

## **ENSURING THAT PATIENTS' INTERESTS ARE AT THE HEART OF ASSESSING PUBLIC HOSPITAL MERGERS**

**Joint statement from the Office of Fair Trading,  
the Competition Commission and Monitor**

**17 October 2013**

### **Introduction**

The NHS faces significant challenges in order to deliver safe, high quality and sustainable services that are fit for the needs of patients in the 21<sup>st</sup> century.

Addressing these challenges will involve changes to how local services are organized and some NHS hospitals may decide to merge. The merger review process forms part of the regulatory oversight of the sector to ensure that proposed transactions work well for patients.

The Office of Fair Trading (OFT), the Competition Commission (CC) and the sector regulator Monitor work together to ensure that the interests of patients are always at the heart of this process. The existing statutory framework is designed to enable mergers that will have a positive overall effect for patients to proceed.

All three authorities want to ensure the merger review process is well understood, and operates as quickly and predictably as possible. This is especially important where the financial or clinical situation of one of the merging parties means that prompt action is required to ensure that the interests of patients are protected. This document explains how we are working together to try to reduce the number of mergers requiring notification and minimize the risk of lengthy merger review.

Not all NHS hospital mergers will give rise to competition concerns. A number of hospital mergers have been cleared by either the OFT or the Cooperation and Competition Panel in the past and these decisions provide useful guidance to how assessments are undertaken in practice. The CC has published its final report on the proposed merger between the Royal Bournemouth and Christchurch Hospital and Poole Hospital. This is an example where more in-depth analysis was required.

Where hospitals are in clinical or financial difficulty Monitor and the Trust Development Authority (TDA) (where this involves an NHS trust) will be closely involved with the hospitals concerned in the process of developing a strategy for safeguarding patient services. Monitor's and the TDA's involvement should ensure that any merger proposal considers the implications for quality of services and patient safety from the outset.

Monitor will offer informal advice to trusts on how they might assess the prospective patient benefits of any merger and also on the possible competition implications of the proposal. Monitor will also be active in scrutinizing and challenging the strategies of NHS foundation trusts, including emerging merger proposals at an earlier stage. This will assist parties to identify at an early stage whether a merger will have a positive effect for patients.

## **The purpose of merger review**

Choice for patients and commissioners and competition between hospitals to attract them helps ensure healthcare providers have incentives to improve the quality and efficiency of their services.

Sometimes a merger between competing hospitals may decrease the incentives on the hospitals to improve their services and therefore lead to worse services for patients. On the other hand sometimes a merger may be the best way of delivering certain benefits to patients in a timely manner. The merger review process is designed to examine both of these aspects and determine on balance what is in the overall interests of patients.

## **The merger review assessment**

The OFT and CC have considerable expertise assessing the impacts of mergers on customers across a wide range of sectors. Monitor's expertise as the health sector regulator plays an important role in the overall assessment of NHS hospital mergers.

The authorities share a common general framework for analysis of hospital mergers. Each assessment needs to be carried out on a case by case basis on the facts and evidence we gather.

This approach allows for the circumstances of each individual merger to be carefully taken into account and reflected in the decision. The authorities will gather evidence from various sources including the merging parties and others, such as commissioning organizations, local patient representatives, other hospitals and healthcare experts. The merging parties should be able to demonstrate what benefits they expect to arise and provide supporting evidence. The OFT and CC will place significant weight on Monitor's advice on the patient benefits of a proposed transaction.

## **Hospitals facing clinical or financial difficulties**

We are aware of the clinical and financial difficulties facing some NHS hospitals and that some hospitals may seek to merge to address these. We recognize the need to act quickly to protect the interests of patients where hospitals are in difficulty.

The merger review process is designed to take into account the particular circumstances of failing organizations. Where hospitals are demonstrably failing we may conclude that the proposed merger has no impact on patients because the merger is no worse in terms of choice and competition than if the hospitals did not merge. It is also not necessary for a provider to have failed before we can find that, without the merger, it will not be a strong competitor in future. However, our approach in each case will be informed by the evidence we gather.

Where hospitals are in clinical or financial difficulty Monitor and the Trust Development Authority (TDA) (where this involves an NHS trust) will be closely involved with the hospitals concerned in the process of developing a strategy for safeguarding patient services. Monitor's and the TDA's involvement should ensure that any merger proposal considers the implications for quality of services and patient safety from the outset. The OFT would place significant weight on Monitor's advice in these circumstances.

## Engaging with the authorities to minimize the risk of delay

NHS hospitals are not obliged to notify mergers to the OFT. Published decisions and relevant guidance will help hospitals make an informed decision on whether their merger should be notified to the OFT.

We encourage hospitals considering a merger to engage with Monitor and where appropriate the OFT at the earliest opportunity. Both can offer help and guidance on the process of merger control and on the evidence that will be required.

In particular, Monitor will offer informal advice to trusts on how they might assess the prospective patient benefits of any merger and also on the possible competition implications of the proposal. Monitor will also be active in scrutinizing and challenging the strategies of NHS foundation trusts generally, including emerging merger proposals at an earlier stage. This will assist parties to identify at an early stage whether a merger will have a positive effect for patients.

All these steps should help to reduce the number of mergers requiring notification and minimize the risk of lengthy merger review.

We will continue to work together to make sure patients' interests lie at the heart of the merger review process. This will include:

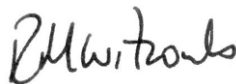
- a joint engagement programme to build awareness of the merger control process in the sector and provide an opportunity for feedback;
- Monitor and OFT will publish a Memorandum of Understanding about Monitor's role in advising on merger benefits;
- the OFT, CC and Monitor are reviewing guidance to assist hospitals assess the potential competition impacts associated with a merger themselves; and
- the OFT will update its published advice on hospital mergers and Monitor will publish guidance on how it will assess patient benefits.

*Signed*  
Clive Maxwell



*Chief Executive*  
Office of Fair Trading

*Signed*  
Roger Witcomb



*Chairman*  
Competition Commission

*Signed*  
David Bennett



*Chief Executive*  
Monitor