stop-shop on the one hand and the provision of the specialised IT platform and logistic solutions

⁵⁸² Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 9 and to Phase II Questionnaire Q11 to customers (wholesale) – Question 11.

⁵⁸³ Agreed minutes of the conference call with competitors of 3 September and 7 September 2015; replies to Phase II Questionnaire to competitors Q9 to competitors (contract stationers) – Question 1.

⁵⁸⁴ Agreed minutes of the conference call with a competitor of 8 September 2015, Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 9 and to Phase II Questionnaire Q11 to customers (wholesale) – Question 11.

for resellers, the competitive constraints exerted by the manufacturers and purchasing groups, as indicated in the previous Commission decisions, are minimal. The manufacturers and purchasing groups do not offer a one-stop-shop or specialised IT and logistic solutions and whereas they could be an alternative supplier for larger resellers who have own warehouses and logistics, they are not a viable alternative for the smaller online resellers relying on the Parties to carry out the purchase orders. The customers explained:

*"[...] switching to manufacturers would require own warehouse, splitting orders, more complicated logistics etc. Going for that solution would require a very high investment and restructuring of the whole business model."*⁵⁸⁵

*"the manufacturers do not send the products directly to the end customers (which would require [customer] to find a partner with a warehouse and a distribution centre). Also, the manufacturers do not offer a wide range of products, therefore it would be necessary to build up own stock which is very costly."*⁵⁸⁶

(722) A customer explained:

*"Currently on the Swedish market there are the EMO/Staples and Office Depot's wholesale businesses and one or two smaller competitors, but nobody else is present in this market. [...] Many [dealers] are purchasing directly from manufacturers, but for the smaller ones it is sometimes necessary to source the products from wholesalers. After the merger, the Parties will be very dominant in the wholesale market and will thus have considerable control over the office suppliers' downstream market."*⁵⁸⁷

(723) The results of the market investigation indicated indeed that smaller dealers do not have their own warehouses and rely on the Parties for the deliveries to the end-customers.

7.3.2. Competitive constraints exerted by the Parties on each other

(724) The participants to the market investigation indicated that the Parties are the closest competitors to each other. All of the respondents to the market investigation listed only two credible suppliers: Office Depot and Staples as viable alternatives in the wholesale supply of the full range of office supplies (one-stop-shop). None of the respondents named Isolda.⁵⁸⁸

(725) Furthermore, participants to the market investigation indicated that the customers use the Parties for benchmarking purposes and negotiating better prices. The customers told the Commission:

*"The price offer of Staples/EMO is quite good, especially that [customer] compares the offer of Staples and Office Depot. It can negotiate prices with Staples on the basis of pricing information gathered from Office Depot."*⁵⁸⁹

⁵⁸⁵ Agreed minutes of the phone call with customer 3 – 4 November 2015.

⁵⁸⁶ Agreed minutes of the phone call with customer 1 – 4 November 2015.

⁵⁸⁷ Agreed minutes of the phone call with a customer of 9 September 2015.

⁵⁸⁸ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Question 9 and to Phase II Questionnaire Q11 to customers (wholesale) – Question 11. As explained in recital (719), some participants indicated as alternatives suppliers not active at all in the wholesale channel or active in one product category only. Those suppliers however cannot be treated as credible alternatives to the Parties, as they do not fulfil the requirements of the customers who need a one-stop-shop wholesale supplier.

⁵⁸⁹ Agreed minutes of the phone call with customer 1 – 4 November 2015.

*"[customer] compares prices for certain products with those of Staples, but the company has a strong preference to have one single supplier and not source from different wholesalers. [customer] can use the quotes from Staples as an argument when negotiating lower prices with Office Depot for the important products."*⁵⁹⁰

- (726) In light of the fact that there are no viable competitors in the provision of the full range of office supplies as well as in the provision of the IT platform service for resellers, the Parties exercise currently an important competitive constraint on each other as regards this segment.

7.3.3. *Competitive conditions following the transaction*

- (727) Post-transaction, the Parties would have a significant and increased market power in the provision of the full range of office supplies as well as in the provision of the IT platform and logistics service for resellers. A number of participants to the market investigation expressed concerns with regard to the possibility the Parties raise prices after the merger. The customers further indicated that in case of a price increase they would not have an alternative supplier:

*"[after the merger] Staples would become very strong and able to raise prices with no competition present on the Swedish market."*⁵⁹¹

"If the new entity increased prices, [customer] would have limited alternative suppliers to go to, therefore it could consider building an own warehouse. It is however a very costly solution that requires time."

"If input prices were to increase, [customer] would be unable to offer good prices to the end customers."

*"The transaction could affect pricing as the merger would effectively create a monopoly. At the moment there are at least 2 alternative suppliers (Staples and Office Depot), so the merger would be detrimental by reducing it to only one option. If the Merged Entity raised prices for the products, [customer] would have to follow, as it would have no alternative supplier."*⁵⁹²

- (728) The merged entity's ability to increase prices for online resellers is due to the lack of alternative suppliers capable of meeting the requirements of this type of customers. Indeed, as explained above in recital (714), while retailers, bookshops and other dealers with own warehouses and larger volumes might turn to manufacturers and other specialised wholesalers to cover their needs, the merged entity will be the only supplier left for small online resellers in Sweden. This particular segment of customers has low bargaining strength. The Parties would be in a position to price discriminate against them given that they negotiate on an individual basis with each of them specific deals including the provision of products and also services.
- (729) According to some participants in the market investigation since the recent announcement of the merger the Parties have already increased prices.⁵⁹³

⁵⁹⁰ Agreed minutes of the phone call with customer 2 – 4 November 2015.

⁵⁹¹ Agreed minutes of the phone call with customer 1 – 4 November 2015.

⁵⁹² Agreed minutes of the phone call with customer 2 – 4 November 2015.

⁵⁹³ Agreed minutes of the phone call with customer 1 – 4 November 2015: *"If Staples takes over Office Depot, [...], Staples would become very strong and able to raise prices with no competition present on the Swedish market. This is already happening since some time [...], [customer] feels it has very weak*

(730) As regards potential competition, a participant to the market investigation indicated, in the context of B2B and the Swedish market in general, that the market for office supplies in Sweden is very mature and expansion is mostly possible via acquiring an already existing supplier.⁵⁹⁴ There were no recent entries to the Swedish wholesale market, which is a further indication that it is unlikely for a new entry in the nearest future.⁵⁹⁵ Furthermore, the need to offer a full range of products together with a specialised IT and logistic service required by the online resellers constitute an additional entry barrier for any new potential competitors on this segment.

7.3.4. Conclusion

(731) In conclusion, in the light of the arguments set out in sections 7.3.1 to 7.3.3 and in light of the results of the market investigation and of the information available to the Commission, the Commission considers that the transaction would lead to a significant impediment to effective competition in the wholesale market for office supplies in Sweden.

7.4. Competitive assessment of the direct channel

(732) The Parties' activities in the direct channel overlap in 8 countries: Austria, Belgium, France, Germany, Italy, Netherlands, Spain and the UK. Office Depot is active via the catalogue sales as well as online through its subsidiary Viking. In 1998 Office Depot merged with Viking Office Products, a public company based in the Netherlands and one of the world's largest direct mail marketers of office supplies, which allowed Office Depot to expand its activities in Europe. Also in 1998 Office Depot created the first eCommerce site using the Viking brand. Currently, Viking has websites in over 30 countries and globally accounts for almost a quarter of Office Depot's overall revenue. Staples is active in the direct channel either via the Staples brand or other subsidiaries, including Pressel which was acquired by Staples in 2004. Pressel Versand International GmbH was a mail order company based in Austria and operating in nine European countries.

(733) The Parties provide both printed catalogues regularly sent to the customers by post, who can then place orders on the phone or via other means. Whereas a number of customers are still expecting to receive a printed catalogue and prefer this form of ordering, there is a growing trend in using an online catalogue available on the website of the supplier, in which case the orders can be placed directly online.⁵⁹⁶

(734) According to the Notifying Party, affected markets could possibly arise in 7 countries: Austria, Belgium, France, Germany, Italy, Netherlands and UK.⁵⁹⁷

(735) The Notifying Party submits that in each overlapping country there are numerous competitors active in the direct channel. One of the most important competitors in the online channel is Amazon, followed by other suppliers, including:

- (a) Austria: Buerohandel GmbH, Office Discount GmbH, Pagro Handelsgesellschaft GmbH
- (b) Belgium: King Belgium, Manutan, Rajapack and Verpa

negotiating power and is not getting very good prices that Staples would be able to offer if more competitors were there."

⁵⁹⁴ Agreed minutes of the phone call with a competitor of 28 July 2015.

⁵⁹⁵ Replies to Phase I Questionnaire Q7 to customers (wholesale) – Questions 15 and 16 and to Phase II Questionnaire Q11 to customers (wholesale) – Questions 20 and 21.

⁵⁹⁶ Form CO, paragraph 108.

⁵⁹⁷ Form CO, Annex 24, Table 9: Direct market share estimates for traditional categories (150 EUR spend).

- (c) France: Bureau Vallee, JM Bruneau, Raja and Top Office
 - (d) Germany: Bueroshop24, Bueromarkt Boettcher AG, Mercateo and Printus Fachvertrieb fuer Buerobedarf
 - (e) Italy: Adveo, Errebian, Gruppo Buffetti S.p.A.
 - (f) Netherlands: Bol.com BV, Coolblue, Media Markt Saturn Nederland B.V. and 123inkt.nl / Digital Revolution BV
 - (g) Spain: Adveo
 - (h) UK: Ebuyer.com, Eurooffice, Office Team, Ryman and Tesco Direct⁵⁹⁸
- (736) In addition to the already existing offer in the direct channel, Amazon is currently a rapidly growing supplier, very well-known by the industry. Although the customers requiring a contract stationer indicated in the market investigation that they would not be able to use Amazon, there is strong acceptance of Amazon among business community. Many participants expressed an interest in using Amazon's service if they were not bound by the tender rules (or if Amazon complied with those rules) and virtually all participants to the market investigation were familiar with Amazon as a major direct supplier on the European market.⁵⁹⁹ Customers using the direct channel also increasingly source office supplies from Amazon. According to Office Depot, one in three Office Depot contract end-users in the UK claim to have purchased workplace supplies from Amazon in 2013, while in 2012, only one in seven Office Depot contract end-users did so.⁶⁰⁰
- (737) According to the data gathered by the Commission during the market investigation, there are many competitors active in the direct sales channel, especially distributors active only via the online channel (and not issuing printed catalogues). Apart from Amazon and other competitors indicated by the Parties, there are also numerous smaller distributors and resellers. The smaller distributors indicated that it is relatively easy to start a new business and start distributing office products via the direct channel, especially since it is possible to use outsource the whole logistics to a wholesaler.⁶⁰¹ This business model is offered by the Parties in Sweden (see section 7.3), but also by Quantore in the Netherlands.⁶⁰²
- (738) The market investigation provided evidence that in case of orders made via the direct channel, the customers can easily switch suppliers with every newly placed order, as there are no contracts or long-term commitments attributed to the purchases. Some customers traditionally use one particular supplier with whom they are familiar, as they used to the catalogue, delivery modalities and the customer service, however the customers are also price sensitive and can easily switch away from their previous supplier if they receive a better offer elsewhere.
- (739) A number of online websites allow for price comparison between different online suppliers, including Mercateo, Kelkoo, Google.com/shopping and many more. Those websites gather offers from different suppliers and allow for price transparency and pricing benchmark for customers (the comparison websites do not sell office supplies

⁵⁹⁸ Form CO, Annex 38 and reply to the RFI of 4 August 2015 questions 37, 43 and 44.

⁵⁹⁹ Replies to Phase I Questionnaire Q4 to customers (contract) – Question 28; replies to Phase II Questionnaire Q8a-j to customers – Question 51.

⁶⁰⁰ These estimates come from a customer survey conducted in October 2013 by Office Depot. See Form CO, paragraph 60.

⁶⁰¹ Agreed minutes of a phone call with a customer of 4 November 2015.

⁶⁰² Agreed minutes of a phone call with a competitor of 11 June 2015.

to end users). The comparison websites allow for greater price transparency on the market and therefore facilitate sales by smaller competitors who may not benefit from the economies of scale, but thanks to more flexibility can lower their fixed costs and therefore offer competitive prices.

- (740) The Notifying Party furthermore submits that there are a number of new entrants to the direct sales channel of office products. Some of them include mass merchandisers, such as CostCo who increased its presence in office supplies in the UK also through its online channel. Other mass merchandisers, such as Tesco and Carrefour also provide office supplies via their online sales channel. eBuyer is an example of a specialist supplier who used to be active in related product categories and who currently also offers traditional office supplies.⁶⁰³
- (741) In conclusion, in the light of the arguments set out in recitals (732) to (740) and in view of the results of the market investigation and of the information available to it, the Commission considers that the transaction would not lead to a significant impediment to effective competition in the direct sales channel for office supplies at the EEA and national level.

7.5. Conclusion on the compatibility of the transaction with the internal market

- (742) In conclusion, in the light of the assessment in sections 5 to 7.4 and in light of the results of the market investigation and of the information available to the Commission, the Commission considers that the transaction would lead to a significant impediment to effective competition in the markets for (i) international contracts for the supply of traditional office supplies and for the supply of stationery in the EEA, (ii) national contracts for the supply of traditional office supplies and for the supply of stationery to business customers with more than 100-200 office worker or more than 250 employees in Sweden and the Netherlands and (iii) wholesale supply of traditional office supplies in Sweden.
- (743) On the other hand, the Commission considers that the transaction would not lead to a significant impediment to effective competition in the markets for (i) national contracts for the supply of traditional office supplies and for the supply of stationery to large business customers in Austria, Belgium, France, Germany, Ireland, Italy, Spain and the United Kingdom, (ii) national contracts for the supply of traditional office supplies and for the supply of stationery to smaller business customers in any of the overlapping countries, (iii) direct supply of office supplies in any of the overlapping countries and (iv) retail supply of office supplies in Sweden.

8. COMMITMENTS

- (744) In order to render the transaction compatible with the internal market in relation to the markets for (i) international contracts for the supply of traditional office supplies and for the supply of stationery in the EEA, (ii) national contracts for the supply of traditional office supplies and for the supply of stationery to business customers with more than 100-200 office worker or more than 250 employees in Sweden and the Netherlands and (iii) wholesale supply of traditional office supplies in Sweden, the Parties submitted commitments pursuant to Article 8 (2) of the Merger Regulation on 27 November 2015 ("the Commitments of 27 November 2015"). The Commission subjected those commitments to a market test. The Commission considered on the basis of the results of the market test, that the Commitments of 27 November 2015

⁶⁰³ Form CO, paragraph 373.

were generally suitable to address the Commission's competition concerns but contained certain risks for the viability and competitiveness of the business to be divested.

- (745) In order to address the issues raised by the Commission, the Parties submitted a final set of commitments on 10 December 2015 ("the Final Commitments").

8.1. Analytical framework

- (746) The following principles from the Remedies Notice⁶⁰⁴ apply where parties to a merger choose to offer commitments in order to restore effective competition.

- (747) Where a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger.⁶⁰⁵

- (748) The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent a significant impediment to effective competition in all relevant markets where competition concerns were identified.⁶⁰⁶ To that end, the commitments have to eliminate the competition concerns entirely⁶⁰⁷ and have to be comprehensive and effective from all points of view.⁶⁰⁸

- (749) In assessing whether proposed commitments are likely to eliminate its competition concerns, the Commission considers all relevant factors including, among other criteria, the type, scale and scope of the commitments, judged by reference to the structure and particular characteristics of the market in which those concerns arise, including the position of the parties and other participants on the market.⁶⁰⁹ Moreover, commitments must be capable of being implemented effectively within a short period of time.⁶¹⁰

- (750) Where a proposed concentration threatens to significantly impede effective competition the most effective way to maintain effective competition, apart from prohibition, is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors via divestiture by the parties.⁶¹¹

- (751) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and

⁶⁰⁴ Commission's Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ("Remedies Notice"), OJ C 267, 22.10.2008, p. 1.

⁶⁰⁵ Remedies Notice, paragraph 5.

⁶⁰⁶ Remedies Notice, paragraph 9.

⁶⁰⁷ Case C-202/06 P *Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, paragraph 54: "*it is necessary, when reviewing the proportionality of conditions or obligations which the Commission may, by virtue of Article 8(2) of Regulation No 4064/89, impose on the parties to a concentration, not to determine whether the concentration still has a Community dimension after those conditions or obligations have been complied with, but to be satisfied that those conditions and those obligations are proportionate to and would entirely eliminate the competition problem that has been identified*".

⁶⁰⁸ Remedies Notice, paragraphs 9 and 61.

⁶⁰⁹ Remedies Notice, paragraph 12.

⁶¹⁰ Remedies Notice, paragraph 9.

⁶¹¹ Remedies Notice, paragraph 22.

competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.⁶¹²

- (752) Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered. Therefore, the divested business must contain the personnel providing essential functions for the business such as, for instance, group R&D and information technology staff even where such personnel are currently employed by another business unit of the parties —at least in a sufficient proportion to meet the on-going needs of the divested business.⁶¹³
- (753) Normally, a viable business is a business that can operate on a stand-alone-basis, which means independently of the parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.⁶¹⁴
- (754) The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element already of the Commission's assessment of the appropriateness of the proposed commitments. In order to ensure that the business is divested to a suitable purchaser, the commitments must include criteria to define the suitability of potential purchasers. This will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.⁶¹⁵

8.2. Description of the Commitments of 27 November 2015

- (755) Under the Commitments of 27 November 2015, the Parties propose to divest the legal entity [...] following a restructuring to exclude from the divestiture (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 of 27 November 2015").
- (756) 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 (hereinafter referred to as the "EEA Contract Business"); and
 - (b) the B2B distribution of office supplies through the contract, direct, retail and wholesale channels in Sweden (hereinafter referred to as "the Swedish divestment business").⁶¹⁶
- (757) The Commitments of 27 November 2015 allow for the Commission to approve the sale of the divestment business of 27 November 2015 without the business activities of one or more countries if this does not affect the viability and competitiveness of the divestment business after the sale, taking account of the proposed purchaser.⁶¹⁷

⁶¹² Remedies Notice, paragraphs 23-25.

⁶¹³ Remedies Notice, paragraph 26.

⁶¹⁴ Remedies Notice, paragraph 32.

⁶¹⁵ Remedies Notice, paragraph 47.

⁶¹⁶ Paragraph 6 of the Commitments of 27 November 2015 in conjunction with paragraph 1 of the Schedule to the Commitments of 27 November 2015.

⁶¹⁷ Paragraph 19 of the Commitments of 27 November 2015.

This clause extends the scope of the relevant clause in the model text for divestiture commitments of the Commission which allows for the Commission to approve the sale of the divestment business without one or more assets or parts of the personnel or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel.⁶¹⁸

(758) The Commitments of 27 November also 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.⁶¹⁹

8.2.1. *Main assets, contracts and personnel*

(759) The divestment business of 27 November 2015 comprises the following main assets, contracts⁶²⁰ and personnel:⁶²¹

- (a) a warehouse/distribution centre in Senlis, France;
- (b) leases on a total of 17 additional warehouses/distribution centres in the Czech Republic, France, Germany, Ireland, Italy, the Netherlands, Spain, Sweden, Switzerland and the UK;
- (c) the inventory in the warehouses which are relevant for the divestment business of 27 November 2015;
- (d) the current customer contracts for the EEA Contract Business and international key account customers;
- (e) customer lists for the EEA contract business and international key account customers;
- (f) agreements with the logistics providers that supply the relevant products for the EEA Contract Business;
- (g) the partnership agreements for the distribution of office supplies for the EEA Contract Business;
- (h) to the extent their geographical scope is limited within the EEA, the assignment of the "Office Depot" trademarks which are related to and used predominantly by the EEA Contract Business;
- (i) to the extent their geographical scope is beyond the EEA, an irrevocable, assignable, sub-licensable and royalty-free license to use the "Office Depot" brand and the "Office Depot" trademarks in the EEA which are related to and used predominantly by the EEA Contract Business;
- (j) IT software and hardware used by Office Depot predominantly for the EEA Contract Business;
- (k) Personnel related to the EEA Contract Business and personnel employed by the Swedish divestment business as well as indispensable key personnel.

⁶¹⁸ Paragraph 17 of the model text, available at http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf.

⁶¹⁹ Paragraph 3 of the Commitments of 27 November 2015.

⁶²⁰ The transfer of the contracts is subject to the consent of third parties to the extent such consent is contractually required.

⁶²¹ Paragraph 2 (a)-(g) of the Schedule to the Commitments of 27 November 2015.

(760) If there is any asset or personnel which is not covered by the lists in the Schedule to the Commitments of 27 November 2015, but which is both used, exclusively or not, in the divestment business of 27 November 2015 and is necessary for the continued viability and competitiveness of the divestment business of 27 November 2015, that asset or adequate substitute will be offered to potential purchasers.⁶²²

8.2.2. *Transitional agreements*

(761) The Parties also propose, at the option of the purchaser, to enter into transitional agreements with the purchaser concerning the following main products and services to be provided to the divestment business of 27 November 2015 by Staples:⁶²³

- (a) own-brand products of Office Depot currently distributed through the contract channel for a period of [...] after transfer of the legal title of the divestment business of 27 November 2015 to the purchaser (that transfer will hereafter be referred to as "closing");
- (b) merchandising / procurement and supply chain services for a period of [...] after closing;
- (c) IT and marketing support for a period of [...] after closing;
- (d) IT software and hardware which is shared between the EEA Contract Business and the direct business retained by the merged entity for a period of [...] after closing.

(762) Upon request of the monitoring trustee, the period for the transitional arrangements could be further extended [...], in consultation with the Commission, if required to preserve the viability and competitiveness of the divestment business of 27 November 2015, unless any delays in the operation of the divestment business are due to the negligence or bad faith of the purchaser.⁶²⁴

8.2.3. *Purchaser requirements*

(763) The requirements for the purchaser of the divestment business set out in the Commitments of 27 November 2015 correspond to the standard requirements contained in the model text for divestiture commitments of the Commission.⁶²⁵ They require, in particular, that (i) the purchaser must be independent of and unconnected to Staples, (ii) the purchaser must have the financial resources, proven expertise and incentive to maintain and develop the divestment business of 27 November as a viable and competitive force, and (iii) the acquisition by the purchaser must not be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the commitments will be delayed.

⁶²² Paragraph 4 of the Schedule to the Commitments of 27 November 2015; that clause also applies to the products and services offered through transitional agreements under paragraph 2 (h) of the Schedule to the Commitments of 27 November 2015.

⁶²³ Paragraph 2 (h) of the Schedule to the Commitments of 27 November 2015.

⁶²⁴ Paragraph 8 of the Commitments of 27 November 2015.

⁶²⁵ Paragraph 17 of the model text, available at http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf.

8.3. Assessment of the Commitments of 27 November 2015

8.3.1. The views of the Parties

(764) The Parties submit that the divestiture of the divestment business of 27 November 2015 would remove any potential competition concerns with respect to the contract channel in the EEA by removing the entire overlap in the EEA contract channel.

(765) Furthermore, according to the Parties, the object of the Commitments of 27 November 2015 is to provide a purchaser with the capacity and resources necessary to distribute office supplies through the contract channel to B2B customers in the EEA and through the wholesale and direct channels to customers in Sweden. Therefore, according to the Parties, the purchaser would replace Office Depot as a competitor in the relevant markets and the competitive dynamics would not be adversely affected by the transaction as modified by the Commitments of 27 November 2015.⁶²⁶

8.3.2. Results of the market test and Commission's assessment

(766) The Commission's assessment focused on (i) whether the Commitments of 27 November 2015 were suitable and sufficient to remove the competition concerns caused by the transaction; (ii) whether the divestment business of 27 November 2015 constituted a viable business able to compete effectively with the merged entity on a lasting basis; (iii) whether there were specific conditions that a potential purchaser should fulfil and (iv) whether the divestment business of 27 November 2015 was sufficiently attractive to find a suitable purchaser.

(767) On 30 November 2015, the Commission launched a market test regarding the Commitments of 27 November 2015 covering all of the questions outlined in recital (766). The results of the market test showed that the Commitments of 27 November 2015 were in principle deemed a suitable solution to resolve the competition concerns identified by the Commission. Yet a limited number of issues impacting the viability and competitiveness of the divestment business of 27 November 2015 were also identified. Those issues were addressed by the Parties through improvements made in the Final Commitments.

8.3.2.1. Suitability of the Commitments of 27 November 2015 and removal of competition concerns

(768) The Commitments of 27 November 2015 include Office Depot's activities in Sweden and Office Depot's activities in the distribution of office supplies through the contract channel in the EEA and Switzerland. As regards the contract channel in particular, the divestment business is active through its own distribution activities in Austria, Belgium, the Czech Republic, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Slovakia, Spain, Sweden, Switzerland and the United Kingdom. In addition, it has distribution agreements in the contract channel with third party distributors in Croatia, Denmark, Finland, Norway, and Poland.⁶²⁷ Furthermore, Office Depot is [...]. The divestment business will thus be active in the contract channel in 21 countries (20 EEA countries and Switzerland).

(769) As the Commitments include the divestment of all of Office Depot's activities in the contract channel in the EEA and Switzerland and all of Office Depot's activities in Sweden, the Commitments of 27 November 2015 remove the entire overlap between

⁶²⁶ Form RM of 27 November 2015, paragraphs 5 and 14.

⁶²⁷ Form RM of 27 November 2015, paragraph 4.

the Parties' activities in all of the markets in which the transaction would lead to a significant impediment to effective competition as summarised in recital (742). In particular, as regards the contract channel, the Commitments of 27 November include all of the activities of Office Depot in the distribution of traditional office supplies as well as the distribution of stationery through contracts so that the Commitments of 27 November 2015 remove the overlaps in the two alternative product markets assessed by the Commission in section 7.2.

- (770) Subject to the assessment in sections 8.3.2.2 to 8.3.2.4, in particular as regards the viability and competitiveness of the divestment business of 27 November 2015, the Commitments are therefore suitable to remove entirely the competition concerns identified by the Commission. This view was shared by the vast majority of customers and competitors who replied to the Commission's market test and who expressed an opinion on that question.⁶²⁸
- (771) As regards the scope of the divestment in the EEA contract channel in particular, the divestment of operations in most of the EEA countries, including its largest economies, and Switzerland is necessary to ensure that the divestment business can become a viable supplier in international contracts in the EEA. The Parties' sales under international contracts are spread over many countries of the EEA: About [...] of the Parties' international contracts and about [...] of Office Depot's international contracts cover more than four EEA countries while about half of the Parties' international contracts cover more than five EEA countries.⁶²⁹
- (772) Similarly, the Parties' 2015 International survey showed that many of the international customers surveyed had responsibility for purchasing office supplies in Germany, the United Kingdom, France, the Netherlands, Spain and Italy, followed by Belgium, Sweden and other countries.

Figure 7: Staples internal document entitled "Data Readout – Key findings for Europe", 17 June 2015, slide 13

[...]

- (773) A similar picture emerged from the Commission's market investigation according to which the customers with international contracts who replied to the investigation purchased office supplies for a number of countries and particularly for Germany, France, the United Kingdom, Belgium, the Netherlands, Sweden, Poland and Spain.⁶³⁰
- (774) Therefore, a competitor for international contracts (i) has to be able to cover at least the large Western European economies to reach the majority of the customers with demand for international contracts but (ii) needs also to rely on a presence in more countries due to the wide geographic spread of the demand. It was thus necessary for the commitments to cover most of the EEA to ensure the preservation of a credible alternative supplier for the international demand.
- (775) Nevertheless, the Commitments of 27 November 2015 provide for some flexibility as regards the assets, legal entities and business activities to be divested. Under the Commitments of 27 November, the Commission may approve the sale of the

⁶²⁸ Replies to Questionnaire R1 – Market test of the Commitments – Competitors - Question 27, and to Questionnaire R2 – Market test of the Commitments – Customers - Question 15.

⁶²⁹ Form CO, Annex 23.

⁶³⁰ Replies to Phase I Questionnaire Q5 to customers (international contracts) – Question 4; replies to Phase II Questionnaire Q8a-j to customers, Question 42.

divestment business without one or more assets or part of the personnel or – and this extends the scope of the equivalent clause in the model text for divestiture commitments of the Commission⁶³¹ – without the business activities of one or more countries, taking account of the proposed purchaser. Thus, if, for example, the purchaser already has business activities in a country which are sufficient in scope to compete effectively for international contracts covering that country, the divestiture could be approved without the sale of those country activities. This clause will thus allow preventing unnecessary divestments in the interest of proportionality.

8.3.2.2. Viability and competitiveness of the divestment business of 27 November 2015

8.3.2.2.1. Current profitability of the divestment business of 27 November 2015

(776) The divestment business of 27 November 2015 had a total turnover of EUR [...] in 2014.⁶³² It achieved an internal gross margin⁶³³ of around [...] and a gross profit margin⁶³⁴ of [...] in the last two and a half years of operation. The distribution costs are accounted for in the gross profit margin. Due to general costs and the costs of selling and administration, the earnings before interest and tax ("EBIT") and the earnings before interest, tax, depreciation and amortisation ("EBITDA") were [...] in that period.⁶³⁵ [...].⁶³⁶

(777) The Commission considers that the profitability of the divestment business appears satisfactory when only the variable costs of sourcing and distributing the products are considered (that is to say the gross profit margin). In addition, the profitability after deduction of all costs will be determined to a large extent by the organisation and structure of the purchaser's existing business and the way the purchaser integrates the divestment business of 27 November 2015 with its existing operations, including any potential synergies.

(778) Therefore, the divestment business of 27 November 2015 appears to be sufficiently profitable to operate as a viable business in the hands of a suitable purchaser. The Commission will be able to further assess those profitability issues also in the context of the buyer approval process when assessing whether the purchaser has the financial resources and incentive to maintain and develop the business as a viable and competitive force in the market.⁶³⁷

8.3.2.2.2. Viability of the divestment business of 27 November in the contract channel

(779) The divestment of Office Depot's distribution activities is limited to the distribution by way of contracts – with the exception of Sweden where all of Office Depot's distribution activities are divested. Contrary to Office Depot's operations before the divestment, the divestment business of 27 November 2015 will thus be active almost entirely in the contract distribution without any significant initial activities in other distribution channels. The Commission has therefore assessed whether operating a business in the contract channel only is a viable option enabling the divestment business of 27 November 2015 to compete in the relevant markets on a lasting basis.

⁶³¹ Paragraph 18 of the model text, available at http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf.

⁶³² See the Parties' reply to the Request for Information of 30 November 2015, question 6.

⁶³³ The internal gross margin is calculated as the sales minus the costs of goods sold.

⁶³⁴ The gross profit is calculated as the sales minus the cost of goods sold and minus the distribution costs.

⁶³⁵ Form RM of 27 November 2015, paragraph 39.

⁶³⁶ *Ibid.*

⁶³⁷ Paragraphs 18 (b) and 19 of the Commitments of 27 November 2015.

- (780) Focussing on one sales channel, including focussing on the contract sales channel only, is not uncommon in the industry.⁶³⁸ The most noteworthy example is Lyreco which focuses its business on the contract sales channel and has only minor operations in other sales channels.⁶³⁹ Lyreco has operated successfully for many years and is currently one of the leading suppliers of office supplies in the contract channel in Europe, as discussed in the competitive assessment for the international level and several national markets in section 8 above. Lyreco's global turnover is around EUR 2 billion⁶⁴⁰ while its European turnover is lower and is therefore closer to the turnover of the divestment business of EUR 1.05 billion. Similarly, the French competitor Fiducial and the Italian competitor MyO currently focus mainly on the contract channel with turnover smaller than the future turnover of the divestment business of 27 November 2015.⁶⁴¹
- (781) The vast majority of market participants who expressed an opinion on this issue during the market test considered that a supplier active only in the contract channel could compete successfully in this market. Only a minority of market participants argued that the presence in other sales channels was necessary, in particular the online channel which is a growing business for office supply companies.⁶⁴²
- (782) The Commission agrees with the view of the majority of respondents to the Commission's market test for the following main reasons: first, as set out in recital (780), there are examples of successful companies which focus only on the contract channel; second, the divestment business' turnover will be substantial and larger than some of the competitors which likewise have a strong focus on the contract channel; third, the divestment business' asset base in logistics and supply chain management consists mainly of leased warehouses which should give it the flexibility to adjust its asset footprint to its reduced scale of operations limited to the contract channel. Therefore, it appears to be a viable business option for the divestment business to be active almost entirely in the contract sales channel.

8.3.2.2.3. Carve-out of the retained business

- (783) The divestment business with its focus on the distribution of office supplies by way of contracts – with the exception of Sweden where all of Office Depot's distribution activities are divested – will have to be separated from the remaining Office Depot distribution activities which are currently integrated with the contract business and which will be retained by the merged entity. While such a carve-out carries implementation risks, the carve-out – taking into account the principle of proportionality – is an adequate solution in this case since such risks have been limited sufficiently in the Commitments of 27 November 2015.⁶⁴³

⁶³⁸ In contrast, focussing on the sale of stationery only is uncommon in the industry. Thus, divesting only the sale of stationery – a solution not discussed by the Parties with the Commission in this case – would potentially have led to issues concerning the viability of the divested business.

⁶³⁹ Agreed minutes of the conference call with Lyreco of September 2015.

⁶⁴⁰ See Lyreco's website at <http://group.lyreco.com/gbr/about-lyreco,22/our-story,2955.html> (last accessed on 16 December 2015).

⁶⁴¹ Response of Fiducial and MyO to Questionnaire R1 – Market test of the Commitments – Competitors, question 4.

⁶⁴² Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 3, and Questionnaire R2 – Market test of the Commitments – Customers – Question 4.

⁶⁴³ In contrast, divesting only the sale of stationery – a potential approach to the remedies which was not discussed by the Parties with the Commission in this case – would potentially have led issues with the carve-out and with ensuring the divestment of a stand-alone business.

- (784) First, the Commitments of 27 November 2015 include an up-front buyer clause according to which 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.⁶⁴⁴ This provision results in a higher degree of certainty that the carve-out will be carried out in a timely and efficient manner before the transaction is closed.
- (785) Second, as regards the carve-out of certain centralised functions, the divestment business of 27 November 2015 relies on centralised functions only through the EEA headquarters in Venlo/Netherlands and two offices in Leicester/United Kingdom (merchandising/ procurement and supply chain services as well as IT and marketing support) and Cluj/Romania (accounts receivable and accounts payable services). The transitional agreements included in the Commitments of 27 November 2015 – to be entered into at the request of the purchaser – ensure that the purchaser will have access to the central functions in Leicester and Cluj for a period of [...] and that the purchaser can use the venues and facilities in Venlo for [...]. The periods can be extended upon request by the monitoring trustee [...]. This will give the purchaser sufficient time to set up its own functions in this respect.
- (786) Third, as regards the personnel, there is a lack of clarity in the Commitments of 27 November 2015 as to how the personnel are to be attributed between the divestment business of 27 November 2015 and the merged entity in practice. The Commitments refer to the transfer of all personnel "*related to*" the EEA Contract Business without specifying how this is to be interpreted, in particular with respect to any shared personnel. However, even if the merged entity tries to retain personnel who work for the divestment business of 27 November 2015 and who are necessary for its continued viability and competitiveness, the purchaser will be able to demand that such personnel or adequate substitutes are offered. Therefore, the risks of carving out the divestment business of 27 November 2015 in terms of personnel are limited under the Commitments of 27 November 2015.

8.3.2.2.4. Access to office supplies

- (787) The replies received from market participants in the market test underline the importance of having competitive access to office supply products from wholesalers and manufacturers, both for own-brand and branded products, for the divestment business of 27 November 2015 to be competitive. This is particularly important in the period immediately following the divestment to ensure that the divestment business of 27 November 2015 does not lose its client base. One competitor explained: "*The key will be the capability of the purchaser to manage the transition period rapidly, and re-gain employees and customer confidence.*"⁶⁴⁵
- (788) The clear majority of competitors answering to that question in the market test considered that the purchaser of the divestment business of 27 November 2015 will be able to source products from manufacturers at prices that will allow it to be a viable and competitive supplier on the market at the national and international level.⁶⁴⁶ In their explanations, the competitors referred mainly to the scale of the divestment business of 27 November 2015. One competitor explained for instance: "*The new player will remain in the Top 5 players on the OS distribution and in the top 3 of the contract business in EEA.*" Other competitors explained that the

⁶⁴⁴ Paragraph 3 of the Commitments of 27 November 2015; see also Remedies Notice, paragraph 36.

⁶⁴⁵ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 6.1.

⁶⁴⁶ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 24.

manufacturers would have an interest in keeping the divestment business of 27 November 2015 competitive which would provide incentives for them to offer competitive prices to the divestment business of 27 November 2015.⁶⁴⁷ The clear majority of customers and competitors also considered that the purchaser of the divestment business of 27 November 2015 will be able to develop and source its own private label products at prices allowing it to be competitive on the market.⁶⁴⁸

- (789) Nevertheless, some competitors came forward with certain reservations during the market test concerning the divestment business' competitive access to office supplies. According to those competitors, the divestment business of 27 November 2015 may have to off-set its less advantageous access to office supplies with an enhanced service reliability or quality to be able to compete successfully.⁶⁴⁹
- (790) The Commission considers that the scale of the divestment business of 27 November 2015 is likely to enable it to have competitive access to office supplies in the longer term. Nevertheless, the divestment business of 27 November 2015 could be vulnerable in the period immediately following the divestment because it will have to honour the existing agreements with customers to keep its sales at the current levels and it will have to win customers' trust. The transitional agreements for office supplies included in the Commitments of 27 November 2015 are limited to the supply of Office Depot's own branded products, however, and do not cover other office supplies. This weakens the competitiveness of the divestment business of 27 November 2015 in the short term.

8.3.2.2.5. Transfer of customer contracts

- (791) The Commission has also assessed the risk of transferring the customer contracts to the divestment business in the light of potential consent required by the customers and in the light of the non-exclusivity of the contracts.
- (792) The Commission notes in this respect that Office Depot estimates that customer contracts with change of control clauses represent at most approximately [...] of the overall contract sales and [...] of the overall number of contracts. Therefore, a significant number of contracts and associated sales volume should in principle transfer to the purchaser automatically.
- (793) Furthermore, Office Depot's current customers who replied to the market test questionnaire showed a willingness to adhere to the present contracts and to continue purchasing from the divestment business in the future, provided that the purchaser will be able to offer the same prices, quality of products and conditions as currently offered by Office Depot. The following comment is representative of the comments received from many current Office Depot customers in the market test: *"If the purchaser can provide the same service, competitive pricing and customer care as Office Depot we would consider to keep purchasing office supplies from the purchaser"*. The limited number of current customers who replied that they would not continue purchasing from the divestment business either pointed to circumstances not specific to the divestment (such as the contract period having

⁶⁴⁷ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 24.1.

⁶⁴⁸ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 20; replies to Questionnaire R2 – Market test of the Commitments – Customers – Question 12.

⁶⁴⁹ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 24.1. One competitor explained: *"The purchaser must have access to vendor commitments that warrant same, or similar, purchase pricing as Office Depot/Staples currently have"*.

come to an end) or explained that a new tender would have to be carried out before deciding on that question.⁶⁵⁰

- (794) Similarly, the replies received from the customers contacted in the market test – regardless of whether they are currently customers of Office Depot or not – were generally positive as regards the customers' willingness to consider concluding a contract for office supplies with the divestment business in the future. Again, the limited number of negative replies was overwhelmingly related to circumstances unrelated to the divestment.⁶⁵¹
- (795) As regards international contracts in particular, the competitors are confident that the divestment business of 27 November 2015 will be able to be competitive in international contracts. The vast majority of competitors answering to that question in the market test consider that the divestment business of 27 November 2015 will be able to provide the necessary services that international contracts require, in particular in terms of logistics solutions.⁶⁵² Furthermore, the majority of the competitors answering to that question in the Commission's market test considered that the customers with global contracts – thus covering more countries than the countries in EEA – would continue purchasing their office supplies needs in the EEA from the divestment business of 27 November 2015 after the contracts would be split between the divested business in the EEA and the merged entity outside of the EEA.⁶⁵³
- (796) While some competitors and international customers considered that splitting the contracts between the EEA and the rest of the world was not a favourable option,⁶⁵⁴ the Commission recalls its findings from the discussion of the geographic market definition (section 6.2.1). While the overwhelming majority of Office Depot's customers with international contracts have some spending outside of the EEA, EEA sales represent approximately [...] of Office Depot's sales to international customers.⁶⁵⁵ Furthermore, a majority of those customers purchase under a European or regional contract as opposed to a global contract. This indicates that many customers with international customers already have split contracts in place, one for the EEA and at least one for the rest of the world. Therefore, the risk of losing international business due to the need to split global contracts is likely to be limited for the viability and competitiveness of the divestment business of 27 November 2015.

8.3.2.2.6. Terms of the transitional agreements

- (797) The Commitments of 27 November 2015 do not contain any pricing clause for the transitional agreements and thus leave that question to the future negotiations between Staples, Office Depot and the purchaser of the divestment business of 27 November 2015.
- (798) In addition to extending the scope of the transitional agreements to include all office supply products as discussed in recital (790), the responses to the Commission's market test indicated that the products and services under the transitional agreements

⁶⁵⁰ Replies to Questionnaire R2 – Market test of the Commitments – Customers – Question 6.

⁶⁵¹ Replies to Questionnaire R2 – Market test of the Commitments – Customers – Question 8.

⁶⁵² Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 16.

⁶⁵³ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 9.

⁶⁵⁴ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 9; responses to Questionnaire R2 – Market test of the Commitments – Customers – Question 7.

⁶⁵⁵ See reply to RFI of 13 November 2015, question 1.

should be provided to the divestment business of 27 November 2015 at cost. The objective should be that the divestment business will have at least as favourable input costs for those products and services as Office Depot has today.⁶⁵⁶

- (799) The Commission considers that leaving the pricing open in the Commitments leads to the risk that the divestment business will have to agree to terms and conditions in the transitional agreements which might negatively affect its competitiveness in the crucial period after the divestment. Therefore, the Commitments of 27 November 2015 do not contain sufficient safeguards to guarantee that the products and services under the transitional agreements will be provided at terms and conditions that allow a smooth transition and guarantee the competitiveness of the divestment business of 27 November 2015 immediately after the divestment.

8.3.2.3. Purchaser criteria

- (800) As regards the criteria to identify a suitable purchaser for the divestment business of 27 November 2015, the competitors answering to that question in the market test considered that experience in the industry was required to run the divestment business viably and competitively.⁶⁵⁷ Furthermore, the competitors underlined that the divestment business of 27 November 2015 included many capabilities required by the purchaser, for example in terms of management, sales, logistics and IT expertise, but also maintained that the business could potentially benefit from synergies to be achieved through divesting the divestment business of 27 November 2015 to an existing office supply company.⁶⁵⁸

- (801) The Commission considers that – after the carve-out to be carried out by the Parties as set out in the Commitments of 27 November 2015 – the divestment business of 27 November 2015 will constitute a stand-alone business with significant in-house capacities, including in terms of management, logistics, IT and sales. Therefore, it is not necessary to restrict the pool of potential purchasers of the divestment business of 27 November 2015 to those with prior activities in the office supply business. Pursuant to the purchaser criteria of the Commitments of 27 November 2015, the purchaser will have to show that it has, among other things, the financial resources, proven expertise and incentive to maintain and develop the divestment business of 27 November as a viable and competitive force. Therefore, the considerations brought forward by the competitors during the market test can be taken into account in a satisfactory manner when the Commission will assess the conditions of the purchaser criteria of the Commitments of 27 November 2015 during the buyer approval process.

8.3.2.4. Attractiveness of the divestment business of 27 November 2015 for potential purchasers

- (802) The vast majority of the customers and competitors who expressed an opinion on that question in the Commission's market test considered that the divestment business of 27 November 2015 was sufficiently interesting to attract suitable purchasers.⁶⁵⁹ Issues raised by a limited number of market participants concerned the scale of the divestment business and its access to products at low purchasing prices, which the

⁶⁵⁶ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 23.

⁶⁵⁷ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 29.

⁶⁵⁸ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Questions 30 and 31.

⁶⁵⁹ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 28, and Questionnaire R2 – Market test of the Commitments – Customers – Question 13.

Commission does not consider to constitute significant obstacles for the divestment business' competitiveness as discussed in recitals (779) to (782) and (787) to (790).

- (803) The Commission received tentative expressions of interest from a handful of potential purchasers in the course of the market test, both from industry buyers and private equity companies.⁶⁶⁰ This indicates that the divestment business of 27 November 2015 may be sufficiently attractive to generate interest in the market. To alleviate any remaining concerns in this regard, the Commitments of 27 November 2015 include an up-front buyer clause, as outlined in recital (758).
- (804) Therefore, the Commission considers that there is a sufficient likelihood that the divestment business of 27 November 2015 will find a suitable buyer.

8.3.2.5. Conclusion

- (805) In the light of the market test, the Commission considered that the Commitments of 27 November 2015 were generally suitable to address the Commission's competition concerns but contained risks for the viability and competitiveness of the divestment business of 27 November 2015 as regards the terms and scope of the transitional agreements, in particular for the supply of office products to the divestment business of 27 November 2015, and as regards the splitting of assets and in particular of personnel between the divestment business of 27 November 2015 and the merged entity.

8.4. Description of the Final Commitments

- (806) The Parties submitted the Final Commitments on 10 December 2015 which maintain the basic scope and structure of the Commitments of 27 November 2015 and make limited changes to the Commitments of 27 November 2015 mainly in the following ways:
- (a) The definition of the divestment business,⁶⁶¹ the separation of assets between the divestment business and the Parties, including the separation of shared personnel,⁶⁶² and the modalities of the divestment⁶⁶³ are clarified in the Commitments and its Schedule.
 - (b) All transitional agreements will be offered to the purchaser at cost.⁶⁶⁴
 - (c) The transitional agreements are extended to cover the supply of all office products from Office Depot's vendors for [...].⁶⁶⁵ The transitional supply agreement was previously limited to own-brand products under the

⁶⁶⁰ Replies to Questionnaire R1 – Market test of the Commitments – Competitors – Question 33.

⁶⁶¹ Paragraph 6 of the Final Commitments; paragraphs 1 and 2 of the Schedule to the Final Commitments.

⁶⁶² The Final Commitments provide for the divestment of all entities comprising the divestment business while allowing a reverse carve-out of those business activities, assets, personnel and legal entities which relate exclusively or predominantly to the business retained by the merged entity, see paragraph 2 of the Schedule to the Final Commitments. As regards the personnel, any personnel not used predominantly by any of the distribution channels will transfer with the divestment business of 27 November 2015, see footnote 2 of the Final Commitments.

⁶⁶³ There is now some flexibility regarding the legal entities to be divested. That flexibility is complemented by an additional safeguard clause pursuant to which any carve-out of business activities, assets, personnel, and legal entities by Staples can only be carried out provided that the exclusion does not have any adverse effect on the viability and competitiveness of the divestment business and that the divestment business is transferred to the purchaser under the supervision of the monitoring trustee, see paragraph 2 of the Schedule to the Final Commitments.

⁶⁶⁴ Clause 8 of the Commitments.

⁶⁶⁵ Paragraph 3(h)(ii) of the Schedule to the Final Commitments.

Commitments of 27 November 2015. The new clause in the Final Commitments intends to allow the purchaser to continue purchasing the office products from Office Depot's vendors under currently agreed terms for the transitional period.

- (d) The list of leases of warehouses has been updated and reduced to include only the leases of the 15 leased warehouses currently in use.⁶⁶⁶
- (e) The Parties will be able to enter into transitional agreements with the purchaser relating to (i) support from previously shared personnel for [...], (ii) use of the Office Depot trademarks in the EEA for [...] and (iii) access and use rights for previously shared warehouses for [...].⁶⁶⁷
- (f) The list of assets includes more systematic references to the assets to be divested for Office Depot's business in Sweden.⁶⁶⁸

8.5. Assessment of the Final Commitments

- (807) The Commission considers that the Final Commitments fully address its concerns with respect to the Commitments of 27 November 2015, in particular as regards the scope and terms of the transitional agreements and the splitting of assets between the divestment business and the merged entity. In all other respects, the Commission's assessment of the suitability of the Commitments of 27 November 2015 set out in section 8.3 applies in the same way to the Final Commitments.

8.6. Conclusion on the remedies

- (808) In light of the assessment set out in sections 8.1 to 8.5, the Commission concludes that the Final Commitments are adequate and sufficient to eliminate the significant impediment to effective competition identified by the Commission.

9. CONDITIONS AND OBLIGATIONS

- (809) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (810) The fulfilment of a measure that gives rise to a structural change of the market is a condition, whereas the implementing steps which are necessary to achieve that result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (811) In accordance with the basic distinction described in recital (810) as regards conditions and obligations, this Decision should be made conditional on the full compliance by Staples with section B and the Schedule of the Commitments of

⁶⁶⁶ Paragraph 3(d) of the Schedule to the Final Commitments.

⁶⁶⁷ Footnote 2 and paragraphs 3(b)(i) and 3(d)(xii) of the Schedule to the Final Commitments.

⁶⁶⁸ Paragraph 3 of the Schedule to the Final Commitments.

10 December 2015. All other sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the commitments is set out in the Annex to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Staples, Inc. acquires sole control of Office Depot, Inc. within the meaning of Article 3(1)(b) of the Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in section B and the Schedule of the Annex.

Article 3

Staples, Inc. shall comply with the obligations set out in sections A, C, D, E and F of the Annex.

Article 4

This Decision is addressed to:

Staples, Inc.

500 Staples Drive

Framingham MA 01702

United States of America

Done at Brussels, 10.2.2016

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

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 up to [...], 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 Strännäs, 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;
 - (iii) IT and marketing support from the Office Depot facility in Leicester, UK 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.

- (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 be 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

[...]