



Statement of Issues

24 August 2017

Platinum Equity – proposed acquisition of OfficeMax Australia

Purpose

1. Platinum Equity, a global private equity group, proposes to acquire OfficeMax Australia (**OfficeMax**) from Office Depot, Inc. (the **proposed acquisition**). Platinum Equity recently acquired Staples Australia Pty Ltd (**Staples**) from Staples, Inc. Both Staples and OfficeMax supply office products, primarily to commercial and government customers, throughout Australia.
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition
 - identifies areas for further inquiry by the ACCC
 - invites interested parties to submit comments and information to assist the ACCC's assessment of the issues.

Overview of ACCC's preliminary views

3. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
4. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. For this matter, there is one issue that may raise concerns.

Issue that may raise concerns

5. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the supply of traditional office products to large commercial and government customers in Australia.

6. The proposed acquisition would result in the horizontal aggregation of the two leading suppliers and reduce the number of credible suppliers from four to three, thereby further increasing concentration in an already concentrated market.
7. The reduction in competition may lead to higher prices and/or lower levels of service to large customers.

Making a submission

8. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
 - The closeness of competition between Staples and OfficeMax, and between Staples and OfficeMax and other suppliers in the relevant market
 - The extent to which large customers have viable alternatives, such as Complete Office Supplies (**COS**) or Lyreco Pty Ltd (**Lyreco**)
 - The extent to which existing suppliers could expand or new entrants enter if the combined Staples-OfficeMax attempted to increase prices and/or decrease service levels.
9. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
10. Interested parties should provide submissions by no later than 5pm on **7 September 2017**. Responses may be e-mailed to mergers@acc.gov.au with the title: *Submission re: Platinum Equity / OfficeMax - attention Elizabeth Elias / Stella Leung*. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Elizabeth Elias on 02 6243 1104 or Stella Leung on 03 9658 6444.
11. The ACCC anticipates making a final decision on **16 November 2017**; however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.

Confidentiality of submissions

12. The ACCC will not publish submissions regarding the proposed acquisition. It will not disclose submissions to third parties (except its advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. The ACCC's [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC ‘Statements of Issues’

13. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC’s preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
14. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide interested parties with the basis for making further submissions should they consider it necessary.

Timeline

Date	Event
15 May 2017	ACCC commenced review of the proposed acquisition
2 June 2107	Closing date for submissions from interested parties
5 July 2017	ACCC requested further information from the parties. Former provisional date for announcement of findings (20 July 2017) delayed
19 July 2017	ACCC received information from the parties
24 August 2017	ACCC publication of Statement of Issues
7 September 2017	Deadline for submissions from interested parties in response to this Statement of Issues
16 November 2017	Anticipated date for ACCC final decision

The parties

The acquirer – Platinum Equity

15. Platinum Equity is a global private equity firm specialised in mergers, acquisitions, and operations of companies that provide mission-critical products, services, and solutions in diverse industries.¹ In early 2017 it acquired the Australian and New Zealand businesses of Staples, Inc.

¹ Platinum Equity, About Platinum Equity, viewed 23 August 2017, <http://www.platinumequity.com/company>.

16. Staples supplies office products to customers predominantly through the following platforms:
 - a. ‘Staples Advantage’, which supplies office products to commercial and government customers primarily through an online ordering platform (www.staplesadvantage.com.au); sales are also made through an electronic data interchange (EDI) (an ordering functionality that integrates with a customer’s enterprise software), over the telephone and by fax
 - b. an online store (www.staples.com.au), which typically supplies office products to consumers and small businesses
 - c. an education-specific online store (www.staplesbacktoschool.com.au), which typically supplies education supplies to schools and parents
 - d. six retail outlets connected to distribution and delivery centres.
17. Staples operates a national distribution centre in New South Wales, seven regional distribution centres across Victoria, Tasmania, Queensland, Western Australia and the Northern Territory, and sixteen regional delivery centres across Australia.

The target – OfficeMax

18. OfficeMax supplies office products to customers through the following platforms:
 - a. ‘OrderMax’, which supplies office products to commercial and government customers through an online ordering platform (www.ordermax.com.au), EDI, over the telephone and by fax
 - b. an online store ‘OfficeMax MyBusiness’ (<https://mybusiness.officemax.com.au>), which typically supplies office products to consumers and small businesses
 - c. an education-specific online store (<https://www.officemaxschools.com.au/>), which supplies education supplies to schools and parents
 - d. two retail stores in Western Australia, which predominantly supply office products to teachers and students.
19. OfficeMax operates six distribution centres with sales offices across New South Wales, Tasmania, Queensland, Western Australia and the Northern Territory. It also operates an additional sales office in Melbourne.

The proposed acquisition

20. Following its acquisition of the Staples businesses in Australia and New Zealand from Staples, Inc. in early 2017, Platinum Equity now proposes to acquire the Australian and New Zealand businesses of Office Depot (OfficeMax Australia and OfficeMax NZ).

21. On 18 April 2017, Platinum Equity announced that it had signed an agreement with Office Depot, Inc. to acquire all of the shares in OfficeMax Australia and OfficeMax NZ.²

Industry background

22. 'Office products' covers a broad range of products that are used in an office, whether at home or in a business, or more generally in the workplace. Key office product categories include: paper, stationery, ink and toner, business machines (such as tablets, printers, scanners), computer and electronic accessories, kitchen supplies, cleaning and janitorial supplies, office furniture, safety equipment and clothing, packaging supplies, promotional products (that is, items branded with corporate logos) and printing services.
23. Staples and OfficeMax are both national suppliers of office products, focusing on the supply of office products to commercial and government customers.
24. Industry participants for the supply of office products consist of manufacturers, wholesalers, suppliers and customers.
25. The main participants in the office products industry are as follows:
- a. **Manufacturers:** include major global corporations across a range of product categories, such as Hewlett-Packard, Canon, Fuji Xerox, Paper Australia, 3M, Faber-Castell and ACCO Brands. Manufacturers sell through wholesalers, direct to suppliers and also, in some cases, direct to end-customers.
 - b. **Wholesalers:** purchase products from a range of manufacturers and resell them to suppliers, as well as importing products from overseas. Wholesalers include major technology wholesalers such as Synnex and Ingram Micro; paper and related products wholesalers, such as BJ Ball; and stationery and office products wholesalers, such as GNS Wholesale.
 - c. **Suppliers:** purchase office products from manufacturers and wholesalers for re-supply to end-customers. Suppliers include:
 - (i) general office product suppliers: supply a comprehensive range of office products. Examples include Staples, OfficeMax, COS, Lyreco, Officeworks, Office National, Office Choice and Quick Corporate Australia
 - (ii) 'specialist' dealers: tend to focus on particular categories of office products. These can include computer/electronic accessories, business machines, kitchen supplies, cleaning and janitorial supplies, safety equipment and clothing. Specialist dealers include Bidvest, Blackwoods, Bunzl, Fuji Xerox, Datacom, PFD, Schiavello, BlueStar, Finsbury and Vistaprint. Other specialist dealers focus on

² Platinum Equity, *Platinum Equity to Acquire OfficeMax Business in Australia and New Zealand from Office Depot*, 18 April 2017, viewed 23 August 2017, <http://www.platinumequity.com/news/1179/platinum-equity-to-acquire-officemax-business-in-australia-and-new-zealand-from-office-depot>.

supply to customers in particular channels, such as Campion or Maxim in the education channel

- (iii) Retailers: such as JB Hi-Fi, Harvey Norman, Woolworths, Coles, Big W, Australia Post and Cartridge World (although some of these, such as JB Hi-Fi, have a commercial division focusing on business-to-business (B2B) sales).
- d. **End-customers:** purchase office products for their own use. They range from individuals and small businesses to large corporates, schools and government departments and agencies.

Overview of general office products suppliers

26. Examples of other general office products suppliers include:

- a. COS: an Australian based supplier of office products to commercial and government customers.³ It has nine distribution centres around Australia.⁴ In addition to its office products business, COS also offers office fit-out solutions through COS Working Spaces.⁵
- b. Lyreco: part of a global group of companies that provide workplace supplies to commercial and government customers.⁶ Lyreco Pty Ltd is a wholly-owned Australian subsidiary of Lyreco SAS (France). It operates five distribution centres in New South Wales, Victoria, Queensland, Western Australia and Tasmania.⁷
- c. Officeworks: an Australian chain of retail office supplies stores, owned by Wesfarmers Limited.⁸ It focuses on the supply of office products to individuals and micro, small and medium-sized commercial customers.⁹ It has more than 160 stores across Australia.¹⁰
- d. Office National: a network of independently owned and operated local business supplies stores, supplying a range of products including office supplies, ink and toner, paper, technology, furniture, facilities supplies, print and promotion and workwear.¹¹

³ Complete Office Supplies, Why COS?, viewed 23 August 2017, <http://www.cos.net.au/c/why-cos>.

⁴ Complete Office Supplies, viewed 23 August 2017, <http://www.cos.net.au/> and Complete Office Supplies, Contact Us, viewed 23 August 2017, <http://www.cos.net.au/c/contact-us>.

⁵ Complete Office Supplies Working Spaces, viewed 23 August 2017, <http://www.cosworkingspaces.com.au/>.

⁶ Lyreco, Lyreco Subsidiaries, viewed 23 August 2017, <http://australia-corp.lyreco.com/gbr/international-coverage,925/lyreco-subsidiaries,1719.html>

⁷ Lyreco, Contact, viewed 23 August 2017, <http://australia-corp.lyreco.com/gbr/contact.html>.

⁸ Officeworks, Who we are, viewed 23 August 2017, <https://www.officeworks.com.au/information/about-us/who-we-are>.

⁹ Officeworks, Who we are, viewed 23 August 2017, <https://www.officeworks.com.au/information/about-us/who-we-are>.

¹⁰ Officeworks, Who we are, viewed 23 August 2017, <https://www.officeworks.com.au/information/about-us/who-we-are>.

¹¹ Office National, About Us, viewed 23 August 2017, <https://www.officenational.com.au/shop/en/obb2cstore/about-us>.

- e. Office Choice: an independent group of local retailers, supplying a range of products including stationery, office supplies, technology and furniture products, in addition to complete office solutions such as canteen, janitorial, first aid supplies and printing services.¹² It caters for a broad range of customers including small and medium-sized enterprises (SMEs), government customers, educational institutions and individual customers.¹³
- f. Quick Corporate Australia Pty Ltd: a member of the Office Choice buying group.¹⁴ It provides a range of products, for example, office supplies, paper, ink and toner, technology, facilities supplies, furniture and print management.¹⁵ It is located in New South Wales, Victoria, Queensland, Western Australia and South Australia.¹⁶

Previous ACCC decisions

2015 ACCC review of Staples, Inc.'s proposed acquisition of Office Depot, Inc.

- 27. In 2015, Staples, Inc. proposed to acquire Office Depot, Inc. The ACCC conducted a public review of that transaction insofar as it concerned the Australian businesses of Staples and OfficeMax. It decided not to oppose that transaction. On the basis of its review at that time, the ACCC considered that the acquisition was unlikely to raise competition concerns in Australia.¹⁷ Staples, Inc. and Office Depot, Inc. decided to terminate the global transaction in May 2016 after a United States District Court granted a preliminary injunction after the United States Federal Trade Commission filed an administrative complaint challenging the transaction.¹⁸
- 28. The ACCC notes that in 2015 very few concerns were expressed by market participants and the ACCC considered that Officeworks, the largest supplier in the wider Australian office products industry, was likely, in the future, to be a credible competitive threat to the merged firm. A higher level of concern is being expressed from market participants in the context of the proposed acquisition this time round, and market inquiries suggest that Officeworks has not expanded significantly into the supply of large customers and appears to have no plans to do so.

¹² Office Choice, About Us, viewed 23 August 2017, <http://www.officechoice.com.au/about-us/>.

¹³ Office Choice, About Us, viewed 23 August 2017, <http://www.officechoice.com.au/about-us/>.

¹⁴ Stationery News, *Quick Corporate Australia moves to Office Choice*, 3 July 2017, viewed 23 August 2017, <http://www.stationerynews.com.au/news/quick-corporate-australia-moves-to-office-choice>.

¹⁵ Quick Corporate Australia, About Us, viewed 23 August 2017, https://www.quickcorporate.com.au/qc/QUICK_CORPORATE_AUSTRALIA-About_Us.htm.

¹⁶ Quick Corporate Australia, About Us, viewed 23 August 2017, https://www.quickcorporate.com.au/qc/QUICK_CORPORATE_AUSTRALIA-About_Us.htm.

¹⁷ ACCC, Mergers Register, viewed 23 August 2017, <http://registers.accc.gov.au/content/index.phtml/itemId/1188435/fromItemId/751043>

¹⁸ See, for example, Staples, *Staples and Office Depot to Terminate Merger Agreement*, 10 May 2016, viewed 23 August 2017, <http://staples.newshq.businesswire.com/press-release/corporate/staples-and-office-depot-terminate-merger-agreement> and Office Depot, *Office Depot Responds to District Court's Ruling on Merger with Staples*, 10 May 2016, viewed 23 August 2017, <http://news.officedepot.com/press-release/corporatefinancial-news/office-depot-responds-district-courts-ruling-merger-staples>.

Related reviews

Proposed acquisition of OfficeMax Australia by Complete Office Supplies

29. On 20 July 2017, the ACCC commenced a public review of a proposal by COS to acquire OfficeMax. That review is ongoing, and information is available on the ACCC's [public register](#).

Market definition

30. The ACCC's preliminary view is that the relevant market for assessing the competitive effects of the proposed acquisition is likely to be the supply of traditional office products to large commercial and government customers in Australia.

Product dimension of the market

31. The ACCC's starting point for delineating relevant markets to assess the competitive effects of the proposed acquisition involves identifying the products actually or potentially supplied by the merger parties. The ACCC then considers what other products and sources of supply constitute sufficiently close substitutes to provide a significant source of constraint on the merged firm.

Office product categories

32. Two broad categories of office products can be distinguished: 'core' and 'non-core' products, which are also referred to as 'traditional' and 'non-traditional' products respectively. Industry reports produced by Penfold Research for the Australian office products industry (which include information obtained from industry participants) define those categories along the following lines:
- a. 'Core' office products: include consumable office products such as writing instruments, paper, labels, envelopes, filing and presentation products, general stationery, ink and toner.
 - b. 'Non-core' products: comprise a broader range of products used in the workplace that have not traditionally been supplied by office product suppliers. These include printing solutions, cleaning and janitorial products, kitchen supplies, office furniture, work wear and safety equipment.¹⁹
33. The ACCC has considered whether the relevant product market in which to assess the competitive impact of the proposed acquisition is a broad market including both 'core' and 'non-core' office products, or a narrower market for 'core' or 'traditional' office products.
34. The ACCC is of the preliminary view that the relevant market for assessing the potential impact on competition of the proposed acquisition is likely to be the market for the supply of traditional office products.

¹⁹ Penfold Research Report, *Office Products in Australia 2016-18*. See, for example, Penfold Research, News, viewed 23 August 2017, <http://www.penfoldresearch.com.au/news-page/>.

35. The ACCC acknowledges that ‘traditional’ or ‘core’ office products suppliers, such as Staples and OfficeMax, appear to have broadened their product ranges in recent years to include ‘non-traditional’ or ‘non-core’ products. However, the ACCC notes that for ‘non-traditional’ office products, customers are more able to substitute to alternatives than for ‘traditional’ office products, such that a combined Staples-OfficeMax would not be able to profitably raise the prices of those products. In particular, there is a range of other suppliers of ‘non-core’ office products, such as Bunzl (cleaning services) and Woolworths (kitchen supplies).
36. There is also a question as to whether customers may be more able to substitute to alternative suppliers for some of the products included in the ‘core’ or ‘traditional’ office products category, such as ink and toner, or paper, such that the combined Staples-OfficeMax may not have the ability or incentive to raise the price of such products. For example, it appears that ink and toner are often supplied separately by vendors of managed print services (MPS), such as Hewlett-Packard and Fuji Xerox.
37. At this stage, the ACCC considers that it can be left open whether separate product markets should be defined for separate product categories, such as ink and toner, or paper. The proposed acquisition raises preliminary competition concerns irrespective of whether the relevant market is defined more narrowly. However, the ACCC is continuing to examine whether particular office product categories should be included in or excluded from the relevant product market.

Customer type and size

38. The information before the ACCC indicates that different customer types and sizes have different demand characteristics for their office products supplier.
39. Small to medium-sized customers typically have less structured purchasing requirements and are less likely to require delivery to multiple locations. They are more likely to make *ad hoc* purchases of particular products when required, including from retail stores, rather than purchasing under a contract with a specialist dealer.
40. In contrast, large commercial and government customers require their office products supplier to exhibit distinct characteristics, including in relation to:
 - a. Product range: customers typically prefer a ‘one stop shop’ for the purchase of a broad range of office products.
 - b. Services: such as integrated IT processing systems with specialised ordering, EDI capability, account management and reporting capabilities.
 - c. Distribution capacity: including the infrastructure to supply high volumes and a wide variety of office products to multiple geographic locations within very short delivery timeframes, typically next-day.

41. Different suppliers have different criteria to categorise customers, and it appears that there is no generally accepted industry standard. The main industry reference report, the Penfold Research Report, distinguishes business customers as follows:
 - a. Micro: less than 5 full-time equivalent employees (FTE)
 - b. Small: 5-19 FTE
 - c. Medium: 20-99 FTE
 - d. Large: 100+ FTE; and
 - e. Government.²⁰
42. Other categorisations are based on the total amount of annual expenditure on office products or the total annual spend per employee, or a combination of both annual spend and number of FTEs.
43. The ACCC's market inquiries have indicated that large commercial customers generally enter into contracts with office supplies providers to supply all of their traditional office supplies, in a 'one stop shop' arrangement. These contracts are often awarded on the basis of tenders and are typically of several years' duration. In addition, as set out in paragraph 40 above, suppliers to large customers need to meet specific requirements concerning, among other things, EDI capability and logistics, product range, service, processing systems, and invoicing.
44. The ACCC is still considering the most appropriate way to define 'large' customers, noting that it may not be necessary to identify or define that term precisely as it may not be determinative of the ACCC's competition assessment.
45. At this stage, the ACCC has included government customers in the relevant market. However, it is considering whether government customers procure office supplies differently to private businesses such that they form a separate relevant market. For example, government customers may be more inclined to use panel arrangements with multiple suppliers, allowing them to multi-source.
46. Supply-side considerations (in particular, the ability of suppliers that supply other products to large businesses to switch to traditional office products; or the ability of suppliers who do not currently supply large commercial and government customers to commence supplying to such customers) are examined in the competitive assessment sections below.

Geographic scope of the market

47. The ACCC's preliminary view is that the geographic scope of the market is national. The parties and their competitors compete for large customer contracts across Australia, and market participants refer to the importance of being able to supply nationally and of national distribution networks.

²⁰ Penfold Research Report, *Office Products in Australia 2016-18*. See, for example, the report outline available at http://www.penfoldresearch.com.au/wp-content/uploads/2017/03/Office_Products_in_Australia_2016-2018_REPORT_OUTLINE.pdf.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market(s). In particular, market participants may wish to comment on:

- The extent to which alternative sources of supply for traditional office products are readily available for large customers.
- The relevant threshold for defining different business customer categories, in particular 'large' commercial and government customers. Which types of customers are more likely to require a 'one stop shop' for a broad range of office products?
- The extent to which government customers procure office supplies differently to private businesses (for example, whether government customers are more likely to multi-source than commercial customers).
- The extent to which there may be separate, narrower regional and/or local markets for the supply of office products across Australia.

Issue that may raise concerns: reduction in competition in the supply of traditional office products to large commercial and government customers

48. Based upon its inquiries to date, the ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in the supply of traditional office products to large commercial and government customers in Australia.

Increased market concentration

49. The ACCC's market inquiries have revealed that there are four main suppliers of traditional office products to large commercial and government customers in Australia:
- a. Staples
 - b. OfficeMax
 - c. COS; and
 - d. Lyreco.
50. Information obtained during market inquiries suggests that Staples is the market leader, with the largest share of the relevant market, followed by OfficeMax, with COS and Lyreco some way behind.
51. The information available to date suggests that a combined Staples-OfficeMax would account for a substantial share of traditional office products to large commercial and government customers in Australia, and that the next largest competitors, COS and Lyreco, would have a significantly smaller share.

52. Staples submits that there are no accurate third party sources of data regarding the supply of office products in Australia, and that it is difficult to estimate market shares.
53. The data submitted by Staples and OfficeMax to indicate market shares is subject to considerable uncertainty as it is based on a number of assumptions, including in relation to the relevant products included in the market and the customer delineation. Therefore, in order to obtain a clearer picture of concentration, the ACCC is continuing to gather data, including tender and customer acquisition data.
54. The information obtained during market inquiries to date indicates that Staples and OfficeMax are close competitors, and the ACCC is of the preliminary view that the proposed acquisition would further increase concentration in what is already a concentrated market. The proposed acquisition would result in the horizontal aggregation of the two leading suppliers of traditional office products to large customers in Australia, thus reinforcing Staples' current position as market leader.
55. The most direct effect of the proposed acquisition would be the loss of competition between Staples and OfficeMax.

Removal of competitive rivalry and lack of viable alternative suppliers

56. The ACCC's market inquiries indicate that large commercial and government customers have benefited historically from competition between Staples and OfficeMax when tendering for office supplies. Some market participants have expressed concerns that this competitive tension would be lost as a result of the proposed acquisition and that a combined Staples-OfficeMax would have the ability to profitably increase prices and/or reduce service levels.
57. The ACCC is of the preliminary view that Staples and OfficeMax compete very closely, and may be each other's closest competitors in providing a 'one stop shop' for large customers' office product needs, in terms of their product ranges, pricing, tendering activity, target customers, services (for example, IT processing systems and delivery times) and their ability to supply nationwide (including distribution capacity). Indeed, some customers consider that Staples and OfficeMax are the only two suppliers who can provide this 'one stop shop' service.
58. The ACCC's investigation suggests that there are a limited number of alternative suppliers to Staples and OfficeMax with the necessary product range, processing systems and logistical capability to satisfy the requirements of large customers. A number of market participants have identified COS and Lyreco as possible alternative suppliers. In particular, COS and Lyreco supply a number of large customers and have won customers from Staples and OfficeMax. COS in particular has had success in achieving positions on government tender panels, although the ACCC understands that winning a position on a panel is not a guarantee of sales. This is because under a panel arrangement individual government departments and agencies can choose which panel member to source from, and often conduct a further competitive process between the panellists before entering contractual arrangements.

59. The ACCC is of the preliminary view that COS and Lyreco compete with Staples and OfficeMax for large customers. However, they appear to operate on a smaller scale, and to focus more on medium-sized customers. In addition, some doubts have been expressed as to the capacity of COS and Lyreco and their ability to scale-up to compete effectively with a combined Staples-OfficeMax.
60. Other suppliers include buying groups, such as Office Brands and Office Choice, groupings of independent local retailers. They appear generally to be used by small and medium-sized businesses and operate under regional networks. Market participants have suggested that such suppliers are less likely to be able to supply a broad range of office products at competitive prices, and are generally unable to provide the specialised IT systems required by large customers with high volume purchases. The available information indicates that there are limited instances where such buying groups have been successful in securing large commercial and government customers, and that where they have been successful this has tended to be limited to specific geographical locations.
61. Category specialist suppliers, such as suppliers of ink, toner and/or paper (for example, Hewlett-Packard), and original equipment manufacturers (such as Dell), supply specific product categories only. As noted above, many large customers prefer a contractual arrangement with a single supplier for a broad range of office products. While large customers appear to utilise other sources from time to time, such as supermarkets and other retailers such as Officeworks, Woolworths, Coles, Big W and Australia Post, (often referred to as ‘off-contract spend’ or ‘leakage’), such suppliers do not offer the full product range required by large customers, or have the technical expertise required. The ACCC does not consider that such suppliers are likely to impose a sufficient competitive constraint on a combined Staples-OfficeMax such as to prevent a price rise and/or a decrease in service levels.
62. Staples and OfficeMax have submitted that Officeworks competes for large customers. However, based on the ACCC’s inquiries to date, it appears that Officeworks’ focus is on retail customers and small to medium business customers. Its website states that it caters for “*micro, small and medium business customers*”, and its CEO has recently stated publicly that the customer set it chooses to serve is “*small, micro and medium business customers, householders and students*”.²¹ Market inquiries suggest that many market participants do not consider Officeworks to be a credible supplier to large commercial and government customers. In particular, some large customers have indicated that Officeworks has limited ability to meet their requirements for a broad product range and service level capabilities (including EDI capability and logistics). As noted above, Officeworks does not appear to have expanded significantly into the supply of large commercial and government customers in the last few years.

²¹ Australian Financial Review, *Officeworks ramps up Amazon defences*, 15 June 2017, viewed 23 August 2017, <http://www.afr.com/business/retail/officeworks-ramps-up-amazon-defences-20170615-gwrnz1>.

63. Staples and OfficeMax have also referred to Amazon as a credible supplier in the foreseeable future. However, Amazon is not yet established in Australia, and the ACCC understands that its current entry plans focus on the retail level.²²
64. In the light of the above, it appears that there may be a lack of viable alternative suppliers that will place a sufficient competitive constraint on a combined Staples-OfficeMax.
65. Alternative suppliers are considered further in the section on 'Barriers to entry and expansion' below.

Barriers to entry and expansion

66. The ACCC's preliminary view is that the threat of new entry or expansion in the relevant market may not constrain a price increase or a decrease in service levels imposed by a combined Staples-OfficeMax.
67. The information before the ACCC indicates that there are barriers to new entry and to expansion by existing competitors.
68. Barriers include:
 - a. Sunk capital expenditure to invest in distribution centres of adequate size to offer a sufficiently broad product range; obtaining ISO certifications;²³ integrated IT systems with appropriate account management and reporting capabilities; national distribution capability.
 - b. Incumbency advantages in retaining customers and rebates used to gain and retain business, which smaller competitors would have difficulty competing with. Available information suggests that customer retention rates are high.
 - c. Previous experience and a track record in meeting delivery requirements, including national delivery, within very short timeframes, typically next-day.
69. New entrants would also have to compete with a combined Staples-OfficeMax on price, one of the most important criteria for large customers. Market feedback suggests that it is already difficult for smaller firms to compete on price. A combined Staples-OfficeMax is likely to be able to take advantage of additional economies of scale and network density in operating a large scale delivery operation with integrated IT systems which provide the ordering and reporting features that large business customers require, and a 'one stop shop' for all of their customers' office product needs.
70. In addition, the ACCC's market inquiries suggest that sales of traditional office products have been declining as a result of the digitisation of the workplace, and that this trend is expected to continue. A number of market participants have indicated that it would not make commercial sense to enter or expand into the

²² See, for example, Australian Financial Review, *Amazon breaks silence on Australian retail plans*, 20 April 2017, viewed 23 August 2017, <http://www.afr.com/business/retail/amazon-breaks-silence-on-australian-retail-plans-20170419-gvnlvp>.

²³ ISO certifications are internationally recognised quality management certifications. See, for example, ISO Quality Services Ltd, *About Us*, viewed 23 August 2017, <https://www.isoqsltd.com/about-us/>.

supply of office products to large customers in current market conditions. As already noted, market inquiries suggest that Officeworks has not expanded significantly into supplying large commercial and government customers in the last few years, and has no current plans to do so.

71. These barriers to entry and expansion mean that timely entry/expansion on a scale sufficient to constrain a combined Staples-OfficeMax may be unlikely. However, the ACCC is continuing to explore this issue. In particular, the ACCC is considering whether existing market participants could readily expand in response to a price increase by a combined Staples-OfficeMax, and whether suppliers in adjacent markets (such as retail suppliers and suppliers of small to medium-sized businesses) could readily commence supplying large customers in response to an attempted price increase by a combined Staples-OfficeMax.

Countervailing power

72. Countervailing power exists when buyers have special characteristics that enable them to credibly threaten to bypass the merged firm, such as by vertically integrating into the upstream market, establishing importing operations or sponsoring new entry, such that this constrains any attempted increase in market power by a supplier.²⁴
73. Countervailing power is more than the ability of one large buyer to negotiate favourable terms and price relative to other buyers. A significant proportion of customers must be shielded from the effects of market power if countervailing power is to prevent a substantial lessening of competition in the relevant market(s).
74. The ACCC considers it unlikely that large customers would commence supplying traditional office products themselves or sponsor new entry in response to a price increase or decrease in service quality by a combined Staples-OfficeMax. In particular, office supplies typically make up a very small proportion of the total operating expenditure of large customers, and do not form part of their core business.

The ACCC invites comments from market participants as to whether the proposed acquisition would remove a key source of competition in the supply of traditional office products to large commercial and government customers in Australia. In particular market participants may wish to comment on the following:

- Who the main suppliers of traditional office products to large customers are.
- The extent to which Staples and OfficeMax have competed in the past and compete currently.
- The extent to which Staples and OfficeMax compete with other suppliers in the relevant market.

²⁴ See ACCC *Merger Guidelines*, November 2008, at paras. 7.48-7.51, <https://www.accc.gov.au/system/files/Merger%20guidelines.pdf>.

- The extent to which a combined Staples-OfficeMax would be constrained from raising prices and/or decreasing service levels by other suppliers of traditional office products.

Large Customers

- Whether you have switched, or would switch, between suppliers, and if so from whom and to whom and the reasons for switching (for example, price, service levels, distribution or IT capabilities, etc.).
- The importance of a 'one stop shop', whether you would consider disaggregating purchases, and, if so, in what circumstances and in relation to which products.
- What is your annual spend on 'traditional' and 'non-traditional' office products?
- Whether you monitor 'off contract' purchases (or 'leakage'), and, if so, what proportion of your total annual spend does it make up.
- For government customers with a panel of suppliers, what is the percentage breakdown of purchases between panel members? Is there a preference for a particular supplier on the panel, and if so, what are the reasons for this?
- The extent to which you would consider the pricing of other retailers (such as Officeworks, Woolworths or Coles) when assessing tender bid pricing.
- When making ongoing purchases under contract, the extent to which you check contract prices against other retail prices (such as Officeworks, Woolworths or Coles), and if so which companies you would check against.
- The extent to which reputation / a proven track record is important, including with regard to meeting delivery requirements (including product range and national delivery within short timeframes).

Suppliers

- Whether you have won or lost any large customer accounts to Staples, OfficeMax, COS, Lyreco, or others, and, if so, from or to whom, and which customers were won or lost.
- The minimum efficient scale and scope of operation required to compete effectively with a combined Staples-OfficeMax.
- The ease with which existing suppliers of traditional office products could expand or new entrants enter in response to an attempt by a combined Staples-OfficeMax to increase prices and/or decrease service levels.
- Any examples of recent attempts at entry or expansion and whether any such attempts have been successful or not, and why; and whether growth was organic or via acquisition.
- How the proposed acquisition might change the potential for entry and/or expansion in the relevant market.

- The extent to which tender processes / government panel arrangements may affect a new entrant's ability to reach efficient scale and scope in a timely manner.
- The extent to which reputation / a proven track record is important to large customers in order to operate successfully in the relevant market, including with regard to meeting delivery requirements (including product range and national delivery, within short timeframes).
- What investments would have to be made in order for a firm to enter / expand successfully in the relevant market. Please indicate type, scale and indicative cost if possible.

ACCC's future steps

75. As noted above, the ACCC now seeks submissions from market participants on the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions are to be received by the ACCC no later than **7 September 2017** and should be emailed to mergers@acc.gov.au.
76. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
77. The ACCC intends to announce its final view publicly by **16 November 2017**. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement of its final view.