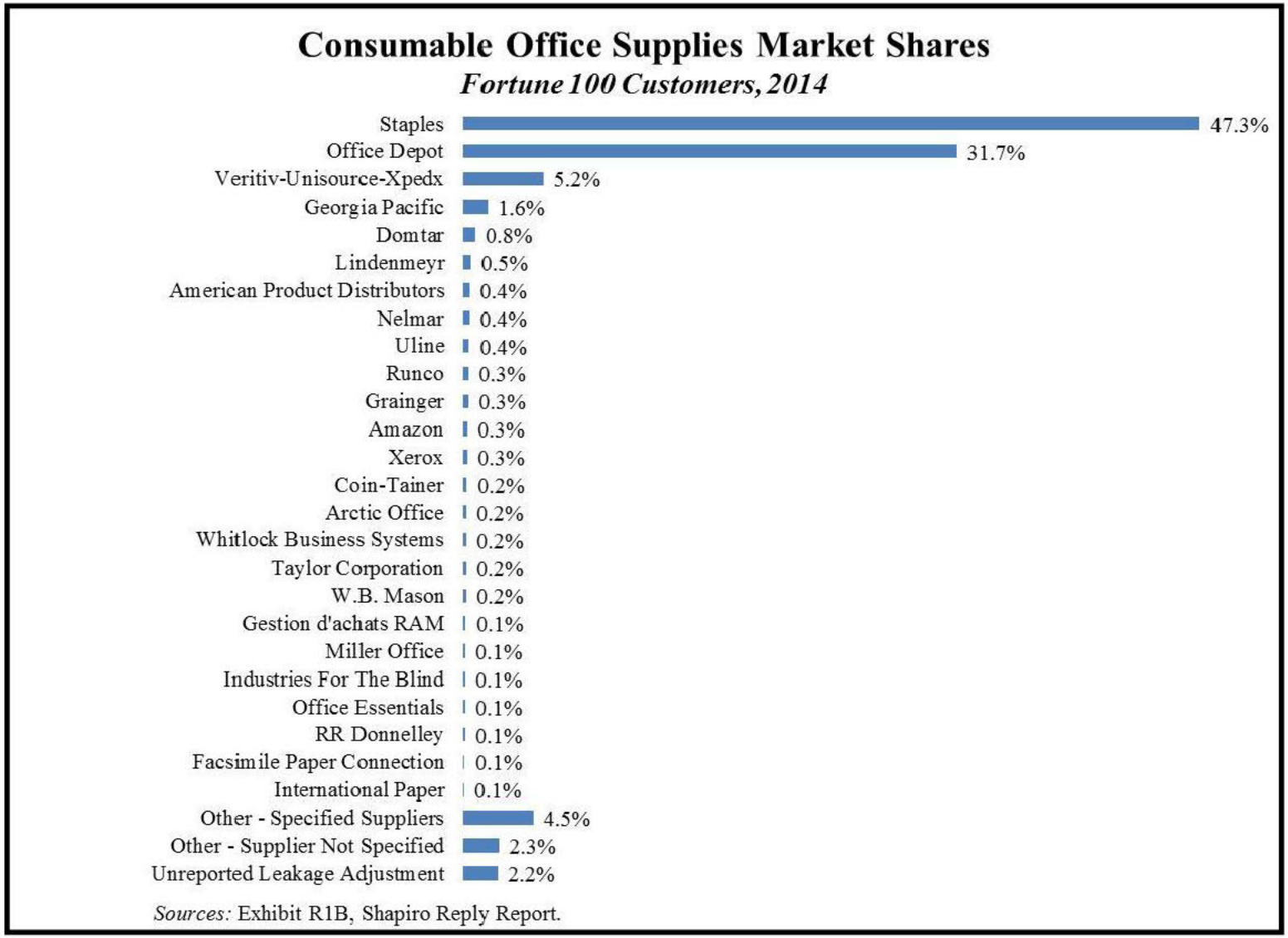
FTC, et al. v. Staples, Inc., et al.

Opening Statement

March 21, 2016

Staples and Office Depot Dominate Sales of Consumable Office Supplies to Large Businesses



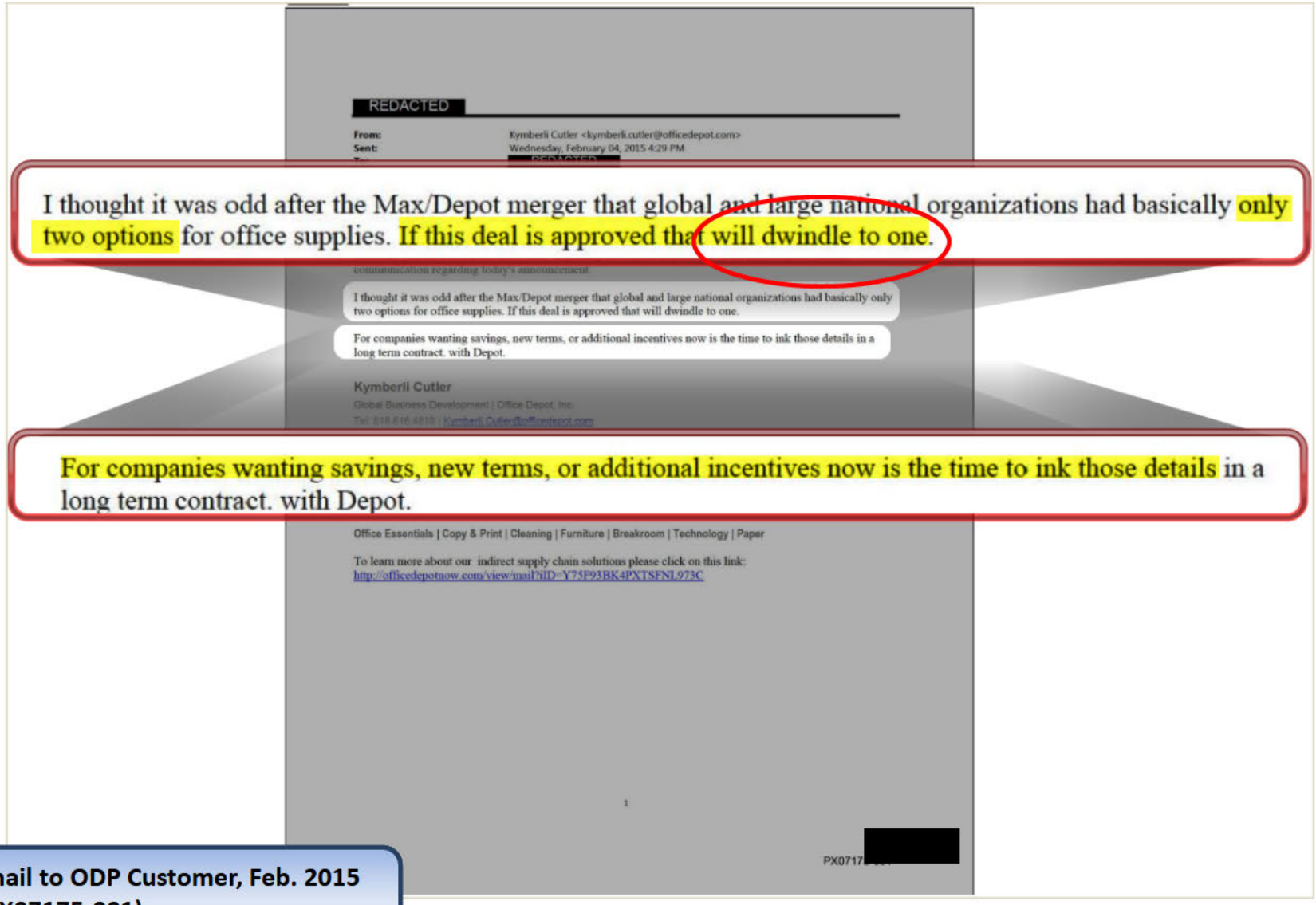
Staples Advantage
-Fortune 100 Overview-

Staples Advantage
- Fortune 100 Overview -

Rank	Name	OP Incumbent	FY12 Sales	Core Office Supplies	Facilities & Breakroom	Print & Promo
1	Exxon Mobil Corporation	Staples/ODP (dual Award 50/50)	7,987,748	$ 6,795,425	$ 811,032	$ 381,292
2	Wal-Mart Stores, Inc.	American Product Distribtuors	8,171,765	$ 7,288	$ 3,319	$ 8,161,157
3	Chevron Corporation	Office Depot	167,032	$ -	$ -	$ 167,032
4	ConocoPhillips	Staples	4,728,110	$ 2,872,850	$ 212,908	$ 1,642,353
5	General Motors Company	Local Suppliers	614,267	$ -	$ -	$ 614,267
6	General Electric Company	Staples	14,680,157	$ 13,357,540	$ 1,211,931	$ 110,687
7	Berkshire Hathaway Inc.	Staples	10,618,701	$ 9,431,374	$ 1,056,935	$ 130,392
8	Federal National Mortgage Association	Office Max	-	$ -	$ -	$ -
9	Ford Motor Company	Local Suppliers	-	$ -	$ -	$ -
10	Hewlett-Packard Company	Staples	10,857,608	$ 5,860,164	$ 89,406	$ 4,908,038
11	AT&T Inc.	Staples/OMX (dual Award 80/20)	16,586,531	$ 12,125,629	$ 900,444	$ 3,560,458
12	Valero Energy Corporation	Staples	537,045	$ 498,575	$ 38,399	$ 70
13	Bank of America Corporation	Staples	31,807,835	$ 24,789,753	$ 4,260,830	$ 2,757,252
42	Johnson & Johnson	Office Depot	-	$ -	$ -	$ -
43	State Farm Mutual Automobile Insurance Company	Office Max	1,126,353	$ -	$ -	$ 1,126,353
44	Dell Inc.	Staples	1,267,874	$ 1,205,369	$ 59,825	$ 2,681
45	WellPoint, Inc.	Staples	1,821,331	$ 1,625,652	$ 192,752	$ 2,927
46	Caterpillar Inc.	Office Max	423,968	$ 1,393	$ -	$ 422,575
47	The Dow Chemical Company	Staples	4,690,168	$ 3,315,006	$ 381,673	$ 993,490
48	United Technologies Corporation	Staples	9,686,790	$ 9,168,070	$ 557,934	$ (39,214)
49	Comcast Corporation	Office Max	116,383	$ 96,381	$ 18,790	$ 1,212
50	Kraft Foods Inc.	Staples	3,267,450	$ 3,019,224	$ 231,558	$ 16,667
51	Intel Corporation	Staples	5,683,106	$ 5,392,199	$ 286,714	$ 4,192
52	United Parcel Service, Inc.	Staples/ODP (dual Award 60/40)	13,613,048	$ 7,176,331	$ 801,644	$ 5,635,073
53	Best Buy Co., Inc.	Office Depot	125,662	$ -	$ -	$ 125,662
54	Lowe's Companies, Inc.	Staples	10,937,698	$ 9,579,370	$ 779,392	$ 578,936
55	Prudential Financial, Inc.	Staples	5,931,281	$ 5,732,358	$ 194,628	$ 4,295
56	Amazon.com, Inc.	Staples	13,869,422	$ 9,552,433	$ 392,141	$ 3,924,847
57	Merck & Co., Inc.	Staples	1,306,337	$ 1,194,368	$ 40,379	$ 71,590
58	Lockheed Martin Corporation	Staples	18,611,675	$ 17,540,574	$ 1,020,812	$ 50,289
59	The Coca-Cola Company	Staples	5,886,895	$ 1,449,547	$ 83,667	$ 4,353,680
90	Sprint Nextel Corporation	Staples	777,477	$ 585,501	$ 190,195	$ 1,781
91	News Corporation	Office Depot	237,636	$ 214,719	$ 22,181	$ 736
92	General Dynamics Corporation	Staples	1,852,857	$ 1,735,668	$ 86,436	$ 30,753
93	The Allstate Corporation	Office Max	-	$ -	$ -	$ -
94	HCA Holdings, Inc.	Staples	38,797,050	$ 35,714,158	$ 2,766,370	$ 316,522
95	American Express Company	Staples	4,329,049	$ 3,985,546	$ 180,310	$ 163,193
96	Tyson Foods, Inc.	Office Max	-	$ -		
97	Deere & Company	Office Max	-	$		
98	Murphy Oil Corporation	Multiple Award	144,701	$ 81,		
99	Philip Morris International Inc.	Proftech	2,539	$ 2,		
100	Nationwide Mutual Insurance Company	Staples	12,591,930	$ 6,752		

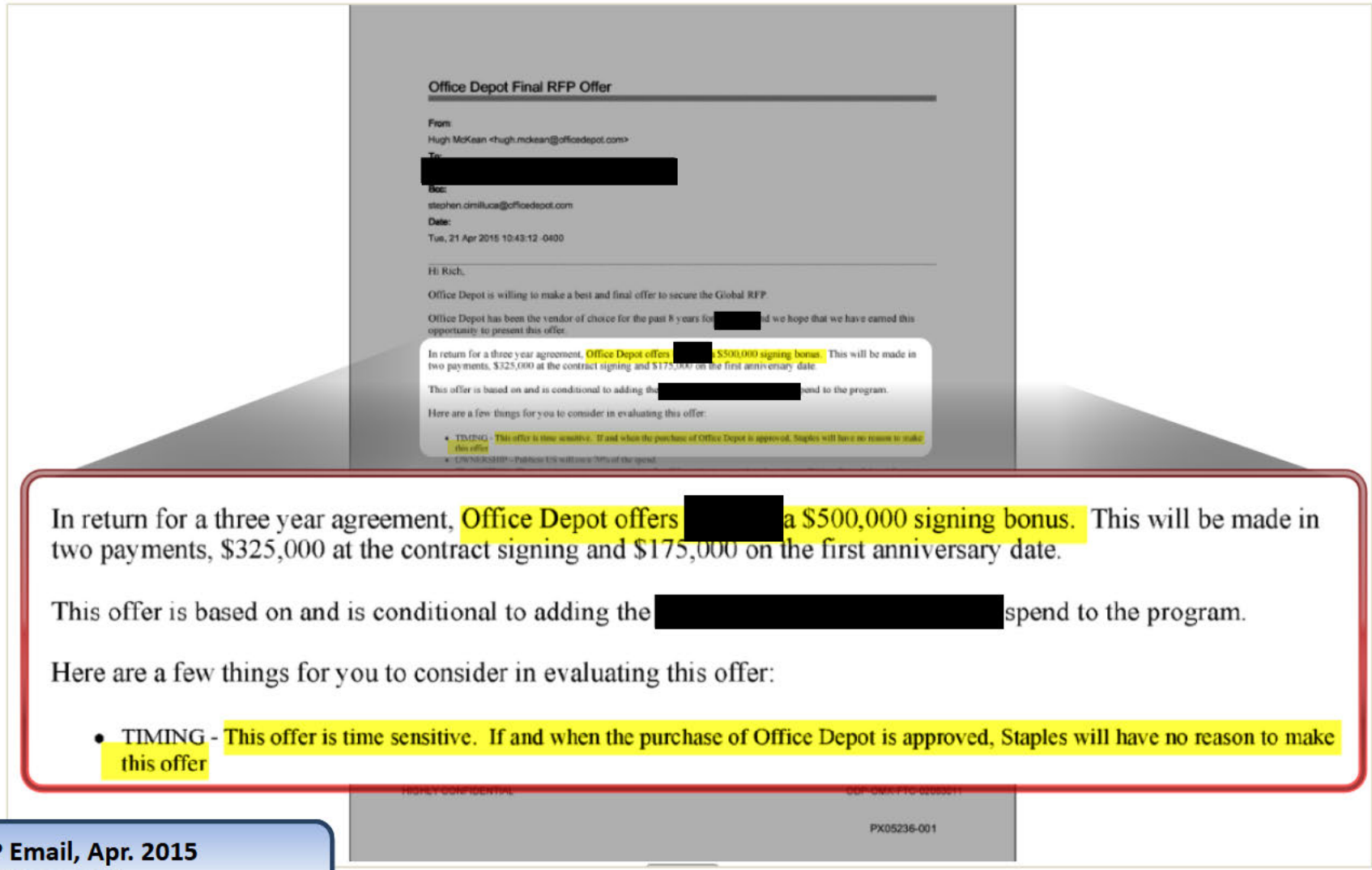
Internal SPLS Email Requesting F100 Poster, Jul. 2013 (PX04499-002)

Staples and Office Depot Warned Customers the Merger Would Eliminate the Benefits of Competition



Email to ODP Customer, Feb. 2015 (PX07175-001)

Staples and Office Depot Warned Customers the Merger Would Eliminate the Benefits of Competition



Office Depot Final RFP Offer

From:
Hugh McKean <hugh.mckean@officedepot.com>
To: [redacted]
Bcc:
stephen.cimilluca@officedepot.com
Date:
Tue, 21 Apr 2015 10:43:12 -0400

Hi Rich,

Office Depot is willing to make a best and final offer to secure the Global RFP.

Office Depot has been the vendor of choice for the past 8 years for [redacted] and we hope that we have earned this opportunity to present this offer.

In return for a three year agreement, Office Depot offers [redacted] a $500,000 signing bonus. This will be made in two payments, $325,000 at the contract signing and $175,000 on the first anniversary date.

This offer is based on and is conditional to adding the [redacted] spend to the program.

Here are a few things for you to consider in evaluating this offer:

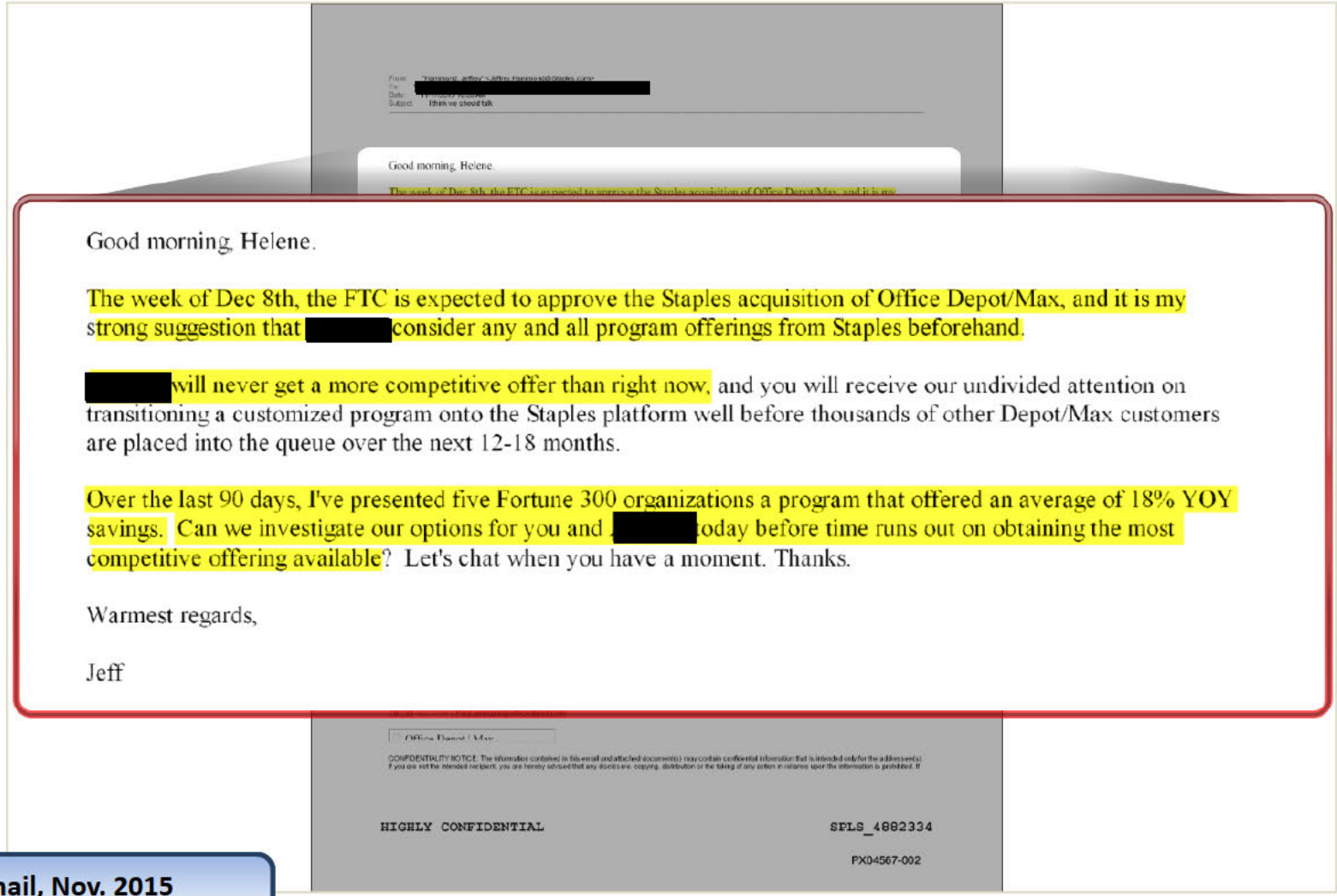
- TIMING - This offer is time sensitive. If and when the purchase of Office Depot is approved, Staples will have no reason to make this offer

HIGHLY CONFIDENTIAL

PX05236-001

ODP Email, Apr. 2015 (PX05236-001)

Staples and Office Depot Warned Customers the Merger Would Eliminate the Benefits of Competition



Good morning, Helene.

The week of Dec 8th, the FTC is expected to approve the Staples acquisition of Office Depot/Max, and it is my strong suggestion that [redacted] consider any and all program offerings from Staples beforehand.

[redacted] will never get a more competitive offer than right now, and you will receive our undivided attention on transitioning a customized program onto the Staples platform well before thousands of other Depot/Max customers are placed into the queue over the next 12-18 months.

Over the last 90 days, I've presented five Fortune 300 organizations a program that offered an average of 18% YOY savings. Can we investigate our options for you and [redacted] today before time runs out on obtaining the most competitive offering available? Let's chat when you have a moment. Thanks.

Warmest regards,

Jeff

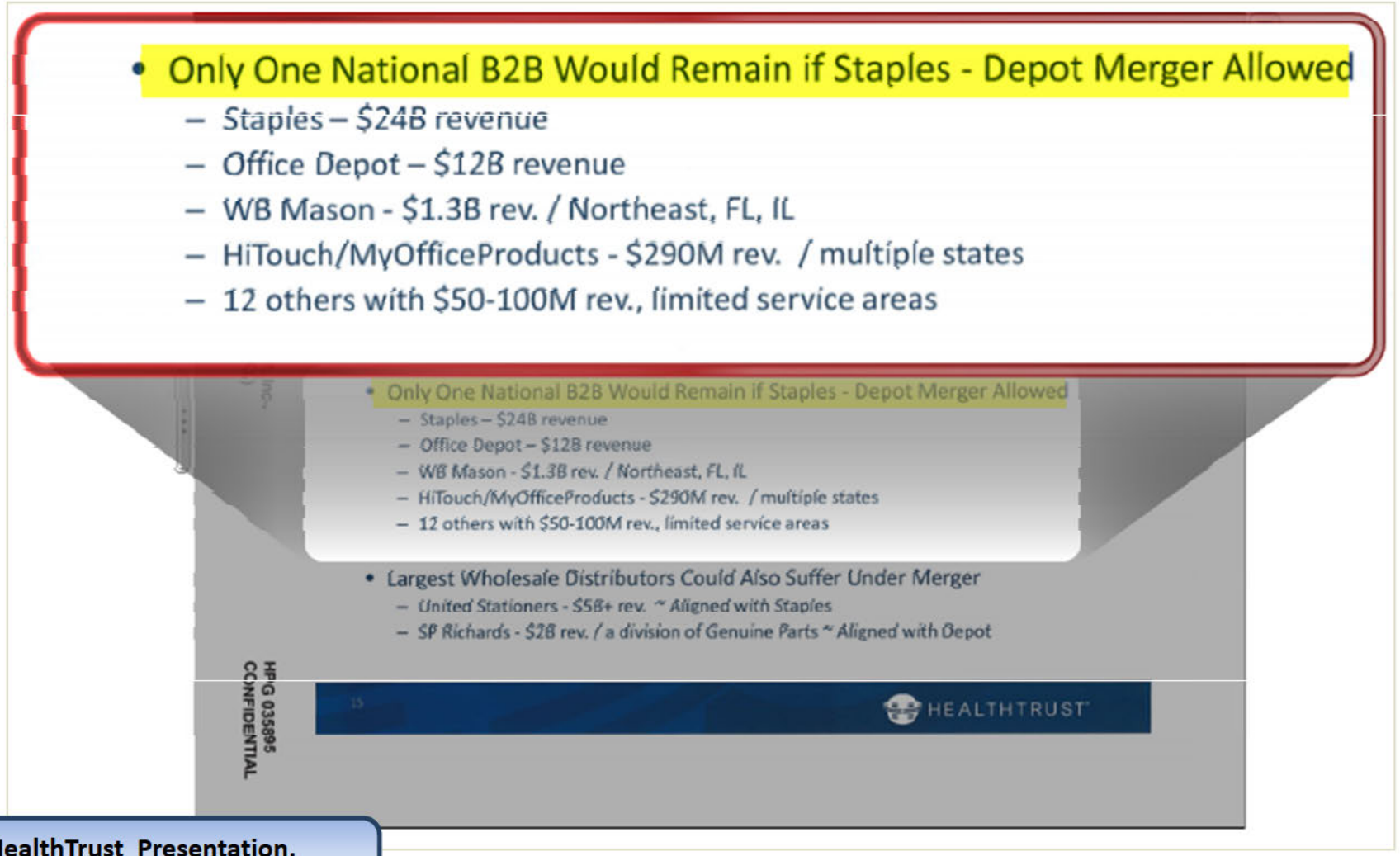
HIGHLY CONFIDENTIAL SPLS_4882334

PX04567-002

SPLS Email, Nov. 2015 (PX04567-002)

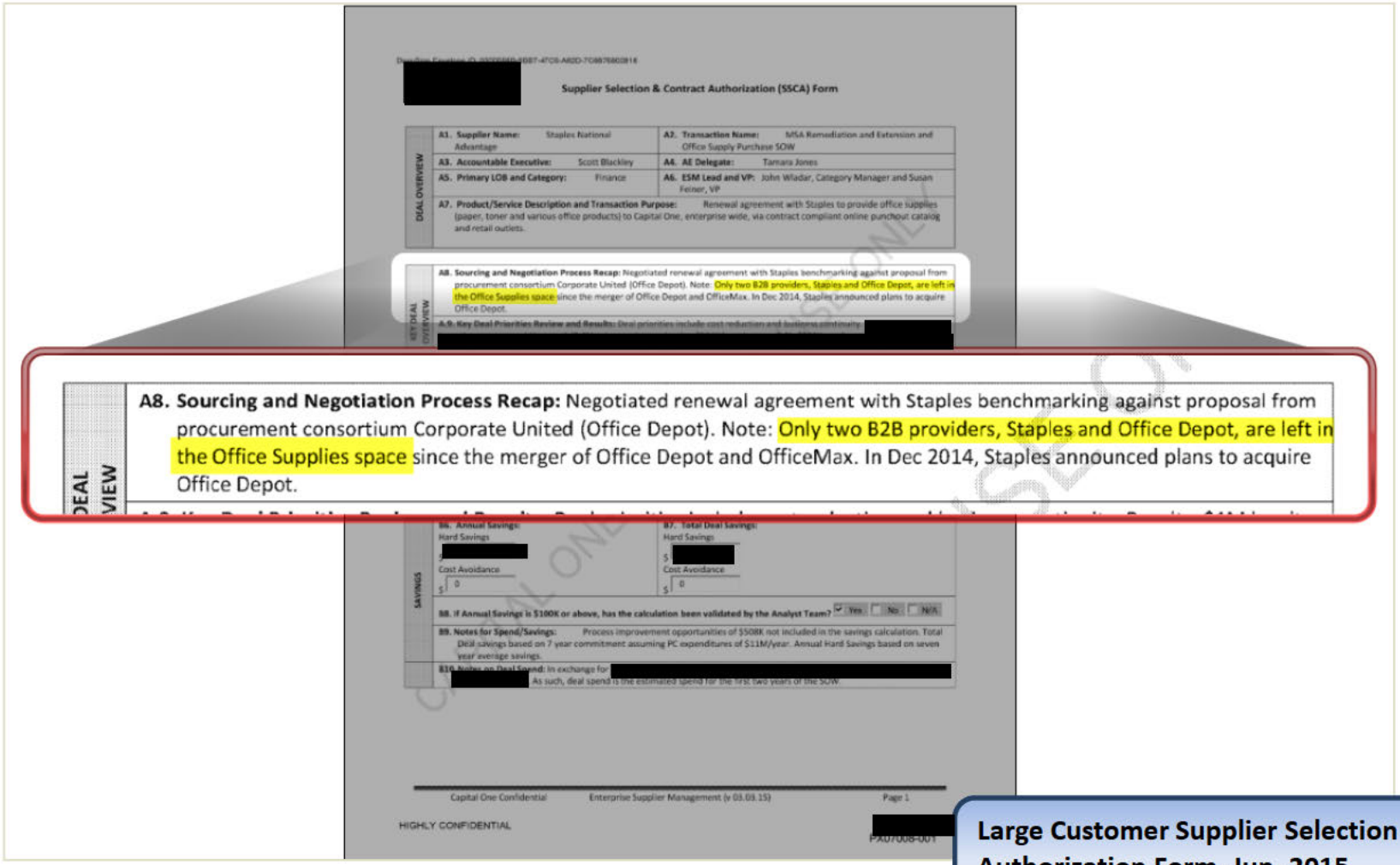
Large Business Customers Consider Staples and Office Depot as their Two Best Choices

- Only One National B2B Would Remain if Staples - Depot Merger Allowed
  - Staples – $24B revenue
  - Office Depot – $12B revenue
  - WB Mason - $1.3B rev. / Northeast, FL, IL
  - HiTouch/MyOfficeProducts - $290M rev. / multiple states
  - 12 others with $50-100M rev., limited service areas



HealthTrust Presentation, 2015 (PX 07071-004)

Large Business Customers Consider Staples and Office Depot as their Two Best Choices



Supplier Selection & Contract Authorization (SSCA) Form

DEAL OVERVIEW

A1. Supplier Name: Staples National Advantage

A2. Transaction Name: MSA Remediation and Extension and Office Supply Purchase SOW

A3. Accountable Executive: Scott Blackley

A4. AE Delegate: Tamara Jones

A5. Primary LOB and Category: Finance

A6. ESM Lead and VP: John Wladar, Category Manager and Susan Feiner, VP

A7. Product/Service Description and Transaction Purpose: Renewal agreement with Staples to provide office supplies (paper, toner and various office products) to Capital One, enterprise wide, via contract compliant online punchout catalog and retail outlets.

KEY DEAL OVERVIEW

A8. Sourcing and Negotiation Process Recap: Negotiated renewal agreement with Staples benchmarking against proposal from procurement consortium Corporate United (Office Depot). Note: Only two B2B providers, Staples and Office Depot, are left in the Office Supplies space since the merger of Office Depot and OfficeMax. In Dec 2014, Staples announced plans to acquire Office Depot.

A9. Key Deal Priorities Review and Results: Deal priorities include cost reduction and business continuity [redacted]

A8. Sourcing and Negotiation Process Recap: Negotiated renewal agreement with Staples benchmarking against proposal from procurement consortium Corporate United (Office Depot). Note: Only two B2B providers, Staples and Office Depot, are left in the Office Supplies space since the merger of Office Depot and OfficeMax. In Dec 2014, Staples announced plans to acquire Office Depot.

SAVINGS

B6. Annual Savings: Hard Savings $ [redacted] Cost Avoidance $ 0

B7. Total Deal Savings: Hard Savings $ [redacted] Cost Avoidance $ 0

B8. If Annual Savings is $100K or above, has the calculation been validated by the Analyst Team? ☑ Yes ☐ No ☐ N/A

B9. Notes for Spend/Savings: Process improvement opportunities of $508K not included in the savings calculation. Total Deal savings based on 7 year commitment assuming PC expenditures of $11M/year. Annual Hard Savings based on seven year average savings.

B10. Notes on Deal Spend: In exchange for [redacted] As such, deal spend is the estimated spend for the first two years of the SOW.

Capital One Confidential Enterprise Supplier Management (v 03.03.15) Page 1

HIGHLY CONFIDENTIAL [redacted] PX07008-001

Large Customer Supplier Selection & Authorization Form, Jun. 2015 (PX07008-001)

Large Business Customers Consider Staples and Office Depot as their Two Best Choices

Message

From: [redacted]

Sent:

To: [redacted]

Subject: OP Distributors

Attachments: AOPD Dealers US.docx

John – As you know, Staples' primary "competitor" is Office Depot/Max although this is in flux with the announcement of the acquisition of Depot/Max by Staples. It is our opinion that this merger will not go through, although there has been some suggestion it may pass this time. Our concern is that the single company would eliminate any and all true competition in the business-to-business distribution market. That said, there are alternatives but they would be very cumbersome to manage.

John – As you know, Staples' primary "competitor" is Office Depot/Max although this is in flux with the announcement of the acquisition of Depot/Max by Staples. It is our opinion that this merger will not go through, although there has been some suggestion it may pass this time. Our concern is that the single company would eliminate any and all true competition in the business-to-business distribution market. That said, there are alternatives but they would be very cumbersome to manage.

The B2B Office Products landscape takes the following form:

Stand-alone distributors that buy direct from manufacturer and ship to multiple corporate locations next business day – 1.) Staples 2.) Office Depot/Max

Regards,

[redacted]

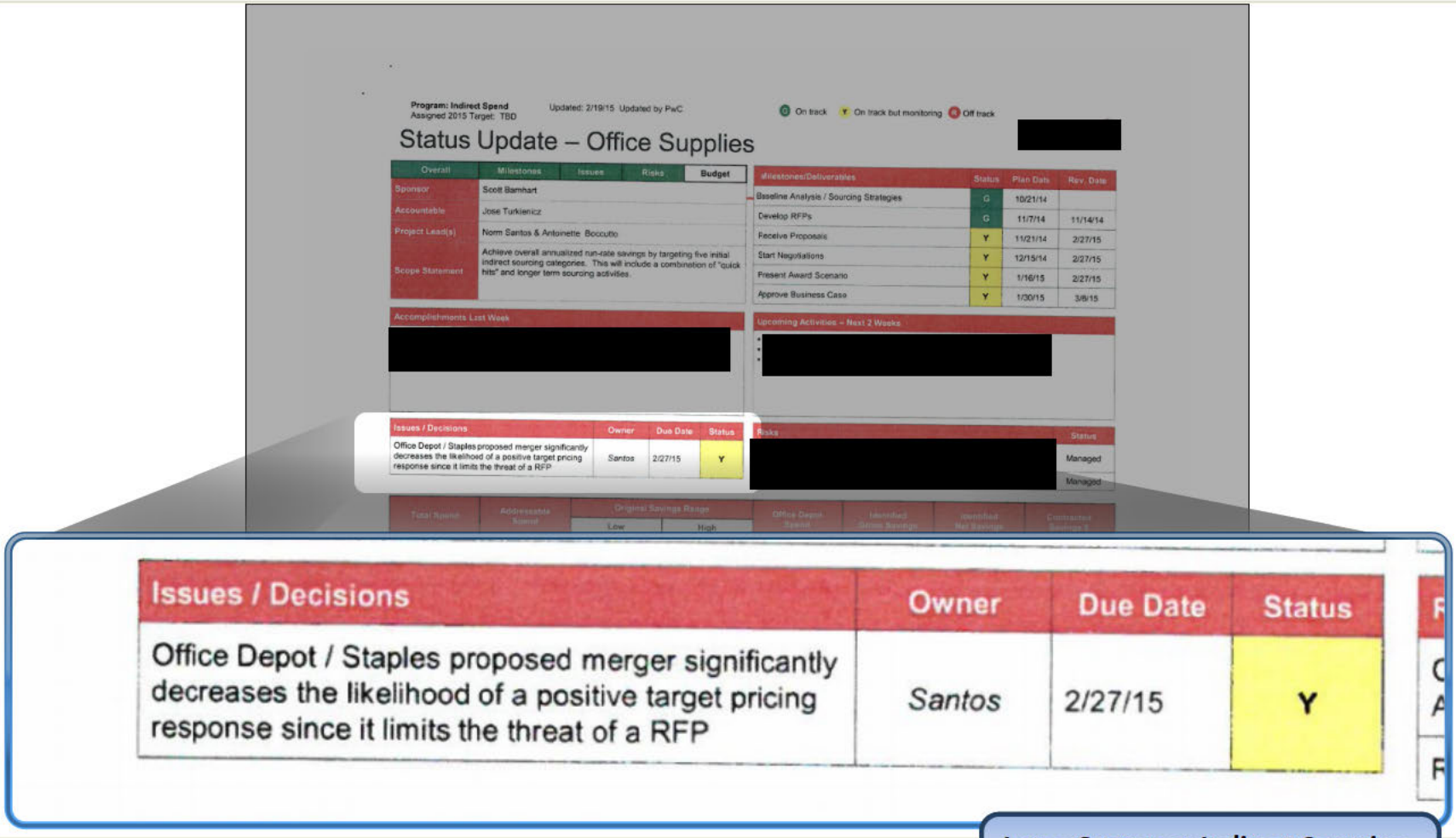
Vice President, Operations

CONFIDENTIAL – FTC v. Staples, Inc. and Office Depot, Inc., Case No. 1:15-cv-02115-EGS (D.D.C.)

[redacted] PX7301-001

Large Customer Email, Jun. 2015 (PX07301-001)

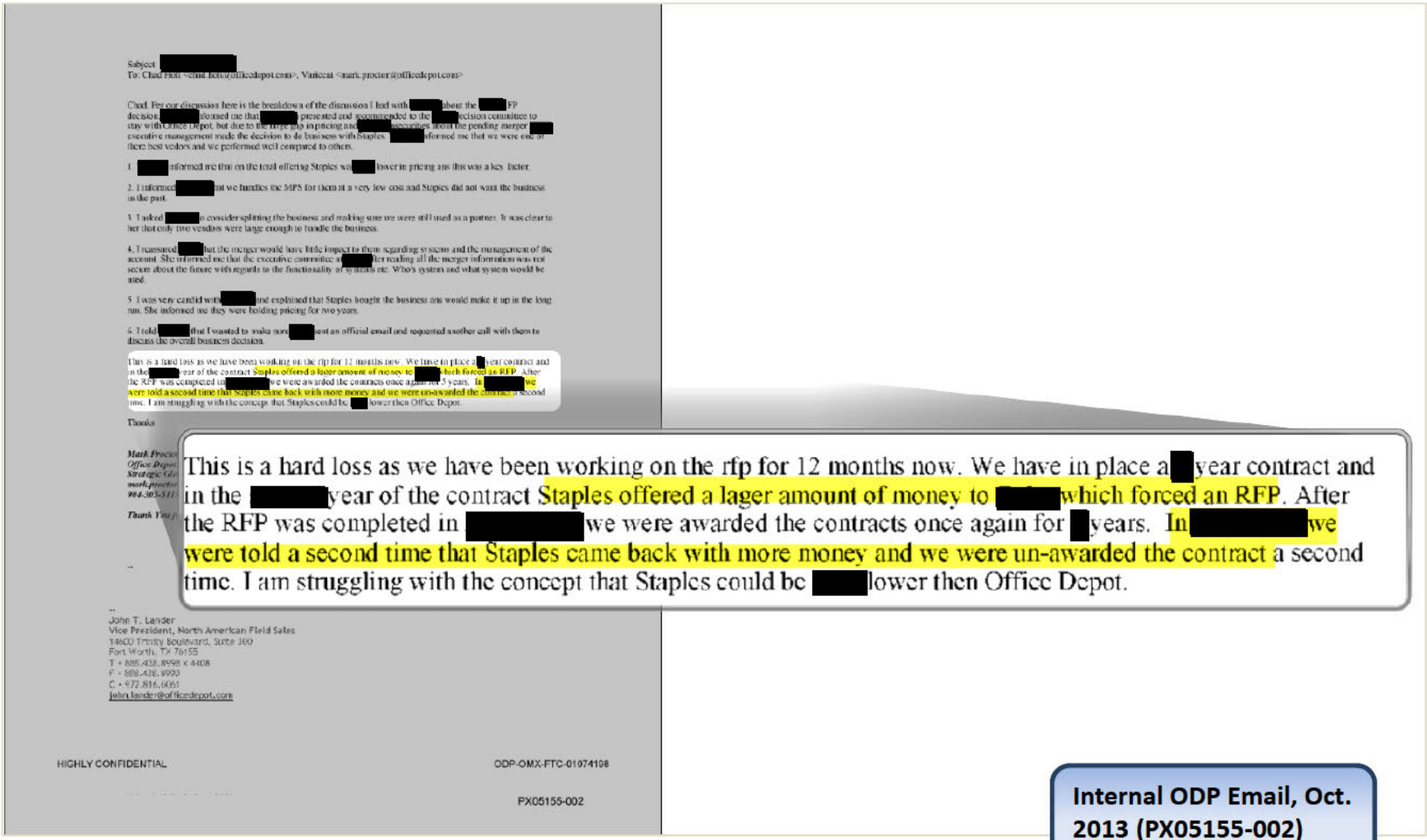
Large Business Customers Consider Staples and Office Depot as their Two Best Choices



Issues / Decisions	Owner	Due Date	Status
Office Depot / Staples proposed merger significantly decreases the likelihood of a positive target pricing response since it limits the threat of a RFP	*Santos*	2/27/15	Y

Large Customer Indirect Sourcing Update, Feb. 2015 (PX07002-010)

Staples and Office Depot Compete Fiercely Against Each Other



Subject: [redacted]
To: Chad Holt <[redacted]holt@officedepot.com>, Vincent <mark.procter@officedepot.com>

Chad, Per our discussion here is the breakdown of the discussion I had with [redacted] about the [redacted] RFP decision. [redacted] informed me that [redacted] presented and recommended to the [redacted] decision committee to stay with Office Depot, but due to the large gap in pricing and [redacted] securities about the pending merger [redacted] executive management made the decision to do business with Staples. [redacted] informed me that we were one of [redacted] three best vendors and we performed well compared to others.

1. [redacted] informed me that on the total offering Staples was [redacted] lower in pricing and this was a key factor.

2. I informed [redacted] that we handles the MPS for them at a very low cost and Staples did not want the business in the past.

3. I asked [redacted] to consider splitting the business and making sure we were still used as a partner. It was clear to her that only two vendors were large enough to handle the business.

4. I reassured [redacted] that the merger would have little impact to them regarding systems and the management of the account. She informed me that the executive committee [redacted] after reading all the merger information was not secure about the future with regards to the functionality of systems etc. Who's system and what system would be used.

5. I was very candid with [redacted] and explained that Staples bought the business and would make it up in the long run. She informed me they were holding pricing for two years.

6. I told [redacted] that I wanted to make sure [redacted] sent an official email and requested another call with them to discuss the overall business decision.

This is a hard loss as we have been working on the rfp for 12 months now. We have in place a [redacted] year contract and in the [redacted] year of the contract Staples offered a lager amount of money to [redacted] which forced an RFP. After the RFP was completed in [redacted] we were awarded the contracts once again for [redacted] years. In [redacted] we were told a second time that Staples came back with more money and we were un-awarded the contract a second time. I am struggling with the concept that Staples could be [redacted] lower then Office Depot.

Thanks

Mark Procter
Office Depot
Strategic Gl
mark.procter
904-305-511

Thank You

This is a hard loss as we have been working on the rfp for 12 months now. We have in place a [redacted] year contract and in the [redacted] year of the contract Staples offered a lager amount of money to [redacted] which forced an RFP. After the RFP was completed in [redacted] we were awarded the contracts once again for [redacted] years. In [redacted] we were told a second time that Staples came back with more money and we were un-awarded the contract a second time. I am struggling with the concept that Staples could be [redacted] lower then Office Depot.

John T. Lander
Vice President, North American Field Sales
14600 Trinity Boulevard, Suite 300
Fort Worth, TX 76155
T + 888.438.8998 x 4408
F + 888.438.8990
C + 972.816.6061
john.lander@officedepot.com

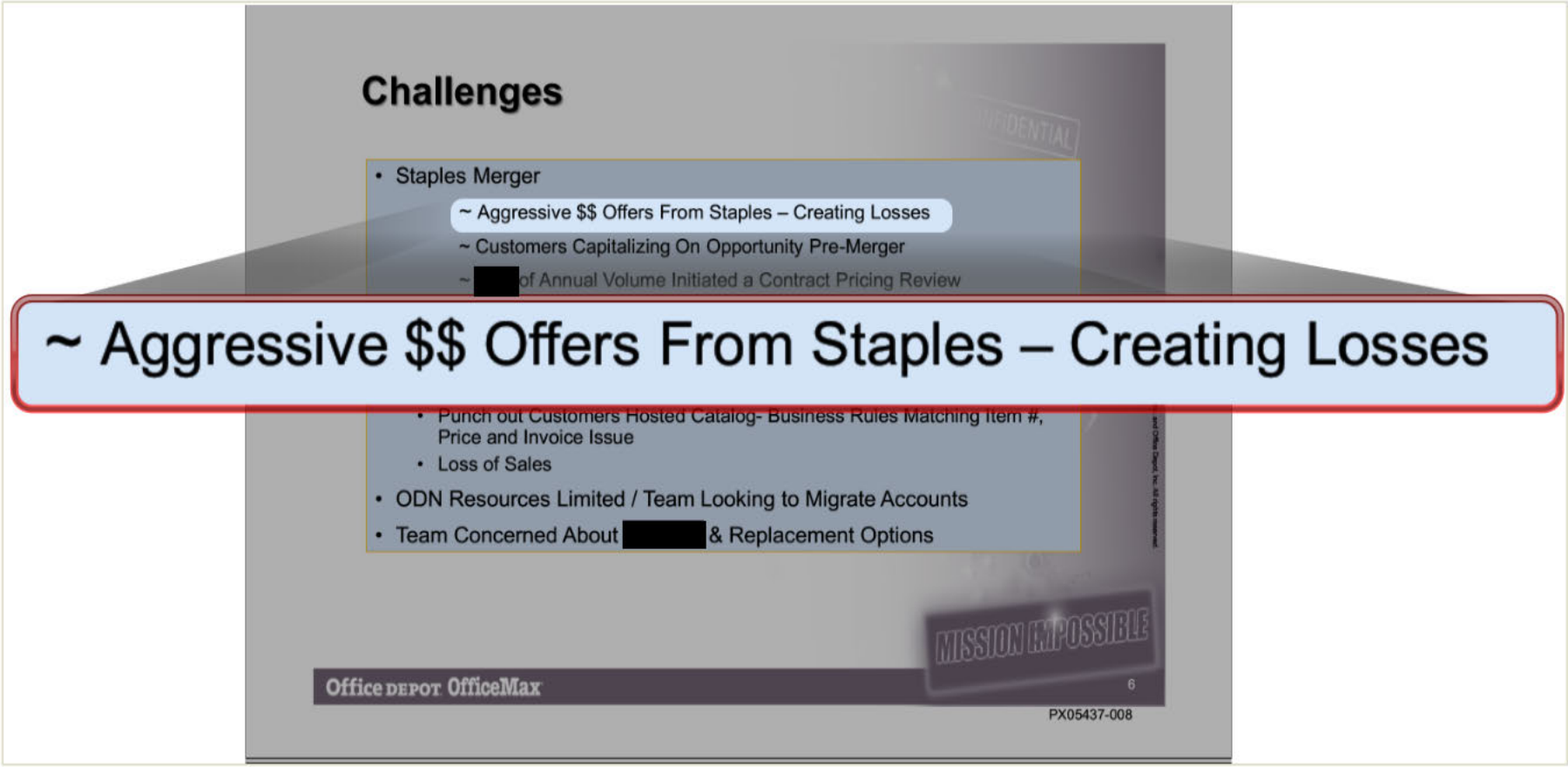
HIGHLY CONFIDENTIAL

ODP-OMX-FTC-01074198

PX05155-002

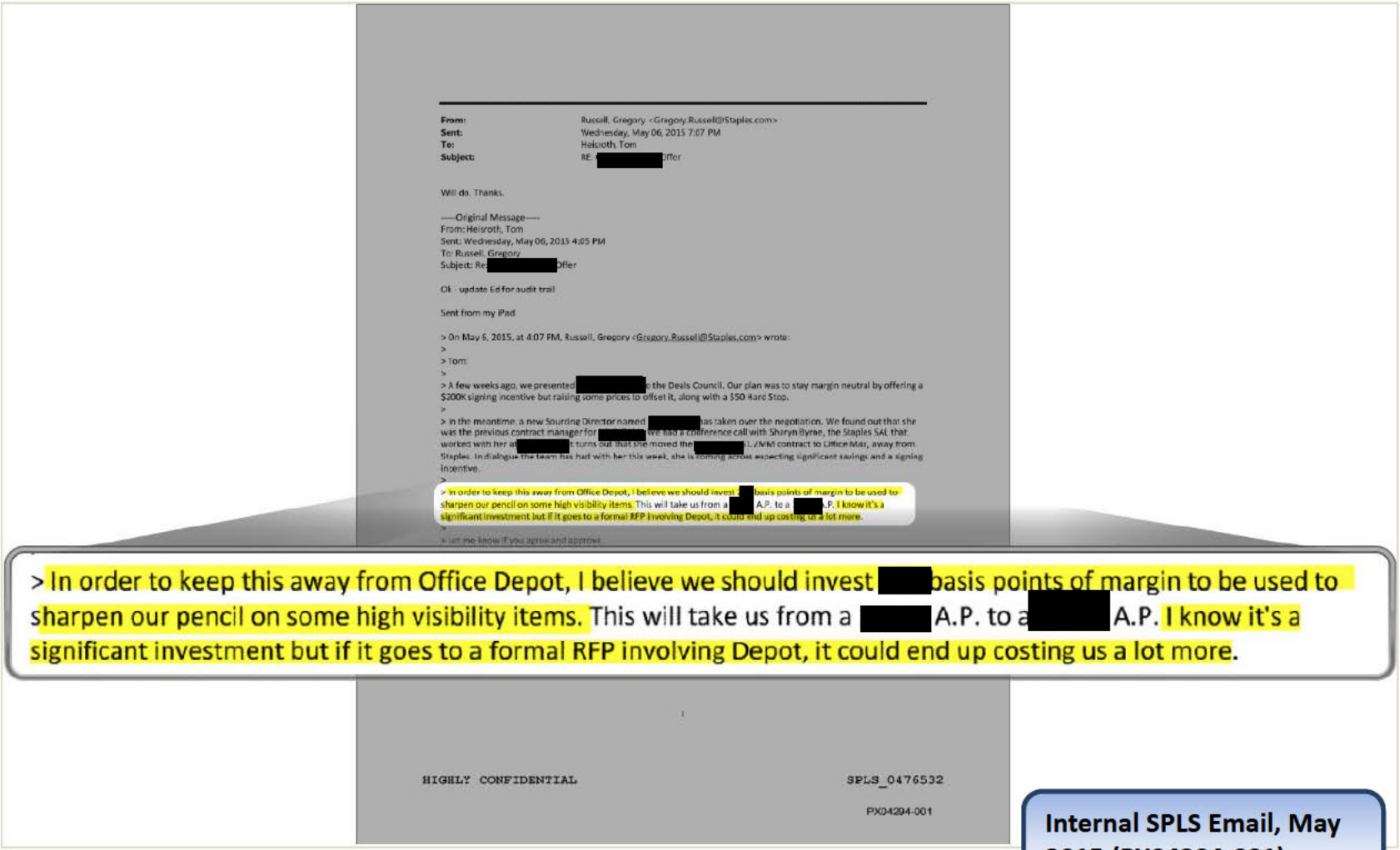
Internal ODP Email, Oct. 2013 (PX05155-002)

Staples and Office Depot Compete Fiercely Against Each Other



ODP Business Review, Aug. 2015 (PX05437-008)

Staples and Office Depot Compete Fiercely Against Each Other



From: Russell, Gregory <Gregory.Russell@Staples.com>
Sent: Wednesday, May 06, 2015 7:07 PM
To: Heiroth, Tom
Subject: RE: [redacted] Offer

Will do. Thanks.

—Original Message—
From: Heiroth, Tom
Sent: Wednesday, May 06, 2015 4:05 PM
To: Russell, Gregory
Subject: Re: [redacted] Offer

Ok - update Ed for audit trail

Sent from my iPad

> On May 6, 2015, at 4:07 PM, Russell, Gregory <Gregory.Russell@Staples.com> wrote:
>
> Tom:
>
> A few weeks ago, we presented [redacted] to the Deals Council. Our plan was to stay margin neutral by offering a $200K signing incentive but raising some prices to offset it, along with a $50 Hard Stop.
>
> In the meantime, a new Sourcing Director named [redacted] has taken over the negotiation. We found out that she was the previous contract manager for [redacted]. We had a conference call with Sharyn Byrne, the Staples SAL that worked with her at [redacted]. It turns out that she moved the [redacted] T/VM contract to Office Max, away from Staples. In dialogue the team has had with her this week, she is coming across expecting significant savings and a signing incentive.
>
> In order to keep this away from Office Depot, I believe we should invest [redacted] basis points of margin to be used to sharpen our pencil on some high visibility items. This will take us from a [redacted] A.P. to a [redacted] A.P. I know it's a significant investment but if it goes to a formal RFP involving Depot, it could end up costing us a lot more.
>
> Let me know if you agree and approve.

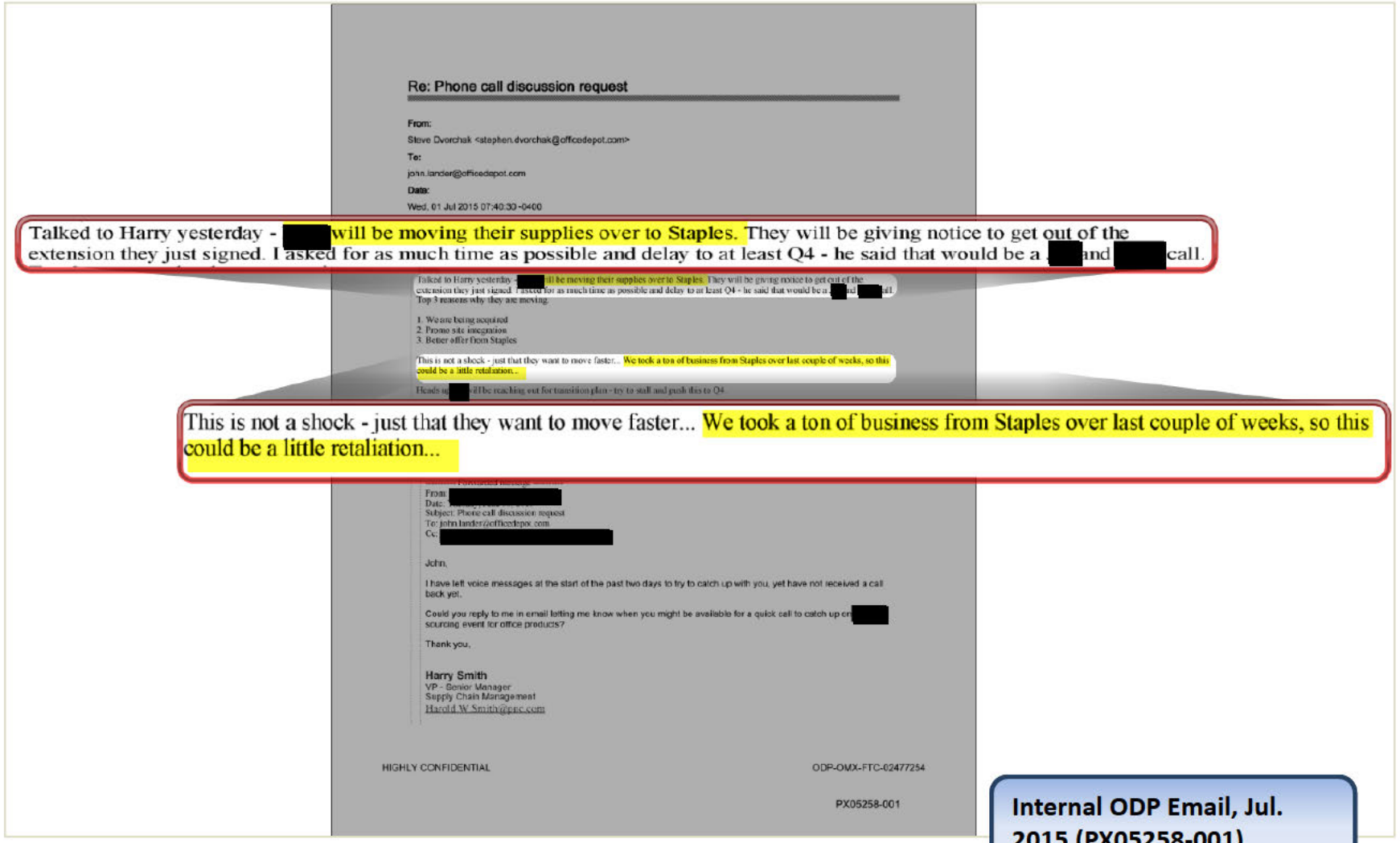
> In order to keep this away from Office Depot, I believe we should invest [redacted] basis points of margin to be used to sharpen our pencil on some high visibility items. This will take us from a [redacted] A.P. to a [redacted] A.P. I know it's a significant investment but if it goes to a formal RFP involving Depot, it could end up costing us a lot more.

HIGHLY CONFIDENTIAL SPLS_0476532

PX04294-001

Internal SPLS Email, May 2015 (PX04294-001)

Staples and Office Depot Compete Fiercely Against Each Other



Re: Phone call discussion request

From:
Steve Dvorchak <stephen.dvorchak@officedepot.com>
To:
john.lander@officedepot.com
Date:
Wed, 01 Jul 2015 07:40:33 -0400

Talked to Harry yesterday - [redacted] will be moving their supplies over to Staples. They will be giving notice to get out of the extension they just signed. I asked for as much time as possible and delay to at least Q4 - he said that would be a [redacted] and [redacted] call.

Top 3 reasons why they are moving:

1. We are being acquired
2. Promo site integration
3. Better offer from Staples

This is not a shock - just that they want to move faster... We took a ton of business from Staples over last couple of weeks, so this could be a little retaliation...

Heads u[redacted] will be reaching out for transition plan - try to stall and push this to Q4

From: [redacted]
Date:
Subject: Phone call discussion request
To: john.lander@officedepot.com
Cc: [redacted]

John,

I have left voice messages at the start of the past two days to try to catch up with you, yet have not received a call back yet.

Could you reply to me in email letting me know when you might be available for a quick call to catch up on [redacted] sourcing event for office products?

Thank you,

Harry Smith
VP - Senior Manager
Supply Chain Management
Harold.W.Smith@pnc.com

HIGHLY CONFIDENTIAL

ODP-OMX-FTC-02477254

PX05258-001

Internal ODP Email, Jul. 2015 (PX05258-001)

Staples and Office Depot Compete Fiercely Against Each Other

PX04064

This is in regards to a $7 Million opportunity where we are in a dog fight with Depot. We currently have $1 Million and stand to gain $6 Million due to [redacted]'s acquisition of [redacted]. Depot (Max) has the former [redacted] piece of business.

You approved us going in at about [redacted] Advantage.

We have an internal coach who is telling us we can likely secure this with an additional [redacted] volume rebate taking the Advantage to [redacted]. The SAL has known this [redacted] contact for many years and feels he is shooting us straight. I think it's the right move as the customer likely thinks it's simpler to go with Depot (Max) as they have the lion's share, so less business to implement. I think we've outsold Depot (Max), but unfortunately, the committee making the decision is being led by a [redacted] guy who is extremely hard cost driven.

Will you approve the additional [redacted] Volume Rebate and the new Advantage of [redacted]? I believe they are nearing a decision so would like to not wait for Friday's Council.

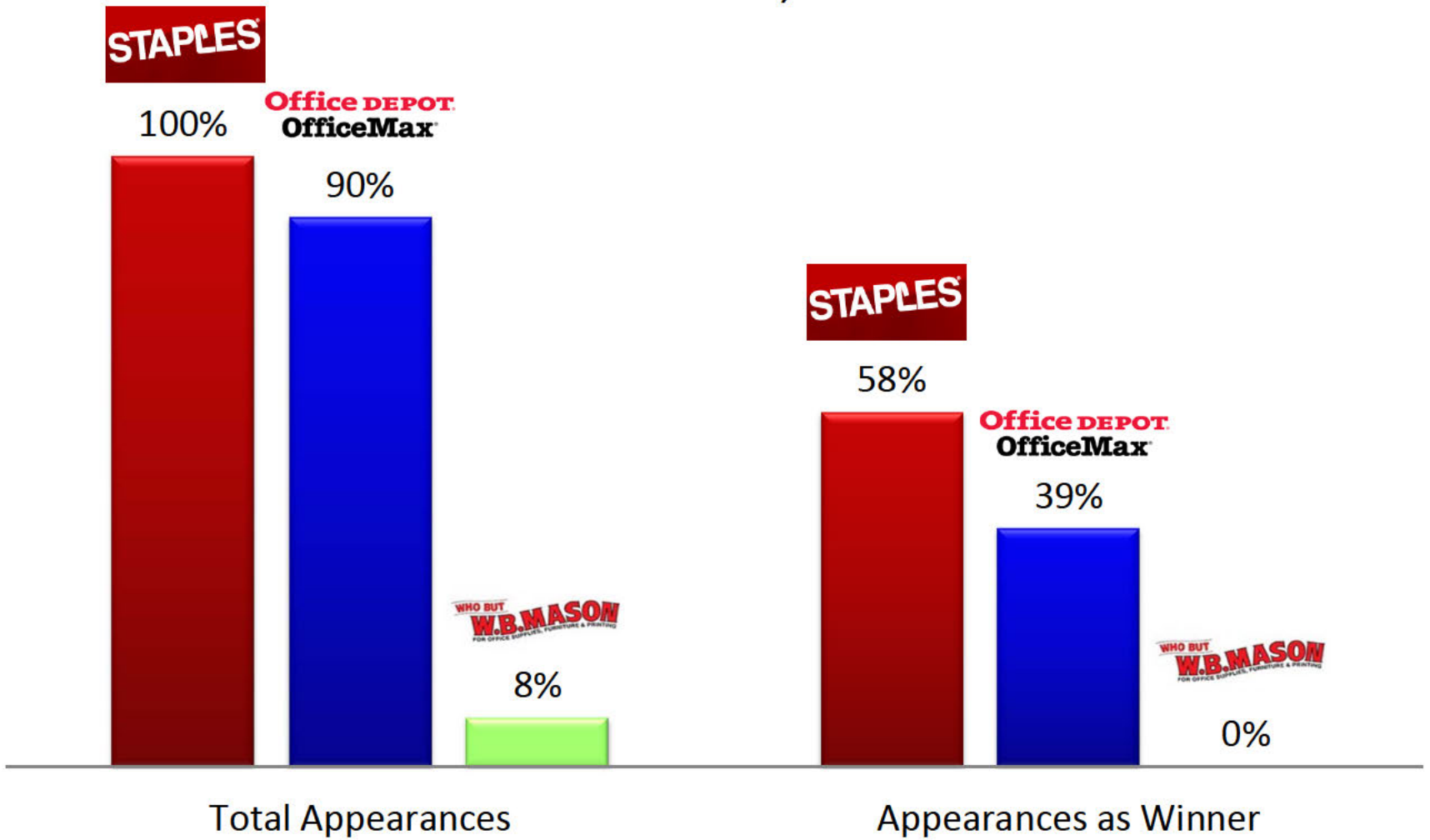
I'll approve this. But ODP is getting cheaper by the week.

Internal SPLS Email, Feb. 2015 (PX04064-001)

Staples and Office Depot Closest Competitors in Bidding Events

Bidder Appearances: Consumable Office Supplies Opportunities

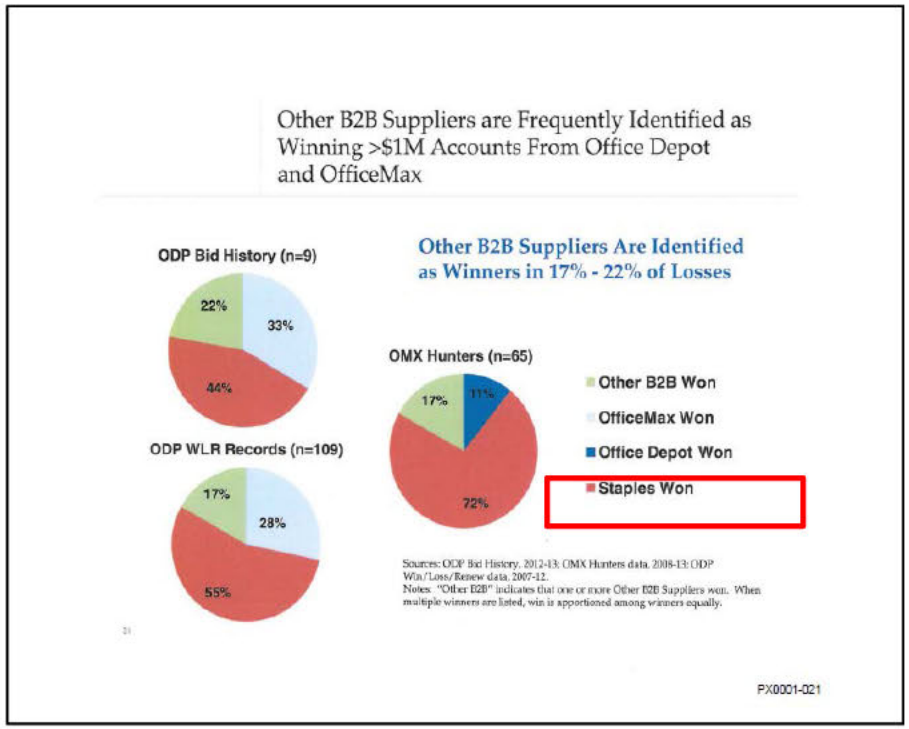
Fortune 100 Customers, 2012-2015



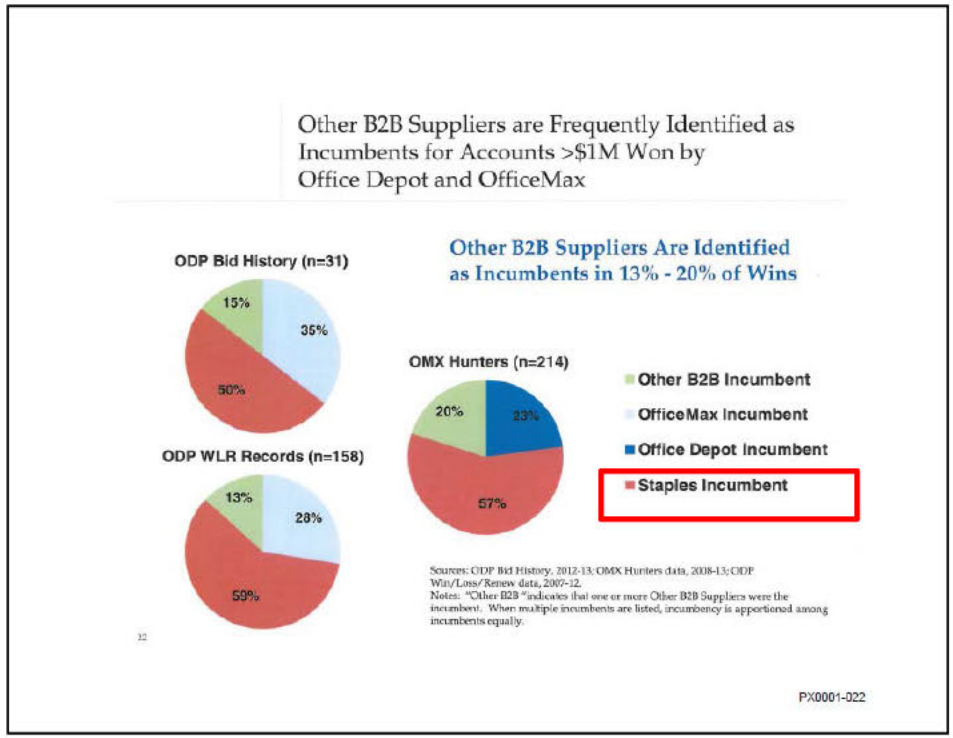
Source: Shapiro Reply Rpt. at Ex. R7A

Staples Was Office Depot's and OfficeMax's Closest Competitor Before the 2013 Merger

Office Depot and OfficeMax represented to the FTC that they were NOT each other's closest competitor



ODP & OMX Presentation to FTC, Sep. 2013 (PX0001-021-022)



The FTC Has a High Likelihood of Succeeding on the Merits

1. Plaintiffs' Prima Facie Case

- The Relevant Product Market is the Sale and Distribution of Consumable Office Supplies to Large Business Customers
- The Relevant Geographic Market is the United States
- The Merger Would Create Extraordinarily High Market Shares and Concentration
- Extensive Evidence Corroborates the Presumption

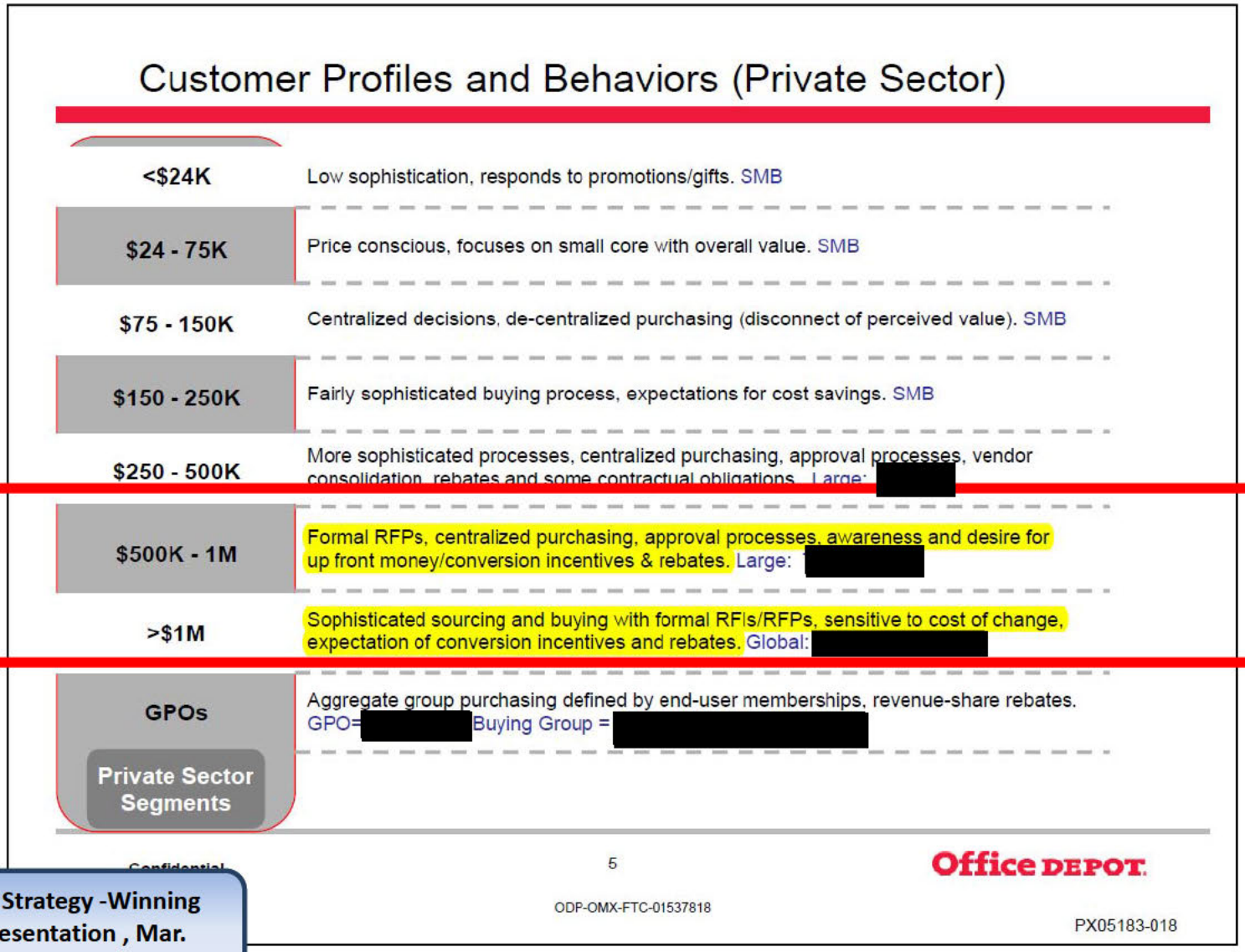
2. Defendants Fail to Rebut the Presumption

- Purported "Leakage" Does Not Rebut the Presumption
- The Commission's 2013 Statement Does Not Rebut the Presumption
- Entry and Expansion Would Not Be Timely, Likely, or Sufficient
- The Proposed "Fix" Is an Insufficient Remedy
- The Claimed Efficiencies Are Not Verifiable or Merger Specific

Plaintiffs Will Prove Their Prima Facie Case

- **The Relevant Product Market is the Sale and Distribution of Consumable Office Supplies to Large Business Customers in the United States**
  - **Cluster Market: group of products with largely the same competitive conditions, clustered together for analytical convenience**
  - **Targeted Customers: large business customers would be vulnerable to prices increases post-merger**
- **Geographic Market is the United States**
  - **Defendants' economic expert agrees**

Large Business Customers Are Distinct and Negotiate Individualized Pricing and Terms



Customer Profiles and Behaviors (Private Sector)

<$24K	Low sophistication, responds to promotions/gifts. SMB
$24 - 75K	Price conscious, focuses on small core with overall value. SMB
$75 - 150K	Centralized decisions, de-centralized purchasing (disconnect of perceived value). SMB
$150 - 250K	Fairly sophisticated buying process, expectations for cost savings. SMB
$250 - 500K	More sophisticated processes, centralized purchasing, approval processes, vendor consolidation, rebates and some contractual obligations. Large: [redacted]
$500K - 1M	Formal RFPs, centralized purchasing, approval processes, awareness and desire for up front money/conversion incentives & rebates. Large: [redacted]
>$1M	Sophisticated sourcing and buying with formal RFIs/RFPs, sensitive to cost of change, expectation of conversion incentives and rebates. Global: [redacted]
GPOs	Aggregate group purchasing defined by end-user memberships, revenue-share rebates. GPO= [redacted] Buying Group = [redacted]

Private Sector Segments

Confidential

5

Office DEPOT

ODP-OMX-FTC-01537818

PX05183-018

ODP Pricing Strategy -Winning Solutions Presentation , Mar. 2014 (PX05183-018)

Large Business Customers Require Online, Customized Catalogs, Integration with Customer's IT System

[redacted] Procurement of Office Supplies RFP 2015

[redacted]

PROCUREMENT OF OFFICE SUPPLIES
REQUEST FOR PROPOSAL (RFP)

Dated: August 26, 2015

Responses Must Be Received By
September 18, 2015

Send to:
[redacted]

[redacted]

[redacted] Page 1 of 32
Confidential Information

HIGHLY CONFIDENTIAL SPLS_4946148

a. **e-Commerce Web Site:**
Supplier must have an existing, fully operational Internet-based e-Commerce website (the "Website") capable of accepting and processing orders placed by designated [redacted] users. The Website shall be hosted, operated and maintained by the Supplier and at Suppliers sole cost and expense. Additional requirements regarding the Website are:

i. The Website must contain only [redacted] approved manufacturers products including, but not limited to, those contained in Exhibit A.

ii. All [redacted] designated non-approved product categories and/or specific items within a specific category, must be able to be blocked from viewing and purchase on the Website.

iii. Supplier is expected to make updates to the Website requested by [redacted] within one (1) business day to the extent practical. Any Supplier-initiated changes (i.e. functionality updates or scheduled maintenance intervals) to the e-commerce site must be communicated to the [redacted] Purchasing Administrator.

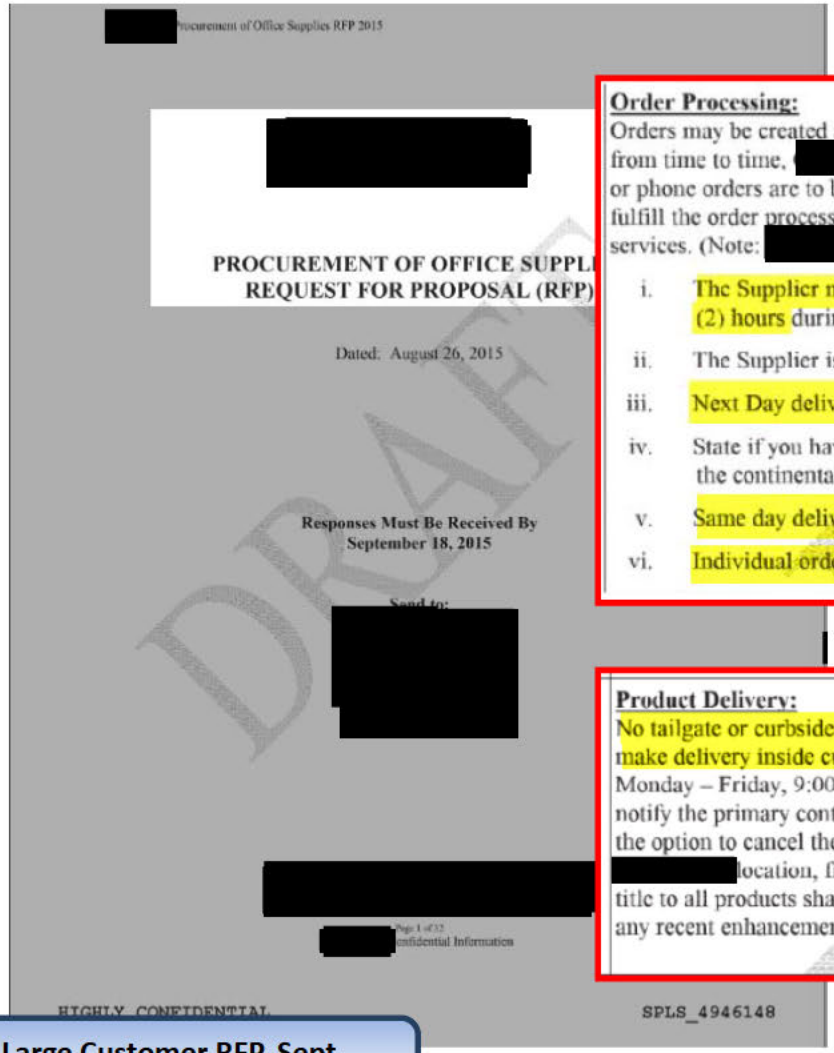
iv. The [redacted] Purchasing Administrator must be able to completely manage the [redacted] user base and have the capability to add/delete users, update user account information including, but not limited to, editing user information, approval limits, ship-to addresses, additional approvers, charge codes, etc.

v. Validated users shall have the ability to create, modify and save orders that are electronically routed for approval.

vi. The Website shall provide for individual order routing and an approval hierarchy for each user as determined by [redacted] and such approval hierarchy shall provide for a minimum of three (3) order

Large Customer RFP, Sept. 2015 (PX04783-010)

Large Business Customers Have Demanding Delivery Requirements



[redacted] Procurement of Office Supplies RFP 2015

[redacted]

PROCUREMENT OF OFFICE SUPPL
REQUEST FOR PROPOSAL (RFP)

Dated: August 26, 2015

Responses Must Be Received By
September 18, 2015

Send to:
[redacted]

[redacted]

[redacted] Page 1 of 32
Confidential Information

HIGHLY CONFIDENTIAL

SPLS_4946148

Order Processing:

Orders may be created and submitted by designated users from each [redacted] affiliate via Suppliers Website or from time to time, [redacted] may submit Purchase Orders via email or fax for fulfillment by Supplier. No verbal or phone orders are to be permitted. Each [redacted] affiliate may have separate and distinct requirements to fulfill the order process. Detail your company's ability to facilitate the ordering process by providing the following services. (Note: [redacted] will not accept extra charges for orders designated as "rush").

i. The Supplier must be able to process order status updates, shipment information and new orders within two (2) hours during normal business hours.

ii. The Supplier is expected to provide toll free phone support during normal business hours.

iii. Next Day delivery is required for orders placed by 5pm in the time zone of the affiliate placing the order.

iv. State if you have any limitation (geographical or otherwise) on your ability to meet this SLA anywhere in the continental United States.

v. Same day delivery capabilities for emergency requirements.

vi. Individual orders must be packaged and addressed for delivery to a specific person.

Product Delivery:

No tailgate or curbside deliveries will be permitted. Shipment must arrive at destination with proper equipment to make delivery inside customers building. Unless other arrangements have been made, deliveries will be accepted Monday – Friday, 9:00 a.m. – 4:00 p.m. (in the time zone of the affiliate placing the order) only. Supplier shall notify the primary contact at [redacted] should any delays occur. The [redacted] user placing the order will have the option to cancel the order if they are unable to accept the delay. All deliveries shall be FOB Destination [redacted] location, freight Paid. Except for items with hidden defects or items that do not meet specifications, title to all products shall pass to [redacted] upon acceptance and delivery at the designated delivery point. Describe any recent enhancements to your delivery service.

Large Customer RFP, Sept. 2015 (PX04783-011-012)

Large Business Customers Require Individualized Pricing and Incentives

[redacted]curement of Office Supplies RFP 2015

[redacted]

PROCUREMENT OF OFFICE SUPPLIES
REQUEST FOR PROPOSAL (RFP)

Dated: Augus

Responses Must B
September

[redacted]

[redacted]

[redacted] Page 1 of
Confiden

HIGHLY CONFIDENTIAL SPLS_4946148

o. Payment Terms & Incentives:

a) **Large Online Order Credit.** Respondent shall provide a two percent (2%) credit applied at the time of order processing for any single order placed via Respondents E-commerce platform totaling over $300.00, which credit will be shown on the original invoice.

b) **Prompt Pay Discounts.** [redacted] will receive a two percent (2%) prompt payment discount for payments made within ten (10) calendar days of [redacted] receipt of invoice ("Prompt Pay Discount"). [redacted] will not receive a Prompt Payment Discount for payments made by [redacted] with a procurement, debit, or credit card; or with cash at Respondents retail stores. Payment terms will be two percent (2%) 10, net 45 days.

c) **Annual Purchase Volume Rebate.** During the Initial Term (twelve (12) months) beginning on the Effective Date of the resulting agreement and for any and each Renewal Term(s) (each a "Term"), if [redacted] net annual purchase total exceeds the Annual Spend milestones in the following table for a Term, then Respondent shall accordingly provide an Annual Purchase Volume Rebate to [redacted] calculated at the percentage listed in the following table. A "Purchase" means a Product ordered by and delivered to [redacted] during a Term, excluding any Product that is returned to Respondent. Purchase price for a Product shall be net any manufacturer rebates, incentives, etc. The Annual Spend amounts shall reset at the end of each Term and the Annual Purchase Volume Rebate shall be calculated and paid no later than fourteen (14) calendar days after the end of each Term (the

Large Customer RFP, Sept. 2015 (PX04783-013)

Plaintiffs Will Prove Their Prima Facie Case

- **The Merger Would Create Extraordinarily High Market Shares and Concentration**
  - **Staples and Office Depot combined would control 79% of the relevant market**
  - **Post-merger market would be highly concentrated**

Courts Have Routinely Enjoined Mergers with Shares Far Lower Than Those in the Present Case

Case	Combined Share	HHI Increase	Post-Merger HHI	Holding
Phila. Nat'l Bank (S. Ct. 1963)	30%	N/A	N/A	Enjoined
PPG Industries (D.D.C. 1986)	53%	1,352	3,295	Enjoined
Cardinal Health (D.D.C. 1998)	37.2% 39.9%	1,431	3,079	Enjoined
Swedish Match (D.D.C. 2000)	60%	1,514	4,733	Enjoined
Heinz (D.C. Cir. 2001)	32.8%	510	5,285	Enjoined
CCC Holdings (D.D.C. 2009)	70% 65%	2,035 545	5,685 5,460	Enjoined
H&R Block (D.D.C. 2011)	28.4%	400	4,691	Enjoined
Sysco/US Foods (D.D.C. 2015)	75%	2,800	5,836	Enjoined
Combined Staples/Office Depot	**79%**	**2,994**	**6,265**	**TBD**

The Defendants Cannot Rebut the Presumption

- **Purported "Leakage" Does Not Rebut the Presumption**
- **The Commission's 2013 Statement Does Not Rebut the Presumption**
- **Entry and Expansion Would Not Be Timely, Likely, or Sufficient**
  - **Existing alternative vendors are not meaningful competitors for large business customers**
  - **Entry or expansion by regional and local suppliers or consortia is unlikely**
  - **Expansion by Amazon is unlikely anytime soon**
- **The Proposed "Fix" Is an Insufficient Remedy**
- **The Claimed Efficiencies Are Not Verifiable or Merger Specific**

Purported "Leakage" Does Not Rebut the Presumption

- **Contracts are important to customers**
  - **Customers invest significant resources**
  - **Office supplies vendors invest significant resources**
- **Contracts include monetary incentives to incent customers to buy on the contract**

Purported "Leakage" Does Not Rebut the Presumption

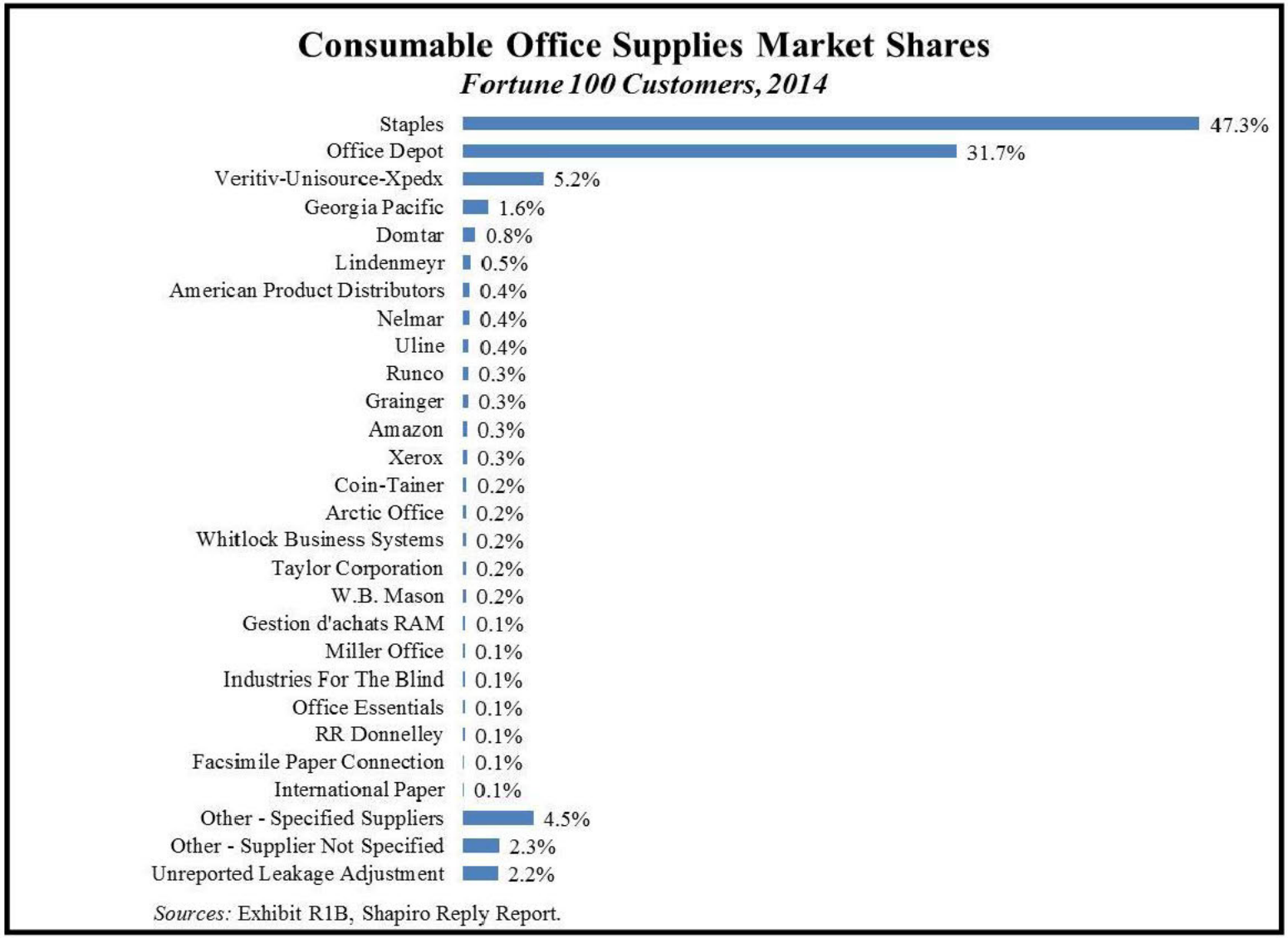
[redacted]

The Commission's 2013 Statement Does Not Rebut the Presumption

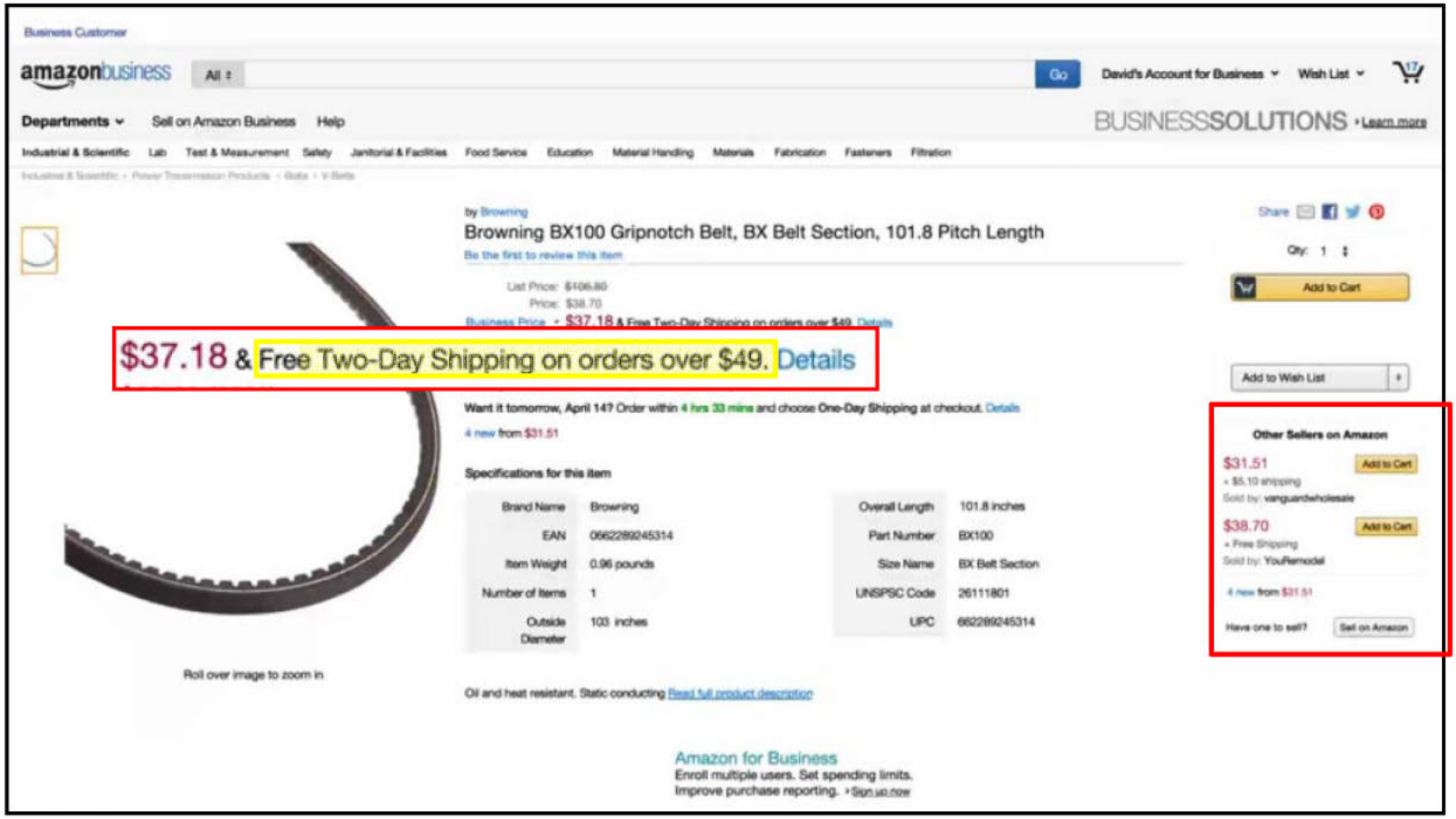
- **Staples was Office Depot's and OfficeMax's closest competitor before the 2013 merger**
- **In 2013, large business customers were neutral or even in favor of the Office Depot/OfficeMax merger**
  - **". . . there was little concern from contract customers about the proposed merger, and even the largest customers believe the merger would be either pro competitive or competitively neutral."**
- **Competitive alternatives today cannot replace the competition lost in this deal**
  - **In 2013, the Commission found ". . . the parties will continue to face strong competition for [large contract] customers from Staples and a host of non-OSS competitors, such as W.B. Mason Co., Inc."**
  - **The presence of Staples was critical. The Commission did not consider whether other alternatives could restrain a combined Staples/Office Depot**

Source: Statement of the Fed. Trade Comm'n Concerning the Proposed Merger of Office Depot, Inc. and OfficeMax, Inc. FTC File No. 131-0104 (Nov. 1, 2013)

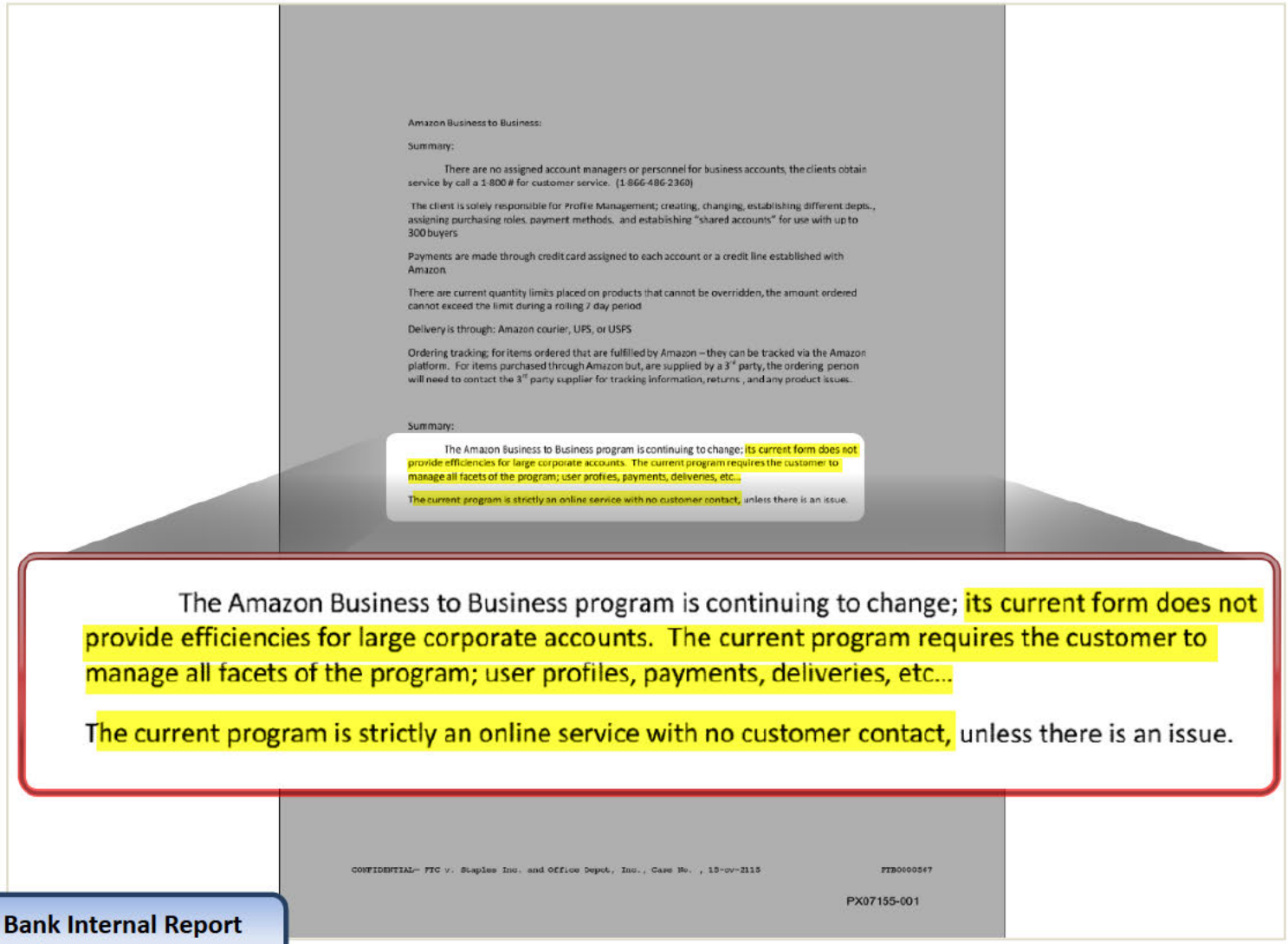
Entry and Expansion Would Not Be Timely, Likely, or Sufficient



Expansion by Amazon Will Not Be Timely, Likely, or Sufficient



Large Business Customers Do Not View Amazon as a Viable Option



Amazon Business to Business:

Summary:

There are no assigned account managers or personnel for business accounts, the clients obtain service by call a 1-800 # for customer service. (1-866-486-2360)

The client is solely responsible for Profile Management; creating, changing, establishing different depts., assigning purchasing roles, payment methods, and establishing "shared accounts" for use with up to 300 buyers

Payments are made through credit card assigned to each account or a credit line established with Amazon

There are current quantity limits placed on products that cannot be overridden, the amount ordered cannot exceed the limit during a rolling 7 day period

Delivery is through: Amazon courier, UPS, or USPS

Ordering tracking; for items ordered that are fulfilled by Amazon – they can be tracked via the Amazon platform. For items purchased through Amazon but, are supplied by a 3rd party, the ordering person will need to contact the 3rd party supplier for tracking information, returns , and any product issues.

Summary:

The Amazon Business to Business program is continuing to change; its current form does not provide efficiencies for large corporate accounts. The current program requires the customer to manage all facets of the program; user profiles, payments, deliveries, etc...

The current program is strictly an online service with no customer contact, unless there is an issue.

The Amazon Business to Business program is continuing to change; its current form does not provide efficiencies for large corporate accounts. The current program requires the customer to manage all facets of the program; user profiles, payments, deliveries, etc...

The current program is strictly an online service with no customer contact, unless there is an issue.

Fifth Third Bank Internal Report (PX07155-001)

The Proposed "Fix" Is Insufficient as a Remedy

Capabilities Assessment: Summary

With this transaction, Essendant will have all the necessary elements to Fully Develop a World Class Enterprise Account Solution

Capability	Current Capability	Capability Enabled by Transaction	Future Steady State
Fulfillment Platform			
Inventory			
Marketing			
Merchandising/COGS			
Last Mile (Courier)			
Sales, Care & Shared Services			
eCommerce			

ESSENDANT™

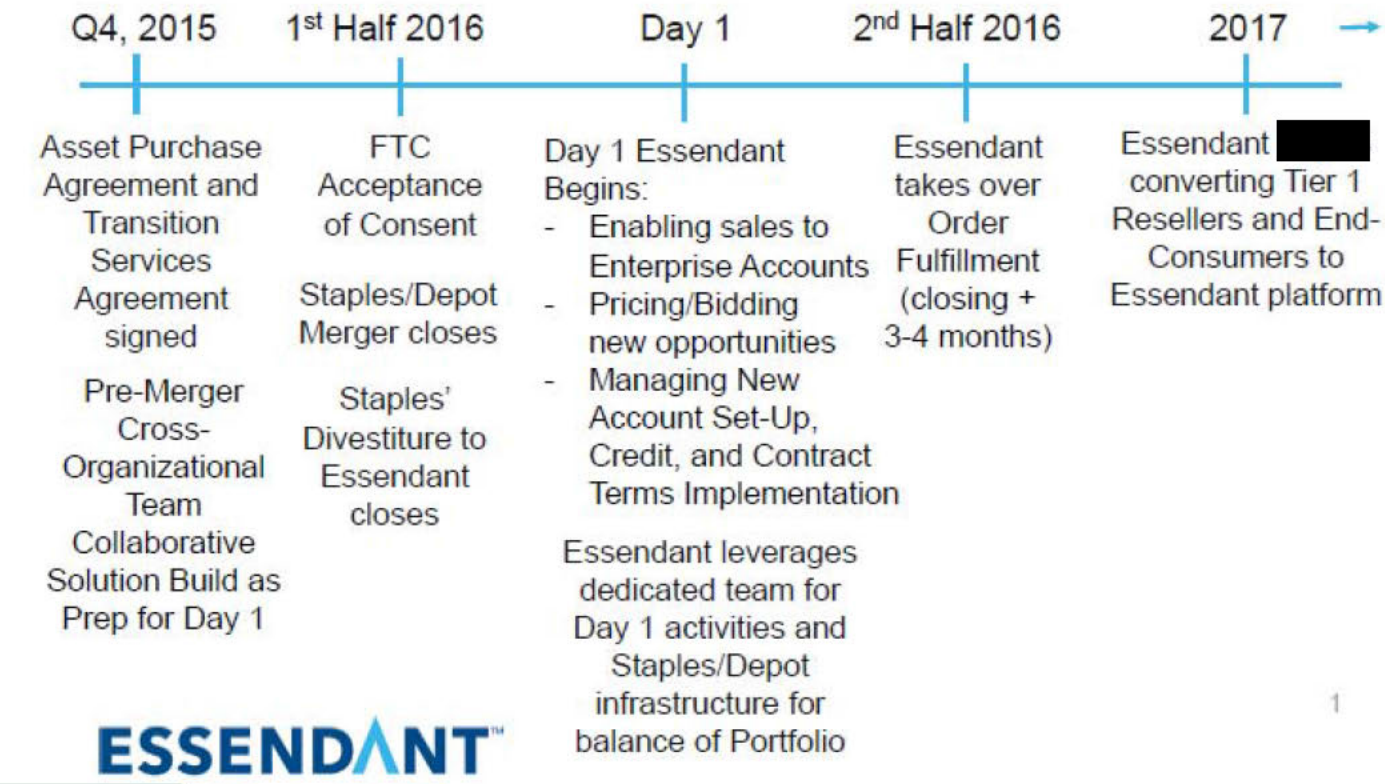
= Full Capability

PX07017-022

Essendant Presentation to FTC (PX07017-022)

The Proposed "Fix" Is Insufficient as a Remedy

Timeline: Transition Plan



Essendant Presentation to FTC (PX07068-002)

Significant Portions of Claimed Efficiencies Are Not Cognizable, Because Not Merger-Specific and Not Verifiable

- **"Extraordinary efficiencies" would be required to salvage an otherwise anticompetitive merger.** *FTC v. HJ Heinz Co.*, 246 F.3d 708, 720 (D.C. Cir. 2001)
- **To be credited, efficiencies must be merger-specific and verifiable.**
  - **Savings would not be realized without the merger.**
  - **Specifics verifiable by independent source.**
- **Defendants' efficiencies expert failed to assess merger specificity or verifiability of nearly 60% of the claimed $1 billion in efficiencies.**

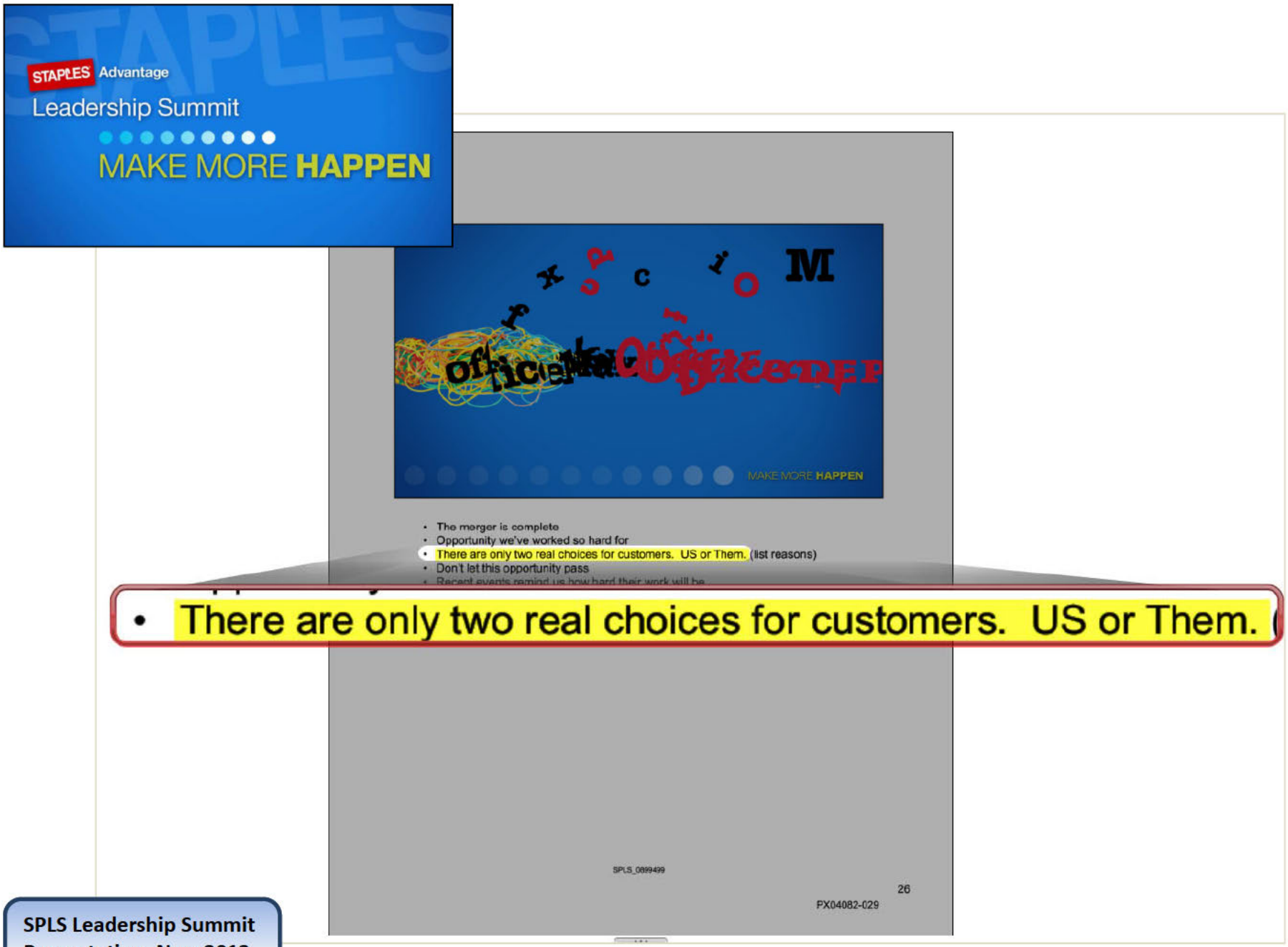
Significant Portions of Claimed Efficiencies Are Not Cognizable, Because Not Merger-Specific and Not Verifiable

"I think we announced a billion of net synergies, and those are divided into four or five different bucketed areas. Those are guesstimates..."

– IH Testimony of Staples CEO, Ron Sargent

Plaintiffs Will Prove Their Prima Facie Case

- **The Relevant Product Market is the Sale and Distribution of Consumable Office Supplies to Large Business Customers in the United States**
- **Geographic Market is the United States**
- **The Merger Would Create Extraordinarily High Market Shares and Concentration**
- **Extensive Evidence Corroborates the Presumption**



SPLS Leadership Summit Presentation, Nov. 2013 (PX04082-029)