Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

February 25, 2019

Re: In the Matter of Staples/Essendant, Inc., File No. 1810180

The Institute for Local Self-Reliance (ILSR), a public interest research and advocacy organization founded in 1974, is pleased to submit these comments in connection with the Federal Trade Commission (FTC)'s recent 3-2 decision to approve the merger between Staples and Essendant. In this matter, ILSR agrees with Commissioners Rebecca Kelly Slaughter and Rohit Chopra that this merger will likely harm competition and should not have been approved. ILSR's specific concerns are as follows:

- **This merger creates a clear conflict-of-interest by handing control of Essendant, one of just two wholesalers that supply independent office products dealers, to one of their biggest competitors, Staples.** Independent dealers comprise a significant and important share of this industry and provide distinct benefits to consumers, especially mid-sized businesses and government agencies, but their future ability to compete is endangered by this merger.

- **The FTC's proposed firewall is insufficient to address this conflict-of-interest and its anticompetitive impact.** Essendant is privy to the details of independent dealers' bids on competitive contracts, including pricing and terms. Staples competes with independent dealers for these same contracts. Giving Staples control of Essendant gives them the means to foreclose their rivals. Given the stakes, the FTC's proposed "firewall" is insufficient. There is no feasible way to prevent the verbal sharing of key competitive details between Staples and Essendant. Mergers that pose deep and fundamental harms to competition, such as this one, should be blocked outright, rather than approved with flimsy remedies that do not fix the harms.

- **Staples has a strong incentive to raise Essendant's wholesale prices to independent dealers in a bid to undermine their ability to compete for mid-market and government contracts, and shift that market share to Staples' own commercial division.**

- **The majority's conclusion that this will not happen on the grounds that Staples is not and has no intention of becoming a significant player in "the downstream market for mid-sized businesses"[1] is inaccurate and ignores much reporting to the contrary.** Since at least 2014, Staples has been making an explicit pivot away from consumer retail sales to focus on the business market.[2] As *Bloomberg* reported in 2017, "Staples Inc. is overhauling its marketing as part of a high-stakes pivot away from what it was built on—selling low-priced office supplies at

1 "Statement of Chairman Joseph J. Simons, Commissioner Noah Joshua Phillips, and Commissioner Christine S. Wilson In the Matter of Sycamore Partners II, L.P., Staples, Inc. and Essendant Inc.," FTC, Jan. 28, 2019.
2 "Staples to close 225 stores in U.S. and Canada by 2015," *Washington Post*, Mar. 6, 2014.

big stores—and toward a stronger focus on selling a wide range of products and services to businesses."[3]

- **Independent office dealers cannot easily switch to the other wholesaler, S.P. Richards, and this is not a viable way to prevent anti-competitive conduct by Sycamore/Essendant.** Switching costs are high, S.P. Richards is not active in all regions of the country, and the wholesaler can absorb only so many independent dealers at a time. If Essendant raises prices or otherwise engages in conduct that harms independent dealers, these businesses have no leverage in negotiating with S.P. Richards. This in turn could reduce discounts to independents, raising independents' prices, thus further advantaging Staples.

- **In effect, the FTC has consigned independent dealers to relying on a supply chain in which one wholesaler is owned by a competitor that has a strong incentive to raises prices and the other gains monopoly leverage as a result**. Given the capital requirements and other hurdles, It is unlikely that a new wholesaler will form in this industry, as the FTC's majority notes in its decision. Moreover, this merger opens the way for Office Depot to buy S.P. Richards, which would leave independent dealers entirely dependent on two corporations that also compete with them. A "firewall" overseen by a monitor is utterly insufficient to address an underlying industry structure that is detrimental to competition.

- **The FTC approved this deal without considering the serious risk to competition posed by Sycamore Partners' ownership of Essendant**. According to the *Wall Street Journal*, Sycamore "often buys struggling retailers and sells off their most valuable pieces." [4] A recent study by Retail Dive found more than 15 percent of retailers acquired by private equity firms over the past 15 years have filed for bankruptcy.[5] Without probing Sycamore's intentions, and the very real risk that it will similarly disassemble Essendant post-merger, the FTC cannot reasonably predict how this merger will impact competition.

- **This merger will harm office products consumers, especially mid-market companies and public agencies, and will harm the economy.** Independent office dealers provide distinct benefits to consumers that are not replicated by Staples, Office Depot, and Amazon. They provide a high level of customer service and customization, and often deliver lower prices.[6] These firms can and do outcompete their bigger rivals in key segments of the market. Their decline, triggered by this merger, would negatively affect consumers. It will negatively affect the local economies that these dealers contribute to. In disregarding the particular ways that independent businesses benefit competition, consumers, innovation, and the broader economy, the FTC is failing to fulfill its charge from Congress, to safeguard competition.

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3 "Staples Revamps Marketing in Bid to Shed Retail-Industry Baggage," *Bloomberg*, May 3, 2017.
4 "How One Investor Made a Fortune Picking Over the Retail Apocalypse," *Wall Street Journal*, Mar. 21, 2018.
5 "Is the road to bankruptcy paved by private equity?," *RetailDive*, Nov. 9, 2018.
6 "Amazon Business Pricing Comparison," OPSoftware, LLC, Jul. 10, 2018.

- **The FTC's approval of this merger will accelerate Amazon's rapid consolidation of the office supply market by undermining the ability of independent dealers to compete.** Compared to Staples and Office Depot, independent dealers offer a service that is much more differentiated from Amazon's, putting them in a better position than the chains to offer consumers a viable, competing alternative to Amazon Business. Many mid-sized companies and government agencies value the service of independent dealers and their success in winning contracts is evidence of their ability to compete on price. This merger, by destabilizing the independents' supply chain, and likely raising their costs, puts these dealers at risk and will help Amazon dominate yet another industry. The FTC's ongoing disregard of Amazon's growing market power and impact on competition, in this sector and others, is deeply concerning. For example, the FTC has apparently chosen to ignore Amazon's use of anticompetitive terms in its office supply contracts with local governments.[7] These terms are helping Amazon foreclose competition from independent office supply dealers.

Thank you for your consideration of these comments. ILSR believes this merger poses such significant anti-competitive harms that it should be unwound. At the very least the FTC should impose much more stringent oversight of the firewall, including clarifying that independent dealers own the data Essendant has about them, and the FTC should commit itself in the final agreement to taking prompt action, including unwinding the merger, should Sycamore Partners engage in anticompetitive conduct or begin to disassemble and sell off parts of Essendant, as it has with other acquisitions, leaving the company no longer a viable wholesaler.

Sincerely,

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7 "Amazon's Next Frontier: Your City's Purchasing," Institute for Local Self-Reliance, Jul. 2018.