

[Press release: Birmingham hospitals merger cleared by CMA](#)

The Competition and Markets Authority (CMA) found that, whilst the merger between Heart of England NHS Foundation Trust (HEFT) and University Hospitals Birmingham NHS Foundation Trust (UHB) could give rise to competition concerns across a number of elective specialties, these were outweighed by the substantial improvements to patient care that were expected to arise.

In reaching this view, the CMA has placed significant weight on the advice on probable benefits from [NHS Improvement](#), the sector regulator, which strongly supports the merger.

NHS Improvement advised the CMA that HEFT had experienced sustained difficulties in governance, quality of care and finances since 2012, which successive management teams had been unable to address.

It also advised that the appointment of the UHB management to HEFT's executive team in October 2015 has already given rise to a number of benefits, such as reduced waiting times and improvements in the quality and safety of patient care for all HEFT patients. However, these improvements and a number of other longer-term benefits would disappear without the merger and the continued presence of the UHB management at HEFT.

The CMA found that HEFT would be a relatively weak competitor to UHB without the merger and that both parties were experiencing capacity constraints.

The CMA compared this to the wide-ranging nature of the benefits identified by the hospitals and NHS Improvement, which would benefit most patients at HEFT. It also examined UHB's track record and the results already delivered at HEFT since October 2015.

On the basis of the available evidence in this case, the CMA found that the benefits put forward by the hospital trusts outweighed the CMA's potential competition concerns.

The merger will therefore not be referred for an in-depth investigation.

Kate Collyer, Deputy Chief Economic Adviser and the decision maker in this case, said:

We have found this merger will have substantial benefits to the healthcare of patients in the Birmingham and Solihull local area.

This is the first time the CMA has cleared an NHS hospital merger on the basis of patient benefits at phase 1 and reflects the quality of the benefits case put forward in this instance and the consistent and detailed advice of NHS Improvement.

The hospitals involved presented clear evidence and a well reasoned case.

Competition currently plays a limited role in the NHS, as health commissioners and regulators have instead emphasised co-operative working to handle growing demand for NHS services.

However, given the scale of the potential impact on patients in Birmingham and Solihull, it was appropriate for the CMA to examine this transaction to determine whether any loss of choice or competition would be outweighed by improvements undertaken by the Parties and overseen by NHS Improvement.

All other information relating to this investigation can be found on the [case page](#).

Notes for editors

1. The CMA is the UK's primary competition and consumer authority. It is an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law. For more information on the CMA see our [homepage](#) or follow us on Twitter [@CMAgovuk](#), [Flickr](#) and [LinkedIn](#). Sign up to our [email alerts](#) to receive updates on merger cases.
2. Under the Enterprise Act 2002 (the Act) the CMA has a duty to make a merger reference, resulting in an in-depth phase 2 merger investigation, if the CMA believes that it is or may be the case that a 'relevant merger situation' has been created, or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.
3. Under the Act a relevant merger situation is or will be created if 2 or more enterprises have ceased or will cease to be distinct enterprises; and the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million; or as a result of the transaction, in relation to the supply of goods or services of any description, a 25% share of supply in the United Kingdom (or a substantial part of it) is created or enhanced.
4. At phase 1, if the CMA is of the view a merger raises a realistic prospect of an SLC it must refer the merger for a phase 2 investigation, unless an exception to the duty to refer applies. Section 33(2)(c) of the Act allows the CMA to exercise its discretion not to refer a merger

giving rise to a realistic prospect of an SLC for a phase 2 investigation if it believes that relevant customer benefits in relation to the creation of the relevant merger situation would outweigh the SLC concerned and any adverse effects resulting from it.

5. The CMA notified NHS Improvement when it decided to carry out an investigation under the UK merger control rules, pursuant to section 79 of the Health and Social Care Act 2012, which applies to mergers involving NHS foundation trusts. NHS Improvement provided advice on the effect of the merger under investigation and this will be published on the [case page](#) as soon as is reasonably practicable.
6. UHB operates the Queen Elizabeth Hospital, and HEFT operates from 3 main hospitals and a smaller site (Birmingham Heartlands Hospital, Good Hope Hospital, Solihull Hospital and the Birmingham Chest Clinic).
7. The CMA's role is to examine the impact that the merger could have on patient choice and the quality of healthcare services provided by the merging trusts. The CMA undertakes an evidence-based assessment of the effects of NHS mergers on competition and aims to ensure that such mergers do not result in lower levels of quality of healthcare services for patients.
8. The CMA has found that in 25 elective specialty services the merger could reduce quality for patients by removing the incentives that currently exist for the trusts to attract patient referrals from each other. In Birmingham, there is limited choice for patients to go to other local hospitals, with the merger reducing the number of competing hospitals trusts from 3 to 2. The 25 services represent less than 15% of the revenue of all services provided by the Parties.
9. This is the first phase 1 hospital merger case that has been cleared on the grounds that relevant customer benefits will outweigh any adverse competitive effects arising from the merger.
10. The text of this decision will be placed on the [case page](#) in due course.
11. Media enquiries should be directed to press@cma.gsi.gov.uk or call: 07774 134814