

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

FEDERAL TRADE COMMISSION )  
 )  
 ) Plaintiff, )  
 v. )  
 )  
 STERIS CORPORATION )  
 )  
 and )  
 )  
 SYNERGY HEALTH PLC )  
 )  
 ) Defendants. )

No. \_\_\_\_-cv-\_\_\_\_

**FILED UNDER SEAL**

**MEMORANDUM IN SUPPORT OF PLAINTIFF  
FEDERAL TRADE COMMISSION'S MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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\*Authorities principally relied upon are denoted with an asterisk.

INTRODUCTION

The Federal Trade Commission (“FTC”) asks this Court to grant a temporary restraining order (“TRO”) and preliminary injunction (“injunction”) to prevent STERIS Corporation (“Steris”), a major U.S. sterilization company, from acquiring its competitor, Synergy Health plc (“Synergy”). Without court-imposed relief, Steris will eliminate a major threat and maintain its position as one of two dominant radiation sterilization providers in the United States. Consummation of the acquisition would deny customers the benefits of increased competition before the FTC has had the opportunity to exercise its statutory duty to hold an administrative proceeding on the merits and determine whether the proposed merger is illegal.

At the time the acquisition was announced, Synergy, a U.K. company, was poised to enter the United States with [REDACTED], x-ray sterilization, that could be used to sterilize medical devices and other healthcare products that currently rely on gamma sterilization. Sterilization is a critical part of the manufacturing process, particularly for medical devices and other similar products, and provides the last line of defense against contamination before products are distributed to end-users. Currently, there are only two U.S. suppliers of gamma sterilization services: Steris and Sterigenics International, Inc. (“Sterigenics”). These two firms, through their respective gamma businesses, are dominant—they account for at least [REDACTED] of all U.S. contract radiation sterilization services. Synergy’s goal was to [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]. As a direct substitute for gamma, Synergy viewed x-ray as a [REDACTED]

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<sup>1</sup> PX 112-037.  
<sup>2</sup> PX 544-004.  
<sup>3</sup> PX 275-003.



### STATEMENT OF FACTS

Many manufacturers, including those that make medical devices and other healthcare products, require sterilization to kill microorganisms living on or within their products.<sup>11</sup> Only a small number sterilize any portion of their products themselves; the bulk of sterilization is contracted to suppliers like Steris and Synergy.<sup>12</sup> Three primary methods of sterilization are used in the United States today: gamma radiation, electron-beam (“e-beam”) radiation, and ethylene oxide (“EO”) gas.<sup>13</sup> Customers choose sterilization methods based on their products’ physical characteristics and packaging, the volume requiring sterilization, and the capabilities of each method.<sup>14</sup> Gamma sterilization is the most effective and economical option for many products because of its penetration capabilities. It is the only viable option for many dense products, such as implantable medical devices, and products with heterogeneous density, such as those packaged in large quantities.<sup>15</sup> Other methods are not viable alternatives for these products. Although e-beam sterilization has been available for over thirty years, it still represents only [REDACTED] of all contract radiation sterilization sales because gamma is the best option for the vast majority of products.<sup>16</sup> EO sterilization, which relies on toxic gas, is not a meaningful alternative for many types of products and packaging.<sup>17</sup>

Steris, with twelve gamma facilities across the country, is one of only two U.S. providers of contract gamma sterilization services.<sup>18</sup> Sterigenics, the other gamma provider, operates

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<sup>11</sup> See, e.g., PX 601 ¶3; PX 605 ¶3; PX 609 ¶¶4-5; PX 610 ¶3; PX 611 ¶3; PX 617 ¶3.

<sup>12</sup> PX 607 ¶19; PX 601 ¶¶14-15; PX 614 ¶14; PX 617 ¶10; PX 710 at 175-180; PX 860-001; PX 366-013.

<sup>13</sup> See PX 607 ¶3; PX 614 ¶6; PX 617 ¶4; PX 601 ¶¶4-5; PX 819-004.

<sup>14</sup> See, e.g., PX 890-024; PX 601 ¶4; PX 607 ¶3; PX 615 ¶8.

<sup>15</sup> See, e.g., PX 601 ¶6; PX 610 ¶5; PX 614 ¶7; PX 617 ¶7; PX 91-003; PX 713 at 49.

<sup>16</sup> PX 902-002; PX 854-007; PX 716 at 50; PX 709 at 129-130.

<sup>17</sup> PX 902-002; PX 115; PX 614 ¶13; PX 605 ¶12; PX 607 ¶¶4-6; PX 601 ¶12; PX 617 ¶6; PX 713 at 47-48; PX 711 at 65-67.

<sup>18</sup> PX 854-003. Steris does not currently offer any e-beam services, [REDACTED]. *Id.*

fourteen U.S. gamma facilities and two U.S. e-beam facilities.<sup>19</sup> Synergy is [REDACTED] provider of e-beam services in the United States, and the [REDACTED] sterilization provider in the world with almost three dozen gamma plants outside the United States.<sup>20</sup>

X-ray is a close competitive alternative to gamma because it has comparable, and possibly superior, depth of penetration and turnaround times.<sup>21</sup> These are the very attributes that led Synergy's founder and CEO, Richard Steeves, to [REDACTED].<sup>22</sup> Synergy operates an x-ray facility in Däniken, Switzerland<sup>23</sup> and [REDACTED]

[REDACTED] [REDACTED]  
[REDACTED] The expansion [REDACTED]  
[REDACTED] By early October 2014, Synergy's Senior Executive Board ("SEB") had [REDACTED]

[REDACTED]  
[REDACTED] Synergy had also [REDACTED]  
[REDACTED]<sup>27</sup> and negotiated a [REDACTED] agreement with [REDACTED]. From October 7-9, Synergy held a [REDACTED]

<sup>19</sup> PX 607 ¶1. Sterigenics is the second-largest U.S. e-beam supplier.

<sup>20</sup> PX 895-004, 009; *see also* PX 819-004.

<sup>21</sup> *See* PX 391-028-029; PX 131-009; PX 155-016; PX 275-007, 055; PX 819-017-018; PX 603 ¶9; PX 601 ¶16; PX 709 at 76-78; PX 716 at 90-96.

<sup>22</sup> PX 102-001-002; PX 95-002.

<sup>23</sup> PX 708 at 22-23; *see also* PX 423-003.

<sup>24</sup> PX 819-006; *see also* PX 194-003.

<sup>25</sup> PX 94-038.

<sup>26</sup> PX 221-001; PX 574-002, 010; PX 194-002, 005; PX-0819-020-021; PX 715 at 129-130; PX 859. [REDACTED]

[REDACTED]  
[REDACTED] PX 704 at 32-36.

<sup>27</sup> *See, e.g.*, PX 880; PX 923; PX 328-002; PX 134-004; PX 128; PX 153-002; PX 571-005; PX 110-001.

<sup>28</sup> [REDACTED]  
[REDACTED] *See* PX 859; PX 580-004; PX 603 ¶16.



probabilities, not certainties.”<sup>35</sup> The Court’s inquiry involves an assessment of both the immediate impact of the acquisition as well as a “prediction of its impact upon competitive conditions in the future,” as Section 7 is “intended to arrest anticompetitive tendencies in their ‘incipiency.’”<sup>36</sup> Thus, “certainty, even a high probability, need not be shown,” and any “doubts are to be resolved against the transaction.”<sup>37</sup> Courts typically assess whether a merger violates Section 7 by determining the relevant product market, the relevant geographic market, and the merger’s probable effect on competition in those relevant markets.<sup>38</sup>

Absent the acquisition, Synergy’s imminent entry with x-ray would have resulted in substantial procompetitive benefits. The “actual potential entrant” doctrine specifically addresses this type of situation: where a potential entrant merges with a firm already competing in the market and the effect lessens future competition.<sup>39</sup> Here, Synergy is a current e-beam provider in the United States and, absent the acquisition, it would have entered the U.S. with x-ray to compete directly with gamma. The acquisition of an actual potential competitor violates Section 7 if: (1) the relevant market is highly concentrated; (2) the competitor “probably” would have entered the market; (3) its entry would have had pro-competitive effects; and (4) there are few other firms that can enter effectively.<sup>40</sup>

<sup>35</sup> *ProMedica Health Sys.*, 2011 WL 1219281, at \*52 (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 323 (1962) (emphasis in original)).

<sup>36</sup> *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 362 (1963) (citing *Brown Shoe*, 370 U.S. at 317, 322).

<sup>37</sup> *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 906 (7th Cir. 1989); see also *Brown Shoe*, 370 U.S. at 323.

<sup>38</sup> See *United States v. Marine Bancorp.*, 418 U.S. 602, 618-23 (1974); see also *U.S. Steel Corp. v. FTC*, 426 F.2d 592, 595-96 (6th Cir. 1970). Courts often rely on the Merger Guidelines framework to assess how acquisitions impact competition. PX 901 (*U.S. Dep’t of Justice & FTC Horizontal Merger Guidelines* (2010) (*Merger Guidelines*)); see, e.g., *ProMedica Health Sys., Inc. v. FTC*, 749 F.3d 559, 565 (6th Cir. 2014); *Bass Bros.*, 1984 WL 355, at \*24.

<sup>39</sup> See *Marine Bancorp.*, 418 U.S. at 624-26; *United States v. Falstaff Brewing Corp.*, 410 U.S. 526, 56-61 (1973); *Yamaha Motor Co. v. FTC*, 657 F.2d 971, 977 (8th Cir. 1981); *United States v. Phillips Petroleum Co.*, 367 F. Supp. 1226, 1232-34 (C.D. Cal. 1973). Synergy’s current small presence in the U.S. radiation sterilization market understates its future competitive significance because it is one of the largest sterilization providers in the world and an actual potential entrant into the United States with x-ray.

<sup>40</sup> See *Areeda & Hovenkamp*, *Antitrust Law IV* ¶1121b (3d ed. 2006); *Yamaha*, 657 F.2d at 977; *Phillips Petroleum*, 367 F. Supp. at 1239.

**A. The Contract Radiation Sterilization Market is Highly Concentrated**

The Supreme Court has explained that “[t]he outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.”<sup>41</sup> That is, courts look at “whether two products can be used for the same purpose, and, if so, whether and to what extent purchasers are willing to substitute one for the other.”<sup>42</sup> The Supreme Court has set forth a series of factors, or “practical indicia,” to determine the contours of the relevant product market.<sup>43</sup> Courts also rely on the “hypothetical monopolist test” to define a relevant product market.<sup>44</sup> Based on these criteria, the relevant product market is no broader than contract radiation sterilization services; this includes contract gamma, x-ray, and e-beam sterilization services because other forms of sterilization, including EO, are not functional substitutes for radiation sterilization.<sup>45</sup> In-house radiation sterilization is also not a viable substitute for contract sterilization because most customers do not have the production volumes required to justify investing in sterilization facilities.<sup>46</sup>

Gamma is the predominant method of radiation sterilization because it is more effective than e-beam for most products.<sup>47</sup> Consequently, the [REDACTED]

<sup>41</sup> *Brown Shoe*, 370 U.S. at 325.

<sup>42</sup> *ProMedica*, 749 F.3d at 565 (quoting *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 119 (D.D.C. 2004)); *United States v. H&R Block*, 833 F. Supp. 2d 36, 50-51 (2011) (citation omitted); see also *Staples*, 970 F. Supp. at 1074.

<sup>43</sup> *Brown Shoe*, 370 U.S. at 325 (such factors include “industry or public recognition of a submarket as a separate economic entity, the product’s peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors”).

<sup>44</sup> *H&R Block*, 833 F. Supp. 2d at 51-52; see also PX 901-011-015 (*Merger Guidelines*) §§ 4.1.1-4.1.3.

<sup>45</sup> PX 902-002; PX 91-003; PX 390-006; PX 854-003; PX 607 ¶¶4-6; PX 601 ¶12; PX 603 ¶¶3-4; PX 709 at 49-51; PX 705 at 88-95; PX 703 at 60-61; PX 710 at 101, 104-105; PX 711 at 82-83; PX 702 at 78-79.

<sup>46</sup> PX 895-004; PX 860-001; PX 366-013; PX 607 ¶19; PX 601 ¶¶14-15; PX 614 ¶¶14-15; PX 605 ¶11; PX 702 at 96-99.

<sup>47</sup> The “outer boundaries” of the product market include all three forms of radiation sterilization because questions surrounding the long-term pricing and availability of gamma may make e-beam a more viable future alternative for some products currently sterilized with gamma. Steris, for example, believes it is uniquely positioned to [REDACTED]

See PX 854-007.

Contract x-ray sterilization services—which Synergy  
—are likely the only competitive alternative for most customers who currently use contract gamma services. This is consistent with Synergy’s “ordinary course” documents,<sup>49</sup> which  
.<sup>51</sup> Overall, Synergy’s strategy was to present x-ray  
Many U.S. customers could not switch from gamma to e-beam under any reasonable economic conditions, but Synergy expected they  
<sup>53</sup> Thus, this Court could analyze the effects of the merger in a narrower market—the sale of contract gamma and x-ray sterilization services to targeted customers.<sup>54</sup> However, whether the merger is evaluated in the radiation market or just that consisting of targeted customers, the result is the same: the merger will cause substantial competitive harm.

The relevant geographic markets—the areas affected by the acquisition—are each of the

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<sup>48</sup> PX 683-001-003; PX 682-001-009; PX 722-038-040; PX 72-001; PX 358; PX 607 ¶20; PX 712 at 123-128; PX 707 at 61-64; PX 710 at 158-165; PX 708 at 218.

<sup>49</sup> When defining the relevant market, “courts often pay close attention to the defendants’ ordinary course of business documents.” *H&R Block*, 833 F. Supp. 2d at 52; *see also Whole Foods*, 548 F.3d at 1045 (Tatel, J., concurring).

<sup>50</sup> PX 194-003; PX 102-001; PX 96-005; PX 114-003; PX 101-012-013; PX 893-001; PX 110-001; PX 109-001; PX 919-003-004, 041; PX 275-007, 061-064; PX 819-006-007; PX 112-037; PX 95-002; PX 891-005. Synergy already has an existing network of e-beam facilities in the United States, but it determined that it  
PX 819-004.

<sup>51</sup> PX 159; PX 164; PX 541-002; PX 163-001; PX 197-001; PX 73-001; PX 709 at 129-130; PX 708 at 218.

<sup>52</sup> PX 220-002; *see also* PX 163-001; PX 275-032. *See H&R Block*, 833 F. Supp. 2d at 53 (developing “pricing and business strateg[ies] with [a particular] market and those competitors in mind” is “strong evidence” of a market).

<sup>53</sup> PX 614 ¶¶ 10, 17; PX 610 ¶¶ 6, 8; PX 601 ¶¶ 9, 17-19; PX 614 ¶17; PX 605 ¶10, 14-15; PX 606 ¶11; *see also* PX 902-002.

<sup>54</sup> *See* PX 901-009-010 (*Merger Guidelines*) §3 (“A price increase for targeted customers may be profitable even if a price increase for all customers would not be profitable because too many other customers would substitute away.”); *accord Times-Picayune Publ’g Co. v. United States*, 345 U.S. 594, 612 n.31 (1953) (relevant product markets “must be drawn narrowly to exclude any other product to which, within reasonable variations in price, only a limited number of buyers will turn”); *Brown Shoe*, 370 U.S. at 325 (“submarkets may exist which, in themselves, constitute product markets for antitrust purposes”); *Spirit Airlines, Inc. v. Northwest Airlines, Inc.*, 431 F.3d 917, 935 (6th Cir. 2005); *H&R Block*, 833 F. Supp. 2d at 51-54; *FTC v. Cardinal Health*, 12 F. Supp. 2d 34, 47 (D.D.C. 1998).



above 2500.<sup>60</sup> The [REDACTED] market for contract radiation sterilization services currently has an HHI of over [REDACTED], while the other [REDACTED] markets—[REDACTED]—are also highly concentrated with HHIs ranging from at least [REDACTED] to more than [REDACTED] points.<sup>61</sup> Similarly, each relevant market for contract gamma and x-ray sterilization services sold to targeted customers is also highly concentrated: in the [REDACTED] contract gamma sterilization market in the [REDACTED] the current HHI level is approximately [REDACTED], and concentration levels in each of the other [REDACTED] geographic markets are even higher.

**B. Synergy is an Actual Potential Entrant and its Entry Would Have Resulted in Substantial Deconcentration and Procompetitive Benefits**

The Supreme Court has held that a firm is an actual potential entrant if: (1) it has an “available feasible means” for entering the relevant market; and (2) those means created “a substantial likelihood of ultimately producing deconcentration of that market or other significant procompetitive effects.”<sup>62</sup> Courts evaluate the likelihood of entry based on whether the competitor “probably” would have entered, since the question under Section 7 is whether competition “‘may be’ lessened substantially.”<sup>63</sup> To determine a firm’s feasible means of entry, courts analyze the intent, capability, and incentive of that firm with respect to the relevant market. Intent is assessed on the basis of subjective evidence (such as whether the firm seriously

<sup>60</sup> Market concentration is measured by the HHI, or Herfindahl-Hirschman Index. PX 901-021-022 (*Merger Guidelines*) § 5.3; *ProMedica*, 749 F.3d at 568.

<sup>61</sup> See PX 275-004, 022, 028.

<sup>62</sup> *Marine Bancorp.*, 418 U.S. at 633; *accord Yamaha*, 657 F.2d at 977-78 (quoting *Marine Bancorp.*, 418 U.S. at 633); *Phillips Petroleum*, 367 F. Supp. at 1232.

<sup>63</sup> *Yamaha*, 657 F.2d at 977. This standard varies between circuits. Most adhere to the statutory standard under Section 7 and evaluate whether the effect of the merger “may be” to eliminate a potential competitor. See *Yamaha*, 657 F.2d at 977-79 (“probably”); *Tenneco, Inc. v. FTC*, 689 F.2d 346, 352 (2d Cir. 1982) (“would likely”); *Mercantile Tex. Corp. v. Bd. of Governors of the Fed. Reserve Sys.*, 638 F.2d 1255, 1268-69 (5th Cir. 1981) (“reasonable probability”). The Fourth Circuit, in a case that preceded *Tenneco*, *Yamaha*, and *Mercantile Tex.* applied a higher standard. See *FTC v. Atl. Richfield Co.*, 549 F.2d 289, 294-95 (4th Cir. 1977) (“clear proof”). The Sixth Circuit has not addressed the issue. Here, evidence of Synergy’s plans satisfies all of these standards.

studied or considered entry, its awareness of the need to diversify, and presentations made to the Board of Directors), while capability and incentive are assessed on the basis of objective evidence (size, financial capabilities, and management and marketing expertise).<sup>64</sup>

It is clear throughout Synergy's "ordinary course" documents that, prior to the acquisition, it [REDACTED]. Since [REDACTED], Synergy's founder and CEO, Dr. Richard Steeves, has been working on [REDACTED]. [REDACTED] Dr. Steeves was [REDACTED] because [REDACTED]. [REDACTED] By September of 2014, the SEB had [REDACTED], Synergy [REDACTED]. [REDACTED].<sup>70</sup> Synergy had also [REDACTED]; after only a few months, Synergy had [REDACTED],<sup>71</sup> and [REDACTED].<sup>72</sup> After the merger

<sup>64</sup> See *Falstaff*, 410 U.S. at 532-34; *Yamaha*, 657 F.2d at 978; *Phillips Petroleum*, 367 F. Supp. at 1242.

<sup>65</sup> PX 94-038.

<sup>66</sup> PX 92-035-036; see also PX 96-005.

<sup>67</sup> PX 95-002.

<sup>68</sup> PX 93-001; see also PX 92-010, 016; PX 891-005; PX 704 at 167-168; PX 922-001 [REDACTED]

<sup>69</sup> PX 400-001; PX 191-001, 004; PX 221-001; PX 101-013; PX 574-010; PX 95-002.

<sup>70</sup> PX 602 ¶¶10, 13; PX 194-008, 012; PX 95-002; PX 544.

<sup>71</sup> See PX 407-018; PX 826-002; PX 134-004; PX 328-002; PX 128-001; PX 923; PX 615 ¶¶19-20; PX 602 ¶12; PX 601 ¶21; PX 614 ¶¶18-19; PX 706 at 75-76.

announcement, Synergy pivoted [REDACTED]

[REDACTED] But Synergy also believed that [REDACTED]: as Synergy's CEO told his Steris counterpart, [REDACTED]. Only after the FTC began investigating did Synergy [REDACTED]

For Synergy, x-ray was its [REDACTED]

[REDACTED] As the largest sterilization provider outside of the United States, and as the only company in the world with more than [REDACTED] years' experience operating a commercial x-ray facility and the ability to offer potential customers x-ray testing, Synergy was particularly well-positioned to introduce x-ray.<sup>77</sup> Synergy's agreement with [REDACTED] also gave it the technical prerequisite to make a substantial impact in the United States.<sup>78</sup>

Synergy's x-ray entry—derailed by the acquisition—would have provided U.S. radiation sterilization customers with the gamma alternative that they need, and Synergy's rollout would have resulted in significant deconcentration and procompetitive effects throughout the United

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<sup>72</sup> PX 610 ¶16; PX 614 ¶19; PX 163-001; PX 172-001. Johnson & Johnson's subsidiary, Ethicon, received the first FDA approval for x-ray sterilization with a Class III medical device. See PX 835-001; PX 836-002; PX 852-002. Other manufacturers would also like to validate their Class III products at Daniken. See PX 714 at 87.

<sup>73</sup> PX 248-001; PX 410-001; PX 407-019-21, 025; PX 112-037; PX 403-002.

<sup>74</sup> PX 109-001.

<sup>75</sup> By January 2015, Synergy was [REDACTED]

[REDACTED] At a February 19 meeting with FTC staff, Andrew McLean [REDACTED]

[REDACTED] PX 202 ¶20. [REDACTED]

[REDACTED] PX 863. Courts are rightly skeptical of such post-acquisition evidence precisely because it is subject to manipulation, as appears to have occurred here. See *Falstaff*, 410 U.S. at 563-70 (Marshall, J. concurring) (noting that such claims should be discounted as "inherently self-serving" and "viewed with skepticism"); *United States v. Siemens*, 621 F.2d 499, 508 (2d Cir. 1980); *Whole Foods*, 548 F.3d at 1047 (Tatel, J., concurring) (finding such post-acquisition evidence to be "all-but-meaningless"); *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1384 (7th Cir. 1986).

<sup>76</sup> *Yamaha*, 657 F.2d at 978. See PX 704 at 109 [REDACTED]

<sup>77</sup> See PX 895-014; PX 819-036; PX 714 at 71-73; PX 603 ¶¶16-17.

<sup>78</sup> See PX 607 ¶15; PX 711 at 141-142; see also PX 819-005. Additionally, Synergy's [REDACTED]

[REDACTED] PX 92-034; PX 819-034-036.



services, and a better technology if the merger proceeds.<sup>88</sup>

**C. Expansion by Other Firms is Unlikely to be Timely, Likely, or Sufficient**

Entry by other firms will not be timely, likely, or sufficient to prevent the anticompetitive effects of the acquisition.<sup>89</sup> Entry into contract gamma sterilization is highly unlikely due to the high capital costs required, the uncertain future availability and pricing of Cobalt 60,<sup>90</sup> and the existence of high regulatory barriers.<sup>91</sup> There are few firms likely to enter, and no potential entrant can replicate the competition that Synergy would have provided.<sup>92</sup> Synergy has enormous entry advantages over other possible x-ray entrants as it [REDACTED].<sup>93</sup> Similarly, e-beam entry is unlikely—facilities are costly and difficult to build, and most gamma customers would not switch to e-beam.<sup>94</sup>

**D. Defendants' Efficiencies Claims are Unverified and Not Merger-Specific**

Courts apply strict requirements to claims that merger efficiencies outweigh anticompetitive effects, including that efficiencies are verifiable, credible, reliable, and not attainable without the anticompetitive effects of the transaction.<sup>95</sup> When a merger raises significant competitive concerns, as it does here, courts have expressly required “proof of extraordinary efficiencies.”<sup>96</sup> Defendants' claimed efficiencies fall well short of what is required.

<sup>88</sup> See PX 601 ¶22; PX 617 ¶18; PX 610 ¶¶17-18; PX 614 ¶¶17, 22; PX 605 ¶¶14-15, 17; PX 609 ¶¶21, 23, 25; PX 615 ¶17; PX 606 ¶15; PX 611 ¶17; PX 618 ¶11; PX 544-005; PX 99-012-013.

<sup>89</sup> PX 901-030-032 (*Merger Guidelines*) § 9. See also *H&R Block*, 833 F. Supp. 2d at 73; *CCC Holdings*, 605 F. Supp. 2d at 47; *Cardinal Health*, 12 F. Supp. 2d at 55; *Bass Bros.*, 1984 WL 355, at \*25.

<sup>90</sup> Cobalt 60 is a significant gamma input.

<sup>91</sup> See PX 360-013; PX 725-023; PX 895-007; PX 703 at 122-123.

<sup>92</sup> [REDACTED] See PX 613 ¶2, 12, 16; PX 612 ¶¶2, 10; PX 608 ¶12, 12; PX 604 ¶8; PX 619 ¶6.

<sup>93</sup> See *supra* Section B; see also PX 275; PX 819-006, 025-027; PX 571-003; PX 897-002; PX 893-001; PX 580-004; PX 202 ¶2; PX 895-007.

<sup>94</sup> See PX 360-013; PX 903-001; PX 619 ¶6; PX 612 ¶12. The most likely e-beam entrant is [REDACTED] which only exacerbates the anticompetitive effects of this transaction. See PX 854-007.

<sup>95</sup> *Heinz*, 246 F.3d at 720; see also *CCC Holdings*, 605 F. Supp. 2d at 73; PX00901-032-034 (*Merger Guidelines*) § 10; *H&R Block*, 833 F. Supp. 2d at 89.

<sup>96</sup> *Heinz*, 246 F.3d at 720.

In a \$1.9 billion transaction, Defendants have claimed only [REDACTED] in efficiencies, of which the vast majority are non-merger-specific overhead and other non-cognizable savings.<sup>97</sup> Much of the remaining savings accrues in markets other than those at issue here, and Defendants have not provided evidence that even those efficiencies would be passed on to consumers.<sup>98</sup>

## II. The Equities Weigh Heavily in Favor of Preliminary Relief

Courts value the “public interest in effective enforcement of the antitrust laws.”<sup>99</sup> Benefits to firms deserve “little weight, lest [the Court] undermine section 13(b)’s purpose of protecting the public-at-large, rather than the individual private competitors.”<sup>100</sup> Allowing this merger to close before the completion of the administrative proceeding would cause irreparable harm by allowing the combined firm to begin altering Synergy’s operations and business plans, accessing Synergy’s sensitive business information, eliminating key Synergy personnel, and stalling Synergy’s U.S. x-ray rollout efforts.<sup>101</sup> As a result, consumers would be denied the benefits of free and open competition, and later remedies would be inadequate to undo the harm if the transaction is subsequently found to be illegal in the FTC proceeding. Defendants’ likely concern that “the transaction will not occur at all” is “a private consideration that cannot alone defeat [a] preliminary injunction.”<sup>102</sup>

<sup>97</sup> PX 17-012, 024-043; *see also* PX 701 at 48-56.

<sup>98</sup> PX 17-012, 047-048; PX 701 at 49.

<sup>99</sup> *ProMedica*, 2011 WL 1219281, at \*60 (citing *Heinz*, 246 F.3d at 726).

<sup>100</sup> *Heinz*, 246 F.3d at 727 n.25 (citing *FTC v. University Health*, 938 F.2d 1206, 1225 (11th Cir. 1991) (quotation omitted)); *Bass Bros.*, 1984 WL 355, at \*22 (private equities are not to be considered in determining whether to enjoin a merger) (citing *FTC v. Weyerhaeuser*, 655 F.2d 1072, 1083 (D.C. Cir. 1981).

<sup>101</sup> *See FTC v. Dean Foods Co.*, 384 U.S. 597, 606 n. 5 (1966); *Bass Bros.*, 1984 WL 355, at \*23; *Weyerhaeuser*, 655 F.2d at 1085-86 n.31 [REDACTED]

[REDACTED] *See* PX 863; PX 811-001; PX 899; PX 248-001.

<sup>102</sup> *Whole Foods*, 548 F.3d at 1041; *see also Heinz*, 246 F.3d at 726-27.

CONCLUSION

For these reasons, the FTC respectfully requests that this Court grant a temporary restraining order and preliminary injunction to prevent Steris from consummating its acquisition of Synergy pending the outcome of the FTC's administrative proceeding.

Dated: May 29, 2015

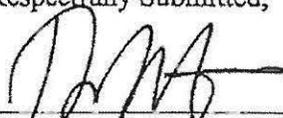
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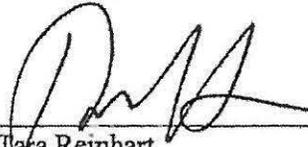
I hereby CERTIFY that, on the 29th day of May, 2015, I filed the foregoing Memorandum in Support of a Motion for Preliminary Injunction with the Clerk of the Court.

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I hereby CERTIFY that, on the 29th day of May, 2015, I served the foregoing Motion for a Preliminary Injunction on the following counsel for Defendants via electronic mail:

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*Attorney for Plaintiff Federal Trade Commission*

	Exhibit	Description
1	PX 1	Steris Corporation-Synergy Health plc, [REDACTED] (Oct. 13, 2014)
2	PX 17	Email from [REDACTED] to Mike Tokich, Karen Burton, Jim Mooney (Oct. 9, 2014)
3	PX 72	Email from [REDACTED] (Sept. 25, 2014)
4	PX 73	Email from [REDACTED], with attachments (Sept. 25, 2014)
5	PX 91	Steris Technical Tip # 4. [REDACTED] (Sept. 2007)
6	PX 92	Dr. Richard Steeves, [REDACTED] (Oct. 1, 2012)
7	PX 93	[REDACTED]
8	PX 94	Email from [REDACTED] (April 22, 2013), with attachment: [REDACTED] (April 2013)
9	PX 95	Email from [REDACTED] (May 15, 2013)
10	PX 96	Email from [REDACTED] (May 17, 2013), with attachment: [REDACTED] (May 2013)
11	PX 99	Synergy Health plc, [REDACTED] (May 20/21, 2014)
12	PX 101	Synergy Health plc, [REDACTED] (July 24, 2014)
13	PX 102	Dr. Richard Steeves, [REDACTED]
14	PX 109	Email from [REDACTED] (Nov. 11, 2014)
15	PX 110	Synergy [REDACTED] (Nov. 2014)
16	PX 112	Synergy Health plc, [REDACTED] (Nov. 18, 2014)
17	PX 114	[REDACTED]
18	PX 115	Steris Technical Tip # 36. [REDACTED] (Oct. 2013)
19	PX 124	[REDACTED] (Aug. 19, 2014)
20	PX 128	[REDACTED], X-Ray Letter of Interest (Sept. 4, 2014)

21	PX 131	Email from [REDACTED] to [REDACTED], et al. (Sept. 15, 2014), with attachment: Synergy, [REDACTED] (Sept. 16, 2014)
22	PX 134	Email from [REDACTED] to [REDACTED] (Sept. 17, 2014), with attachment: [REDACTED], X-Ray Letter of Interest (Sept. 17, 2014)
23	PX 153	Email from [REDACTED] (Nov. 4, 2014)
24	PX 155	Synergy Health plc, [REDACTED] Presentation (Oct. 22, 2014)
25	PX 159	Email from [REDACTED] to [REDACTED] (Nov. 6, 2014)
26	PX 163	Email from [REDACTED] to [REDACTED] (Nov. 18, 2014)
27	PX 164	Email from [REDACTED] to [REDACTED] (Nov. 13, 2014)
28	PX 172	Email from [REDACTED] to [REDACTED] (Dec. 5, 2014)
29	PX 191	Email from [REDACTED] (Sept. 18, 2014)
30	PX 194	Synergy Health plc, [REDACTED] (Oct. 7, 2014)
31	PX 195	Synergy Health plc, [REDACTED] (Oct. 7-9, 2014)
32	PX 197	Email from [REDACTED] (Nov. 12, 2014)
33	PX 202	Declaration of [REDACTED] (Feb. 25, 2015)
34	PX 215	Email from [REDACTED] (Sept. 18, 2014)
35	PX 220	Email from [REDACTED] (includes emails with [REDACTED]) (Aug. 22, 2014)
36	PX 221	Email from [REDACTED] (Sept. 17, 2014)
37	PX 248	Email from [REDACTED] (Oct. 21, 2014)
38	PX 253	Email from [REDACTED] (Jan. 20, 2015)
39	PX 275	Synergy Health plc, [REDACTED] (Sept. 17, 2014)
40	PX 328	Email from [REDACTED] to [REDACTED] (Aug. 22, 2014), with attachment: [REDACTED], X-Ray Letter of Interest (Aug. 22, 2014)
41	PX 358	Steris, [REDACTED] - Version 12.0

42	PX 360	Email from [REDACTED] (Apr. 22, 2014)
43	PX 366	Steris [REDACTED] (Oct. 2014)
44	PX 390	[REDACTED] (May 12, 2014)
45	PX 391	Synergy Health plc, [REDACTED]
46	PX 400	Email from [REDACTED] (Sept. 29, 2014)
47	PX 403	Email from [REDACTED] (Oct. 24, 2014)
48	PX 407	Synergy Health plc, [REDACTED]
49	PX 410	Email from [REDACTED] (Dec. 5, 2014)
50	PX 423	Synergy Health plc, [REDACTED] (January / February 2012)
51	PX 541	Email from [REDACTED] [REDACTED] (Aug. 15, 2014)
52	PX 544	[REDACTED] (Oct. 9, 2014)
53	PX 571	[REDACTED]
54	PX 574	Minutes from [REDACTED] (Sept. 18, 2014)
55	PX 580	Interim Results For The Six Months Ended 28 September 2014 (Nov. 4, 2014)
56	PX 601	Declaration of [REDACTED] (Apr. 9, 2015)
57	PX 602	Declaration of [REDACTED] (Apr. 9, 2015)
58	PX 603	Declaration of [REDACTED] (Apr. 10, 2015)
59	PX 604	Declaration of [REDACTED] (Apr. 23, 2015)
60	PX 605	Declaration of [REDACTED] (Apr. 23, 2015)
61	PX 606	Declaration of [REDACTED] (Apr. 24, 2015)
62	PX 607	Declaration of [REDACTED] (Apr. 27, 2015)
63	PX 608	Declaration of [REDACTED] (Apr. 27, 2015)
64	PX 609	Declaration of [REDACTED] (Apr. 29, 2015)
65	PX 610	Declaration of [REDACTED] (May 4, 2015)
66	PX 611	Declaration of [REDACTED] (Apr. 24, 2015)

67	PX 612	Declaration of [REDACTED] (May 6, 2015)
68	PX 613	Declaration of [REDACTED] (May 11, 2015)
69	PX 614	Declaration of [REDACTED] (May 14, 2015)
70	PX 615	Declaration of [REDACTED] (May 12, 2015)
71	PX 617	Declaration of [REDACTED] (May 19, 2015)
72	PX 618	Declaration of [REDACTED] (May 22, 2015)
73	PX 619	Declaration of [REDACTED] (May 22, 2015)
74	PX 682	[REDACTED]
75	PX 683	Email from [REDACTED] (Oct. 15, 2013)
76	PX 701	IH Transcript of [REDACTED], pages 48-56
77	PX 702	IH Transcript [REDACTED], pages 78-79, 96-99, 195-196
78	PX 703	IH Transcript of [REDACTED] [REDACTED], pages 55-56, 60-61, 87-88, 122-123
79	PX 704	IH Transcript of [REDACTED], pages 32-36, 109, 167-168
80	PX 705	IH Transcript of [REDACTED], pages 88-95, 148-150
81	PX 706	IH Transcript of [REDACTED], pages 75-76
82	PX 707	IH Transcript of [REDACTED], pages 61-64, 126
83	PX 708	IH Transcript [REDACTED], pages 22-23, 214-216, 218, 220
84	PX 709	IH Transcript of [REDACTED], pages 49-51, 57-58, 76-78, 129-130
85	PX 710	IH Transcript [REDACTED], pages 101, 104-105, 158-165, 175-180
86	PX 711	IH Transcript [REDACTED], pages 65-67, 82-83, 141-142
87	PX 712	IH Transcript of [REDACTED], pages 123-128
88	PX 713	IH Transcript of [REDACTED], pages 47-48, 49
89	PX 714	IH Transcript of [REDACTED], pages 71-73, 87, 90-91
90	PX 715	IH Transcript of [REDACTED]l, pages 129-130
91	PX 716	IH Transcript of [REDACTED], pages 50, 90-96
92	PX 721	[REDACTED]

93	PX 722	[REDACTED]
94	PX 725	[REDACTED]
95	PX 811	Synergy Health plc, [REDACTED] (Nov. 20, 2014)
96	PX 819	[REDACTED] (July. 16, 2014)
97	PX 826	Email from [REDACTED] [REDACTED] (Aug. 28, 2014)
98	PX 835	Email from [REDACTED] to [REDACTED] (Sept. 28, 2014)
99	PX 836	Email from [REDACTED] [REDACTED] (Sept. 26, 2014)
100	PX 852	Email from [REDACTED] (Sept. 30, 2014)
101	PX 854	STERIS [REDACTED]
102	PX 859	[REDACTED]
103	PX 860	[REDACTED] Executive Business Review Notes (Dec. 6, 2011)
104	PX 863	Email from [REDACTED] (Feb. 26, 2015)
105	PX 880	[REDACTED] Letter of Interest to Synergy (Aug. 28, 2014)
106	PX 890	[REDACTED] X-ray Sterilization Webinar (Mar. 1, 2013)
107	PX 891	[REDACTED] (July 16, 2013)
108	PX 893	[REDACTED] (Oct. 2014)
109	PX 895	Synergy Health plc, [REDACTED]
110	PX 897	[REDACTED]
111	PX 899	[REDACTED]
112	PX 901	DOJ & FTC, Horizontal Merger Guidelines (issued August 19, 2010)
113	PX 902	Letter to [REDACTED] re STERIS & Synergy (Dec. 31, 2014)
114	PX 903	Email from [REDACTED] to [REDACTED] (Nov. 20, 2013)
115	PX 919	[REDACTED] (Aug. 28, 2014)
116	PX 922	Email from [REDACTED] to [REDACTED] (Sept. 19, 2014)
117	PX 923	[REDACTED] X-Ray Letter of Interest (Aug. 28, 2014)