Statement of the Commission
In the Matter of Steris Corporation and Synergy Health PLC
Docket No. 9365
October 30, 2015

We have voted unanimously today to end the administrative litigation regarding Steris Corporation's acquisition of Synergy Health PLC. Although we still have competitive concerns about this acquisition, we have concluded that further adjudication would not serve the public interest.

This matter involves the merger between Steris and Synergy, the second and third largest sterilization companies in the world. Until recently, Synergy sought to introduce emerging x-ray sterilization technology in the United States to compete with Steris and other providers of sterilization services. The Commission investigated whether the transaction would harm competition by terminating those entry plans.

On May 28, 2015, the Commission voted unanimously to issue an administrative complaint alleging that the transaction violated Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act because it was likely to substantially lessen future competition for contract radiation sterilization services in certain regional markets in the United States. The following day, the Commission asked the United States District Court for the Northern District of Ohio to enjoin the transaction pending the conclusion of the administrative litigation. On September 24, following a hearing, the district court denied our request for injunctive relief. We elected not to appeal that ruling. On October 1, Steris made a motion to withdraw this matter from administrative litigation and to terminate it.[1]

In evaluating whether to dismiss administrative litigation following the denial of a preliminary injunction, the Commission considers the following factors: the district court's findings, any new evidence developed during the preliminary injunction proceeding, whether the transaction raises important issues requiring resolution, the costs and benefits of further litigation, and any other matter that bears on the public interest.[2] Although we still have reason to believe that Steris's acquisition of Synergy is likely to have anticompetitive effects, after considering these factors, we have decided that, on balance, it is appropriate to dismiss this case.

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[1] Under Commission Rule 3.26, upon such a motion, an administrative case is automatically removed from adjudication pending a determination by the Commission about whether to proceed with the administrative proceeding, unless Complaint Counsel argues that the motion is procedurally improper. 16 C.F.R. § 3.26(c). Here, Complaint Counsel did not raise any procedural objection.

[2] Fed. Trade Comm'n, Administrative Litigation Following the Denial of a Preliminary Injunction: Policy Statement, 60 Fed. Reg. 39741 (Aug. 3, 1995), *available at* https://www.ftc.gov/sites/default/files/documents/federal_register_notices/administrative-litigation-following-denial-preliminary-injunction-policy-statement/950803administrativelitigation.pdf. The Commission recently affirmed that it will continue to consider these factors. *See* Fed. Trade Comm'n, Revisions to Rules of Practice, 80 Fed. Reg. 15157, 15158 (Mar. 23, 2015), *available at* https://www.ftc.gov/system/files/documents/federal_register_notices/2015/03/150323rulespracticefrn.pdf.

Foremost in our thinking is the fact that the district court's denial of preliminary relief would render it difficult for us to craft meaningful relief were we to find the merger unlawful at the conclusion of the administrative proceeding. In particular, because Steris currently provides contract sterilization services using an alternative technology, gamma radiation, the merged company is unlikely to continue Synergy's efforts to bring x-ray sterilization technology into the United States market. Thus, even if the transaction were found to be anticompetitive following an administrative hearing, it is unlikely that there would be any asset or business to divest that would recreate the competitive environment that likely would have emerged in the absence of the merger, at least for the foreseeable future.

This inability to devise meaningful relief largely negates the potential benefits of continuing the administrative litigation, whereas the costs remain substantial. We therefore conclude that the public interest warrants terminating the administrative litigation.