Anticipated acquisition by STERIS Corporation of Synergy Health Plc

ME/6488/14

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 9 February 2015. Full text of the decision published on 26 February 2015.

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

CONTENTS

SUMMARY 1
ASSESSMENT 2
Parties 2
Transaction 3
Jurisdiction 3
Counterfactual 4
Frame of reference 4
Competitive assessment 11
Third party views 21
Decision 21

SUMMARY

1. STERIS Corporation (**STERIS**) has agreed to acquire Synergy Health Plc (**Synergy**) (the **Merger**). STERIS and Synergy are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties overlap in the supply of sterile packaging and disinfectant wipes in the UK. There is also a vertical relationship as STERIS supplies a number

of products and services which are used as inputs for the provision of decontamination services, Synergy's main business in the UK. These products are decontamination chemicals, decontamination washers, sterilisers, sterilisation indicators and after-sales services. The CMA has therefore assessed the impact of the Merger on the supply of these products and services in the UK.

4. In respect of both horizontal overlaps, the Parties have a small combined share of supply, the Merger gives rise to small increments and third party comments suggest there are several competitors.

5. Evidence available to the CMA suggests that STERIS has a small share of supply in washers, sterilisers and decontamination chemicals; that indicators represent a small fraction of the cost base of Synergy's competitors; that the existing supply by STERIS of after-sales services is protected under long-term contracts; and that alternative suppliers exist in the supply of each of these products. No concern was raised by third parties in relation to input foreclosure.

6. Evidence available to the CMA suggests that Synergy does not have, and is not likely to gain, a share of procurement sufficiently large for the merged entity to have the ability to foreclose competitors of STERIS through customer foreclosure. The CMA notes that only limited concern was raised by a competitor of STERIS, and this was in relation to foreclosure of suppliers other than itself.

7. The CMA considers that these factors, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects or vertical effects.

8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

9. In the UK, STERIS supplies products used by healthcare and life sciences customers to prevent infections and sterilise equipment, including decontamination chemicals, washers, sterilisers, sterilisation indicators and certain medical equipment, such as hospital operating theatre tables. STERIS also has an after-sales services business in the UK. The turnover of STERIS

in the financial year ending 31 March 2014 was around £979.8 million worldwide and around £[✂] in the UK.

10. Synergy offers a range of support services and medical products to healthcare providers in the UK. These include outsourced hospital decontamination services, linen management, continence care, wound care and contract sterilisation services for medical device manufacturers and industrial companies. The turnover of Synergy in the financial year ending 31 March 2014 was around £380.5 million worldwide and around £[✂] in the UK.

Transaction

11. STERIS and Synergy will be merged into a new company, incorporated under the name of Solar New Hold Co Limited, referred to as New STERIS.[i] New STERIS will act as the holding company of Synergy and STERIS after completion of the Merger. STERIS shareholders will acquire 70%, and Synergy shareholders will acquire 30%, of New STERIS.

12. The Merger will be effected by way of a scheme of arrangement, whereby the shares in Synergy will be exchanged for shares in New STERIS and cash.

13. The Parties informed the CMA that the Merger is also the subject of review by the Federal Trade Commission (**FTC**) in the USA. The FTC has issued a second request and its investigation is ongoing.

Jurisdiction

14. As a result of the Merger, the enterprises of STERIS and Synergy will cease to be distinct.

15. The UK turnover of Synergy exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

16. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 6 January 2015 and the statutory 40 working day deadline for a decision is therefore 2 March 2015.

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions as between the Parties.[1]

19. In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

20. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[2]

21. The Parties supply sterile packaging used to cover small, lightweight items such as surgical implements before decontamination and to protect them afterwards. Sterile packaging comprises consumable packaging, including wraps and pouches, made of paper or poly-paper (that is not easy to tear) and, in the case of pouches, also laminate. The packaging also includes a green film to allow for visual control of the integrity of sealed lines.

22. The Parties also supply decontamination wipes, used to clean and disinfect surfaces.

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[1] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The Merger Assessment Guidelines have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).
[2] *Merger Assessment Guidelines*, paragraph 5.2.2.

23. STERIS also supplies:

- decontamination washers (**washers**), pieces of equipment used to disinfect and clean surgical implements and other medical equipment;
- consumable decontamination chemicals (**chemicals**), which are detergent products used in washers;
- a range of sterilisers**,** which are pieces of equipment used to sterilise other medical equipment or tools after they have been manufactured, or after they have been used, cleaned and disinfected. Sterilisers use high-temperature (eg steam, dry heat) or low-temperature (eg ethylene oxide, hydrogen peroxide, gamma, x-ray, electron beam, etc) sterilisation methods;
- after-sales services, which include the provision of testing, servicing and maintenance for washers, sterilisers and other equipment; and
- sterilisation indicators (**indicators**), which are consumables used to test that a particular sterilisation process has taken place correctly.

24. Synergy also supplies decontamination services in the UK, which consist of a combination of processes including cleaning, disinfection and/or sterilisation used to render reusable surgical implements safe for further use. These services are supplied to healthcare and life sciences customers.[ii] Healthcare customers include the sterile supply departments (**SSDs**) of NHS hospitals, private hospitals, independent sector treatment centres, clinical commissioning groups and other clinics and surgeries.

Product scope

Sterile packaging

25. The Parties submitted that they sell two types of sterile packaging, namely sterile wraps and sterile pouches. The Parties explained that instruments are placed in a wrap or a pouch and then placed in a steriliser. Once the sterilisation process is complete, the wraps and pouches keep the items sterile and provide safe handling and storage of such items until the moment they are used. Therefore, the Parties submitted that both products are used interchangeably.

26. The Parties also submitted that compliance standards do not differ between different types of sterile packaging and that there is no proprietary technology that would prevent a wrap producer from manufacturing pouches, and vice versa.

27. The CMA received some submissions from third parties suggesting that switching between the production of different types of sterile packaging would require investment in product-specific machinery. However, the CMA considers that while sizeable fixed investment costs could limit the degree of supply-side substitutability, this might not preclude supply-side substitution by producers of both wraps and pouches with excess capacity. Nonetheless, the CMA has not found it necessary to conclude on the product scope of the frame of reference in relation to sterile packaging, since, as explained in further detail at paragraphs 59 to 64, no competition concerns arise on any plausible basis.

Wipes

28. The Parties submitted that they overlap to a minimal extent in the provision of disinfectant wipes in the UK. The Parties provided share of supply estimates on the basis of the supply of disinfectant wipes to dental customers. As explained in further detail in paragraphs 65 to 69, the CMA considers that no realistic prospect of an SLC arises under this, or wider, frames of reference and therefore has not concluded on the product frame of reference in relation to disinfectant wipes.

Indicators

29. The Parties submitted that the narrowest plausible candidate market for sterilisation indicators is the supply of those conforming to the Bowie-Dick test, which is designed to assess the adequacy of air removal and steam penetration in a sterilisation process. This test is mandated by international and national standards.

30. The Parties stated that, in the UK, sterilisation indicators are predominantly sold in paper or electronic form. The Parties submitted that they are aware of over 30 NHS trusts which have switched from using paper products to using 3M's electronic product and are aware of one customer that has switched from an electronic product to a paper product.

31. The Parties further submitted that biological indicators, which are sometimes used in the US, are not approved for the Bowie-Dick test and are therefore rarely used by UK customers.

32. As explained in further detail in paragraphs 79 to 82, the CMA considers that the Merger does not give rise to the realistic prospect of an SLC whether distinguishing between or aggregating paper and electronic indicators and, therefore, the product frame of reference can be left open.

Sterilisers

33. The Parties submitted that sterilisers can be distinguished on the basis of whether they are intended to sterilise at a high or low temperature and that customers' choice of process mainly depends on the nature of the product to be sterilised. The Parties submitted that there is therefore limited demand-side substitutability between the two.

34. An industry report[3] suggests that there may be further segmentation within these two categories of steriliser based on differences in the sterilisation methods they use. In particular:

    (a) high-temperature sterilisers can use sterilisation methods based on either moist heat (eg steam) or dry heat; and

    (b) low-temperature sterilisers can use ethylene oxide, vaporised hydrogen peroxide, paracetic acid, hydrogen peroxide gas plasma or ozone gas.

35. The report suggests that different sterilisation methods are more suited for certain applications and, therefore, may constitute a narrower market with limited demand-side substitutability. However, as explained in further detail in paragraphs 94 to 97 no realistic prospect of an SLC arises under any plausible basis and, therefore, the product frame of reference can be left open.

Washers

36. The Parties submitted that the narrowest candidate market for washers of the type STERIS supplies encompasses the supply of all types of washers in the UK. The Parties submitted that STERIS supplies a range of single-chamber washers, hospital cart washers, ultrasonic washers and multi-chamber washers. The Parties submitted that there is a high level of demand- and supply-side substitutability between all types of washers.

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[3] *Sterilization Market, Equipment and Contract Services, Global forecast to 2017*, Markets and Markets, 2012 (the **Markets and Markets report**).

37. As explained in further detail in paragraphs 98 to 100, the CMA considers that there is no realistic prospect of an SLC under any plausible basis, and the product frame of reference can be left open.

Chemicals

38. In relation to decontamination chemicals, the Parties submitted that the narrowest candidate market is the supply of hospital hygiene detergents in the UK. The Parties explained that they are not aware of any precedent where this candidate market has been considered. However, they submitted that the European Commission (**the Commission**) left the market definition open in respect of the supply of cleaning chemicals to hospitals in its consideration of the 2002 acquisition by Johnson Professional Holdings of Diversey Lever.[4] The Parties submitted that, while the Commission stated that there was no support in its market testing for product market definitions narrower than institutional detergents, it noted that the hospital hygiene segment may constitute a separate market.

39. The Parties submitted that the data they provided was on the basis of hospital hygiene detergents, which are called decontamination chemicals in the UK, in line with a market report.[5]

40. The CMA did not receive evidence suggesting that there existed any plausible narrower candidate markets than the supply of decontamination chemicals. In any case, as explained in further detail in paragraphs 89 to 93, the CMA considers that no realistic prospect of an SLC under any plausible basis and the product frame of reference can be left open.

After-sales services

41. The CMA understands from the Parties' submissions that STERIS supplies after-sales services only for machinery of its own brand.[6] The CMA also understands from third party feedback that the spare parts used in the provision of after-sales services may be, at least in some cases, brand-specific. It therefore took the supply of after-sales services on STERIS machinery as its narrowest plausible candidate product frame of reference

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[4] Case No COMP/M.2665 – *Johnson Professional Holdings/DiverseyLever*, 2002.
[5] *Western European Decontamination Equipment Market*, M5E7-54, Frost & Sullivan, September 2010 (the **Frost & Sullivan report**).
[6] The Parties submitted that STERIS only competes to supply after-sales services to customers of STERIS' sterilisers and washers, excluding a small amount of incidental repairs of other equipment. They submit that STERIS' practice not to offer such services is a [✂], rather than being due to technical or other barriers.

and considered whether there would be sufficient evidence to widen this to include the supply of after-sales services more generally.

42. The Parties submitted that third party suppliers are able to provide after-sales maintenance for STERIS equipment. They estimated that around [65–75]% of STERIS' equipment customers used these suppliers, on the basis that STERIS provides after-sales services to only [25–35]% of its customers.

43. The CMA received some evidence from third parties that there could be barriers to providing maintenance for STERIS machinery specifically, in particular relating to the availability of spare parts. However, one supplier of after-sales services said it could redirect resources to expand its portfolio to include STERIS machinery in very short timescales. A competitor of Synergy and customer of STERIS' after-sales services submitted that other suppliers could provide it with after-sales services.

44. As explained in further detail in paragraphs 83 to 88, the CMA considers that there is no realistic prospect of an SLC under any plausible basis and it is therefore not necessary to conclude on the product frame of reference.

Decontamination services

45. The Parties submitted that the narrowest candidate market for decontamination services is the supply of decontamination services in England. The Office of Fair Trading (**the OFT**, one of the CMA's predecessors) has previously considered decontamination services in the context of merger control in cases involving Synergy.[7] In its previous decisions, the OFT considered the commercial supply of off-site decontamination services as its relevant frame of reference, further distinguishing between the supply to NHS acute hospitals under the National Decontamination Programme and supply under other types of contracts/customers.

46. The Parties submitted that healthcare customers include the SSDs of NHS acute hospitals, private hospitals, independent sector treatment centres, clinical commissioning groups and other clinics and surgeries.

47. The Parties also repeated submissions made by Synergy in the previous OFT cases mentioned above that in the provision of outsourced decontamination services to hospital SSDs, they are constrained by self-supply by NHS Trusts (either to themselves or to other Trusts) and the ability of Trusts to switch to

[7] *Synergy/Shiloh*, OFT, 11 October 2005 and *Synergy Healthcare pc/Vernon-Carus*, OFT, 29 April 2008.

using disposable instruments rather than decontaminating and reusing medical instruments.

48. In this case, the Parties do not overlap in the supply of decontamination services. Therefore, the CMA has not found it necessary to conclude on whether there should be a distinction between off-site, on-site, commercial and self-supply decontamination services as the competitive assessment in relation to non-horizontal effects considered the Parties' ability to foreclose all competitors of Synergy in the UK (including parties that self-supply) and did not find a realistic prospect of an SLC under any plausible basis.

Conclusion on product scope

49. For the reasons set out above, the CMA has considered the impact of the Merger on the supply of sterile packaging, disinfectant wipes, indicators, sterilisers, washers, chemicals, after-sales services and decontamination services.

50. However, as explained above, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out in further detail below, no competition concerns arise on any plausible basis.

Geographic scope

Decontamination equipment and consumables

51. The Parties made submissions in relation to the geographic scope of the frame of reference for each of the decontamination consumables, equipment and services they supply in the UK. In particular, the Parties submitted that they compete with global suppliers in the supply of sterilisation indicators, sterile packaging and that the supply of sterilisers, washers and chemicals tend to have a European or global dimension.

52. The CMA did not find it necessary to conclude definitively on the precise scope of the geographic frame of reference in relation to the above consumables and equipment, because the geographic frame does not affect the competitive assessment in any eventuality. In its assessment of competitive effects, the CMA has considered all suppliers of decontamination consumables, equipment and after-sales services that are available to customers irrespective of their geographic location.

Decontamination services

53. The Parties submitted that the narrowest candidate market for decontamination services of the type Synergy supplies is the supply of decontamination services in England.

54. In *Synergy/Shiloh* (2005) the OFT stated that it appeared that the relevant geographic scope was at least national. In *Synergy/Vernon-Carus* (2008) the OFT considered regional aspects of the transaction[8] for certain types of contracts (ie those arranged independently of what was known as the National Decontamination Programme).

55. As explained above, given that there is no horizontal overlap between the Parties in the supply of decontamination services, the CMA has not found it necessary to conclude on whether the geographic market for decontamination services was sub-national, national, or wider than national.

Conclusion on geographic scope

56. For the reasons set out above, on a cautious basis the CMA has considered the impact of the Merger for each of the products/services described above in the UK.

57. However, as already noted above, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out in greater detail below, no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

58. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.[9] Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the supply of sterile packaging and wipes.

[8] In particular, the OFT considered an overlap between the parties in North-West England.
[9] *Merger Assessment Guidelines*, from paragraph 5.4.1.

Sterile packaging

59. The CMA received a number of estimates regarding the size of the sterile packaging sector in the UK in the course of its investigation. These estimates ranged from £75 million in 2014 (the Parties' estimate based on the Frost & Sullivan report) to £17 million in 2012 (a third party estimate based on a study conducted by the Sterile Barrier Association).

60. The UK sales of STERIS and Synergy in 2014 were £[✂] and £[✂], respectively. On a conservative basis, using the estimate for 2012 referred to by one third party, the Parties' combined share of supply would be only [0–10]%, with an increment of [0-10]%.

61. The Parties submitted that they face competition from a large number of alternative suppliers, and submitted a list of 21 firms they considered to be 'strong global suppliers'.[10]

62. The CMA received revenue information from four suppliers of sterile packaging. The revenue information provided by the suppliers is set out in **Table 1**. The Parties' combined share of supply of sterile packaging, including only these known revenues, is [0–10]% with an increment of [0–10]%. Within pouches or wraps, based on known revenues only, the maximum increment to the Parties' combined share of supply would be [0–10]%. In both cases, the Parties' share of supply and the increment would be smaller when including revenues from other suppliers.

[10] These include 3M, Advanced Sterilisation Products, Amcor, Andersen Caledonia, Belimed, BHT Hygienetechnik, Cardinal Health, Getinge AB, Interster, Kimberly Clark Corporation (KC), Matachan, Medline, Midmark International, Minntech Corp, Ningbo Wisevigor Beauty & Medical Ltd., PMS Medikal, PuriCore, Raven Biological, Stella Performance, Sterlox Technologies, Wipak, Westfield Medical, VP Group, Granton Medical and Unisurge International.

Table 1: Revenues from the sale of sterile packaging in the UK

					%
Supplier	*Wraps*	*Pouches*	*Other*	*Total*	*Share of known revenues*
[✂]	[✂]	[✂]	[✂]	[✂]	[70–80]
[✂]	[✂]	[✂]	[✂]	[✂]	[10–20]
STERIS	–	–	[✂]	[✂]	[0–10]
[✂]	[✂]	[✂]			[0–10]
Synergy	–	–	[✂]	[✂]	[0–10]
[✂]*	[✂]	[✂]	[✂]	[✂]	[0–10]
Total				£13.4m	100

Source: Third party submissions.

* [✂] submitted that it had 'withdrawn from any related activity'.
Note: A dash (–) denotes missing data, [✂].

63. Responses from customers, including a response from [✂], also suggested that there were several alternative suppliers. Two of the three customers named ten or more alternatives, while one named two alternative suppliers. The CMA also notes that no third parties raised concerns about the Merger in respect of the supply of sterile packaging in the UK.

64. On the basis of the small estimated shares of supply of the Parties, small increments arising from the Merger and the remaining number of potential suppliers of sterile packaging in the UK, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of unilateral effects in the supply of sterile packaging in the UK.

Wipes

65. The Parties submitted that the UK disinfectant wipe sector is worth between £2.4 million and £3 million.[11] They submitted that STERIS' and Synergy's revenues in financial year 2014 were around £[✂] and £[✂], respectively, and that this implies a share of supply of [0–10]% with an increment of [0–10]%. The Parties submitted that these shares of supply would be smaller when including the supply of disinfectant wipes to segments other than dental customers.

[11] The Parties submitted that they received this estimate from [✂], a third party supplier, which estimated that UK sales of wipes within the 'dental decontamination consumables' sector was £2.4–£3 million. The Parties confirmed this estimate using the British Dental Trade Association's 2010 market *Spotlight Report*, which estimated the 2009 market value for surface towelettes as being £3.4 million.

66. The Parties submitted that there are numerous suppliers of disinfectant wipes in the UK, including Schulke, Alkapharm, Dentisan, Azo, Spectrum, Solo, SporeClear, Cyber, Safe R, Schein and Dental Directory.

67. [✂] submitted that there were 13 alternative suppliers of disposable wipes and, additionally, 21 alternative suppliers of instrument disinfectants, detergents and associated products, which includes instrument wipes, probe wipes and hard surface disinfectants and wipes.

68. The CMA notes that no third parties raised concerns about the Merger in respect of the supply of disinfection wipes.

69. The CMA therefore considers that given the Parties' small combined share of supply, the small increment arising from the Merger and the large number of alternative suppliers of disinfectant wipes in the UK, the Merger does not give rise to a realistic prospect of an SLC as a result of unilateral effects in the supply of disinfection wipes in the UK.

Vertical effects

70. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.

71. Most vertical mergers are competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.[12]

72. In the present case, the CMA has considered whether the Merger would give rise to the realistic prospect of an SLC by giving the Parties the ability and incentive to foreclose its upstream or downstream competitors either by increasing the price of inputs to Synergy's competitors or by foreclosing STERIS' competitors of access to Synergy as a customer.

73. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[13] In practice,

[12] In relation to this theory of harm, 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.
[13] *Merger Assessment Guidelines*, paragraph 5.6.6.

where a merged entity lacks the ability to foreclose its competitors, the presence of incentives to do so can be considered less relevant. This is discussed below.

Input foreclosure

74. In order to assess the ability of the merged entity to engage in a strategy of input foreclosure, the CMA considered evidence on the products currently supplied by STERIS to Synergy's competitors (including to the NHS for the purposes of self-supply), the extent to which those competitors could avoid the effect of a price increase by switching to alternative suppliers, and the proportion of their respective cost bases accounted for by those inputs.

75. The CMA contacted and received responses from the main suppliers of decontamination services,[14] [✂].[15]

76. [✂] submitted that STERIS supplies it with indicators only. [✂] submitted that it only purchased indicators (Bowie-Dick packs and detection kits) and tray tags from STERIS. [✂] submitted that it used STERIS for washers and after-sales services for its installed base of washer equipment. [✂] submitted that it purchased a wide range of products from STERIS.

77. The CMA notes that no third parties raised concerns about input foreclosure in relation to this transaction.

Indicators

78. The Parties submitted that STERIS has a share of supply of sterilisation indicators in the UK of [40–50]%.[16]

79. The Parties submitted that there are many alternative suppliers of indicators in the UK, including leading competitors 3M, Getinge, Propper, P3 Medical, GKE, SPSmedical, BAG, Sterlab, Valisafe and Interster. They also submitted that sterilisation indicators make up a very small proportion of the costs associated with the supply of decontamination services, accounting for [0–10]% of Synergy's cost base.

[14] The CMA also contacted three other firms listed by the Parties as competitors in the supply of decontamination services, namely [✂]. The CMA understands these competitors are not directly active in decontamination services, but rather in other services including hospital laundry services.
[15] The CMA understands that [✂] is involved in the self-supply of decontamination services to [✂].
[16] The Parties submitted that STERIS earned revenues of £[✂] from sterilisation indicators in its most recent financial year, compared to an estimated UK market size in 2014 based on the Frost & Sullivan report above.

80. Customers of sterilisation products confirmed that there are numerous alternative suppliers.

81. Two decontamination services providers submitted that indicators make up 0.1% and 0.2% of their respective cost bases.

82. On the basis that there are alternative suppliers of sterilisation indicators and that the evidence indicates that indicators do not represent a large proportion of any decontamination supplier's cost base (including NHS self-supply), the CMA considers that there is no realistic prospect that the merged entity would have the ability to foreclose alternative suppliers, including self-supply by the NHS, of decontamination services in the UK by increasing the price of, or refusing to supply, sterilisation indicators.

After-sales services

83. In respect of after-sales services, the Parties submitted that STERIS supplies after-sales services to just one of Synergy's competitors, namely [✂]. [✂] also submitted that STERIS was a supplier of after-sales services.

84. STERIS' supply relationship with [✂] is governed by a maintenance service contract which the Parties submitted will last until [✂]. The contract cannot be terminated by STERIS except under conditions relating to [✂].

85. In addition, the Parties submitted that third party suppliers can service STERIS' machinery and that STERIS provides after-sales services to only [25–35]% of its customers, with the remainder being supplied by third parties.

86. The CMA received responses from two of the third party suppliers of after-sales services identified by the Parties as capable of maintaining STERIS machinery. Both submitted that they provide after-sales services for devices not of their manufacture. While both submitted that there could be some difficulties in obtaining the spare parts necessary to maintain STERIS equipment, one nevertheless currently supplies after-sales services for STERIS equipment.

87. [✂] confirmed that [✂].

88. Based on evidence that STERIS supplies after-sales services to only one of Synergy's commercial competitors; that there is a significant legal barrier to STERIS withdrawing its supply of after-sales services of STERIS machinery from this competitor; and, to a more limited extent, that Synergy's competitor confirms there are third party suppliers of these services that it believes could provide after-sales services for STERIS equipment, the CMA considers that there is no realistic prospect that the Parties would have the ability to

foreclose any of Synergy's competitors in the supply of sterilisation services in the UK by increasing the price of, or refraining from supplying, after-sales services to those competitors.

Chemicals

89. Responses from decontamination service providers indicate that only one is currently a customer of STERIS for decontamination chemicals.

90. STERIS estimated that its share of supply in decontamination chemicals in the UK was [10–20]% in 2014.[17]

91. Evidence collected by the CMA suggests that STERIS' share of supply may in fact be smaller than this. Table 2 sets out the revenues earned by STERIS and four suppliers of decontamination chemicals that responded to questions sent by the CMA. The data suggests that STERIS' share of supply of decontamination chemicals is, at a maximum, [5–15]% and more likely smaller given that not all suppliers are included.

Table 2: Decontamination chemicals UK revenues

	£	%
Party	*Total revenues*	*Share of known revenues*
STERIS	[✂]	[5–15]
[✂]	[✂]	[10–20]
[✂]	[✂]	[10–20]
[✂]	[✂]	[50–60]
[✂]	[✂]	[0–10]
Total	£9.6 million	100

Source: Third party responses.

92. [✂] submitted that there were 22 alternative suppliers for 'instrument disinfectants and detergents and associated products'.

93. On the basis that STERIS supplies chemicals to only one of Synergy's commercial competitors; they have indicated there are several alternative suppliers; and that the evidence available to the CMA suggests that STERIS is likely to have a small share of supply, the CMA considers that there is no realistic prospect that the merged entity would have the ability to foreclose

[17] Based on sales of £[✂] compared to an estimated market size of £7.5 million. The Parties estimated the total UK market size using an assumption that decontamination chemicals represented 20% of the total cleaning equipment and supplies market, which was estimated in the Frost & Sullivan report to be worth $56.9 million (£34.5 million) in 2014.

any of Synergy's competitors or NHS self-supply by raising the price of, or refraining to supply, decontamination chemicals.

Sterilisers

94. None of the responses from decontamination service providers indicated that any currently use sterilisers supplied by STERIS.

95. The Parties submitted that STERIS' share of supply in the UK in respect of sterilisers was [0–10]% for low-temperature sterilisers and [0–10]% for high temperature sterilisers.

96. The CMA considered STERIS' share of supply within the narrower product segments of moist heat and vaporised hydrogen peroxide sterilisers.[18] Estimates based on sales data provided by the Parties and the Markets and Markets report suggest that, in both areas, STERIS' share of supply in 2014 was around [5–15]%.[19]

97. Based on STERIS' small share of supply, the CMA considers that there is no realistic prospect that the merged entity would have the ability to foreclose any of Synergy's competitors by raising the price of, or refraining to supply, moist heat sterilisers, vaporised hydrogen peroxide sterilisers (or sterilisers more generally) to Synergy's competitors.

Washers

98. The Parties submitted that STERIS' share of supply of washers in the UK was [0–10]% in 2014.[20] However, this calculation is based on the assumption that the market size for washers can be approximated by assuming that washers represent 80% of the total revenues from the supply of cleaning equipment and supplies estimated in the Frost & Sullivan report. As the Parties did not submit a basis for this assumption, the CMA has attached only limited weight to this share of supply.

99. Among Synergy's competitors (including NHS self-supply), only one submitted to the CMA that it currently uses washers supplied by STERIS. This third party named [✂] as alternative suppliers of washer equipment.

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[18] The Parties submitted that STERIS does not currently supply dry heat, ethylene oxide, hydrogen peroxide gas plasma, ozone or filtration sterilisers in the UK.
[19] In the financial year ended 31 March 2014, STERIS sold [✂] of moist heat sterilisers resulting in revenues of £[✂], and [✂] vaporised hydrogen peroxide steriliser for £[✂]. The Markets and Markets report estimates that the UK market sizes in 2014 for these categories were around $27 million (£17.4 million) and $1.3 million (£831,000), respectively.
[20] This estimate is based on revenues of £[✂] and a total market size of £6.6 million.

100. On the basis that the only third party using washers supplied by STERIS can identify at least three alternative suppliers of washer equipment and, to a more limited extent, that the evidence available to the CMA suggests that STERIS has a small share of supply in the supply of washers, the CMA considers that there is no realistic prospect that the merged entity would have the ability to foreclose any of Synergy's competitors in the supply of sterilisation services in the UK by increasing the price of washer equipment.

Customer foreclosure

101. As part of the CMA's investigation, one of STERIS' competitors in the supply of a number of inputs to decontamination services raised some concerns regarding the Merger. These concerns are considered in turn below.

102. First, the competitor submitted that it was concerned that the Merger could lead to smaller competitors deciding that it was no longer worthwhile to compete in the UK, particularly in view of likely future reduced spending by the NHS. In particular, the competitor told the CMA that it expected to continue competing after the Merger, but that some suppliers may be more vulnerable, in particular those offering only single product lines, referring to [✂] as examples. It told the CMA that [✂] already found that it was no longer lucrative to compete in the UK.

103. However, the CMA did not receive any evidence to suggest that there would be any Merger specific effect on these competitors, nor that STERIS' share of supply should be interpreted as an increment to Synergy's share of procurement.

104. In addition, the CMA received responses in relation to its market test from a number of third parties mentioned by this competitor, in particular [✂]. None of these raised any concerns relating to competition and none made any suggestion of having exited or planning to exit the market. No third parties raised concerns in relation to the possibility of customer foreclosure.

105. In this context, the CMA also considered the relative importance of Synergy as a customer of decontamination equipment. The Parties submitted two estimates of Synergy's share of the supply of decontamination services in England, measured by share of acute hospitals and by share of acute hospital beds served by Synergy. These measures, based on the data provided by the Parties, suggest shares of supply of [15–25]% and [15–25]%, respectively. Assuming that shares of procurement are broadly proportionate to share of supply, the CMA considers that there is no realistic prospect that the merged entity, through acquiring Synergy, would have a sufficient share of procurement that it would have the ability to foreclose STERIS' competitors in

the supply of sterilisers or washers by pursuing a strategy of customer foreclosure.

106. Second, STERIS' competitor submitted that it expected Synergy to begin managing increasing numbers of NHS SSDs and, therefore, to become an increasingly important customer of sterilisation equipment. [✂]. The CMA did not receive any evidence to suggest that outsourcing of the management of in-hospital sterile services departments was likely to increase at a rapid pace, nor that any such outsourcing would be likely to be won by Synergy. [✂] submitted that it would wish to pursue any opportunity to undertake on-site decontamination services for NHS hospitals should they become available, although it did not currently hold any such contracts. The CMA considers that there is no realistic prospect that the merged entity would gain a sufficient share of procurement of sterilisers or washers to give it the ability to foreclose competitors of STERIS by pursuing a strategy of customer foreclosure.

107. The CMA notes that to the extent that the supply of washers and sterilisers operate on a European level, competitors of STERIS would potentially have access to customers outside the UK in the event that the merged entity would gain a sufficiently large share of procurement. However, the CMA considers that there is no realistic prospect of an SLC under any market definition and therefore, as noted above, did not find it necessary to conclude on geographic market definition.

Conclusion on vertical effects

108. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects.

Conclusion on vertical effects

109. A third party raised the possibility that STERIS' supply of inputs to decontamination services could result in flows of confidential information to Synergy through [✂]. However, [✂].

Barriers to entry and expansion

110. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might

prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[21]

111. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

112. The CMA contacted customers and competitors of the Parties. One competitor of STERIS raised concerns in relation to the possibility of customer foreclosure as a result of the Merger. [✂]. No other third parties raised concerns about the Merger.

113. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

114. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

115. The Merger will therefore **not be referred** under section 33(1) of the Act.

Jonathan Parker
Director, Mergers
Competition and Markets Authority
9 February 2015

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[i] In relation to paragraph 11, the Parties clarified that the new company into which STERIS and Synergy will be merged will in fact be called New STERIS.

[ii] In relation to paragraph 24, the CMA clarifies that Synergy does not supply decontamination services to life sciences customers.

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[21] *Merger Assessment Guidelines*, from paragraph 5.8.1.