

Monitor

Making the health sector
work for patients

**Report on the
proposed merger
of Southport and
Ormskirk Hospital
NHS Trust and St
Helens and Knowsley
Teaching Hospitals
NHS Trust's
pathology activities**



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Executive summary

1. Monitor has reviewed the proposed merger¹ of the pathology activities of Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust. The purpose of this review was to advise the NHS Trust Development Authority (NHS TDA)² on the expected impact of the merger on patients by assessing its effect on choice and competition.
2. This report sets out our advice to the NHS TDA and the assessment that supports our advice.
3. We assessed the proposed merger's effect on choice and competition in the following groups of pathology services:³
 - direct access cold pathology services – purchased on behalf of GPs by clinical commissioning groups
 - cold pathology services – required by healthcare providers⁴ to assist in diagnosis and treatment
 - hot pathology services – required by healthcare providers to assist in diagnosis and treatment.

Our advice to the NHS TDA

4. Our advice to the NHS TDA is that the proposed merger is not likely to have an adverse effect on patients as a result of a loss of choice and competition in any of the groups of pathology services listed above or in any of the other services the merger parties⁵ provide.

¹ Throughout this report, for ease of reference, we refer to the agreement between Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust as a proposed merger as we have reviewed it on this basis. See paragraphs 22 to 34 of this report for more information.

² As the proposed merger involves two NHS trusts only, Monitor's role is to provide advice to the NHS TDA in accordance with the [Partnership agreement between the NHS TDA and Monitor](#).

³ We also considered the impact of the proposed merger on Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust's incentives to compete for elective and non-elective healthcare services.

⁴ For the purposes of this report we use the term healthcare providers to mean purchasers of pathology services which are not GPs (as pathology services are purchased on behalf of GPs by clinical commissioning groups).

⁵ Throughout this report, for ease of reference, we use the term 'merger parties' to refer to Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust. The merger that we are assessing only relates to the merger parties' pathology activities and is not a complete merger of the two organisations' activities.

Introduction

5. On 16 May 2014, Monitor accepted for review a proposed merger involving the pathology⁶ activities of Southport and Ormskirk Hospital NHS Trust (Southport and Ormskirk Trust) and St Helens and Knowsley Teaching Hospitals NHS Trust (St Helens and Knowsley Trust).
6. For mergers involving only NHS trusts (that is, not involving an NHS foundation trust), Monitor reviews the proposed merger and advises the NHS Trust Development Authority (NHS TDA) on the impact that the merger may have on patients by assessing its effect on choice and competition.
7. Our partnership agreement⁷ with the NHS TDA sets out our review process.⁸
8. As set out in our partnership agreement, the NHS TDA will take account of our advice and any recommended actions in reaching its final decision on whether or not to approve a merger.
9. When we review a proposed merger, we measure the possible impact of the merger on patients by assessing its effect on choice and competition. A merger could reduce pathology providers' incentives to innovate or to provide a high quality, efficient service, which would have a negative impact on patients.
10. If we find that a proposed merger is likely to result in an adverse effect on patients from a loss of choice and competition, we assess whether there are other benefits to patients which are likely to result from the merger.⁹ We then advise the NHS TDA whether or not the merger should be permitted to proceed.

Background to the proposed merger

11. In this section we:

- describe the merger parties
- set out the merger parties' rationale for the proposed merger
- describe the transaction that gives rise to the merger.

⁶ For a definition of pathology, see [Annex 1: Description of pathology services](#).

⁷ [Partnership agreement between the NHS TDA and Monitor](#).

⁸ Our approach to this assessment is consistent with the approach taken by the Competition and Markets Authority in reviewing mergers involving NHS foundation trusts and the approach previously taken by the Co-operation and Competition Panel.

⁹ It was not necessary for us to assess any benefits to patients in this case as we concluded that the merger was not likely to result in a loss of choice and competition.

The merger parties

12. **Southport and Ormskirk Trust** provides healthcare services across Southport, Formby and West Lancashire. It has 500 beds across two sites: Southport and Formby District General Hospital and Ormskirk and District General Hospital. Pathology services are provided at both sites. Southport and Ormskirk Trust employs more than 3,300 staff and has an annual income of £181 million,¹⁰ of which £8.5 million is generated from pathology activity.
13. **St Helens and Knowsley Trust** provides healthcare services across St Helens, Knowsley, Halton and South Liverpool. It has 690 beds across two sites: Whiston Hospital and St Helens Hospital. Pathology services are provided at both sites. St Helens and Knowsley Trust employs more than 4,000 staff and has an annual income of £279 million,¹¹ of which £9.6 million is generated from pathology activity.

Rationale for the proposed merger

14. Southport and Ormskirk Trust told us that it had sought a pathology partner in response to the requirements of the national Quality, Innovation, Productivity and Prevention (QIPP) programme.¹²
15. Pathology is one of the areas targeted by the QIPP programme, which sets out an expectation that pathology services should be provided in accordance with the findings of the Carter Review of NHS pathology services in England (the Carter Review).¹³ The Carter Review recommended consolidating pathology activities in centralised core laboratories and combining the provision of transport, logistics and IT services required to support the delivery of pathology services.¹⁴
16. According to the Carter Review, consolidated pathology services can offer flexibility as well as operational and financial efficiency by delivering significant economies of scale. The Carter Review found this could improve services for patients and provide better value for the taxpayer, releasing funds for commissioners to invest in improving service quality and patient safety in other areas. The Carter Review concluded that changes to the provision of pathology

¹⁰ [Southport and Ormskirk Trust Annual Report, 2012/13.](#)

¹¹ [St Helens and Knowsley Trust Annual Report, 2012/13.](#)

¹² QIPP is a Department of Health initiative to drive forward quality improvements in NHS care while making up to £20 billion of efficiency savings by 2014/15.

¹³ ['Report of the Review of NHS Pathology Services in England', 2006.](#)

¹⁴ [The Carter Review](#), pages 11-17.

services were needed to address the challenges of demand, innovation, quality, patient safety and resources.

17. Southport and Ormskirk Trust told us that its pathology business is not viable as an independent service due to sustained recruitment difficulties for consultant and technical posts.¹⁵ It told us that prospective applicants are deterred because its main pathology department is small, with no junior medical staff posts,¹⁶ and has an uncertain future. It also told us that its recruitment difficulties are exacerbated by the fact that it is not an NHS foundation trust and by a national shortage of cellular pathology consultants. Southport and Ormskirk Trust told us that its pathology department is dependent on remote reporting¹⁷ and locums from third parties. It told us that remote reporting and locums are expensive, of variable quality, delay reporting and affect cancer targets.
18. Southport and Ormskirk Trust told us that to ensure the Carter Review and QIPP objectives could be met in a safe, sustainable and affordable manner it looked for a partner for the delivery of its pathology services. Southport and Ormskirk Trust selected St Helens and Knowsley Trust as its pathology partner based on the outcome of a competitive process between several prospective partners.¹⁸
19. The merger parties said that creating a larger pathology department through a merger would enable sub-specialist reporting¹⁹ and make the vacant posts at Southport and Ormskirk Trust more attractive. St Helens and Knowsley Trust told us it has a long history of sustained full occupancy of all significant posts.

¹⁵ Southport and Ormskirk Trust told us it has advertised unsuccessfully several times over the last five years in cellular pathology and has 3.2 whole time equivalent consultant vacancies in cellular pathology (of an establishment of 5.0) in addition to consultant vacancies in clinical chemistry and microbiology. Southport and Ormskirk Trust told us that technical staffing in blood sciences and cellular pathology are logged as extreme risks on its risk register and its pathology department can only just maintain an out-of-hours rota for blood sciences.

¹⁶ The higher volume of tests undertaken in larger pathology departments may allow the creation of junior medical staff posts. Junior medical staff can take on the more routine pathology work, allowing consultants to focus on the more complex and the subspecialist work. Their presence also provides teaching and supervision opportunities for consultants. These factors may make those consultant posts more attractive when recruiting.

¹⁷ Remote reporting involves slides for samples that have undergone a cellular pathology test being sent to an off-site pathologist. They are interpreted by the pathologist and a report is sent back electronically.

¹⁸ Southport and Ormskirk Trust told us [§].

¹⁹ The main pathology specialties break down into subspecialties. For example, cellular pathology comprises histopathology and cytopathology. Pathology departments may use pathologists who have subspecialised, such as histopathologists and cytopathologists, rather than cellular pathologists who cover both.

The merger agreement

20. The merger parties propose to consolidate their pathology activities by entering into a five-year agreement.²⁰ The agreement will involve a transfer of staff and licensing of assets from Southport and Ormskirk Trust to St Helens and Knowsley Trust, as explained further in paragraph 25. For the duration of this agreement St Helens and Knowsley Trust will be responsible for providing all pathology services to Southport and Ormskirk Trust and to third parties under Southport and Ormskirk Trust's existing contracts with clinical commissioning groups (CCGs) and other healthcare providers.
21. After the agreement comes into force, pathology services will continue to be provided from sites at both Southport and Ormskirk Trust and St Helens and Knowsley Trust. Most pathology services will continue to be delivered at their present site but the delivery of certain services will be transferred from one site to another (eg cellular pathology and microbiology will no longer be provided at Southport and Formby District Hospital).²¹

Why we reviewed this merger

22. In this section we explain why we reviewed this merger. Under our partnership agreement with the NHS TDA, Monitor advises on the impact that a merger between NHS trusts may have on patients by assessing its effect on choice and competition. In doing so, so far as possible, we take a similar approach to the Competition and Markets Authority (CMA).
23. We advise the NHS TDA on transactions which result in the activities of two separate NHS trusts being combined²² and either:
- (i) the turnover of the organisation (or part of the organisation or the organisation's activities) being acquired is £70 million or greater (this is known as the **turnover test**);

²⁰ The agreement between the merger parties is extendable to ten years if both merger parties agree.

²¹ For further detail see [Annex 3: Pathology services provided by Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust](#).

²² This includes mergers, acquisitions, joint ventures and other transactions between NHS trusts that result in two separate NHS trusts (or parts of two separate NHS trusts) being combined. In making its assessment, Monitor follows a similar approach to the CMA, which is to look at the substance of an arrangement rather than its legal form (as set out at paragraph 4.7 of [Mergers: Guidance on the CMA's jurisdiction and procedure](#)).

- (ii) the merged organisation supplies services that together represent at least 25% or more of services (of any description) supplied in the UK or a substantial part of it (this is known as the **share of supply test**).²³

24. We consider each of the elements (set out in paragraph 23) below.

Activities of two separate NHS trusts are combined

25. Southport and Ormskirk Trust and St Helens and Knowsley Trust told us that the transaction will involve the transfer to St Helens and Knowsley Trust (by licence) of the assets and premises currently owned by Southport and Ormskirk Trust which relate to its pathology activities. It will also involve the transfer from Southport and Ormskirk Trust to St Helens and Knowsley Trust of all employees employed in Southport and Ormskirk Trust's pathology business (that is, all pathology staff will be employed by St Helens and Knowsley Trust following the transaction). The merger parties told us that as a result of the transaction some pathology activities will cease to be provided at Southport and Ormskirk Trust's premises and will be supplied from St Helens and Knowsley Trust's facilities as explained in paragraph 21. The arrangements will be for an initial five-year term.

26. The merger parties told us that the transaction will involve the ongoing supply of pathology services by St Helens and Knowsley Trust to Southport and Ormskirk Trust and that the transaction will require St Helens and Knowsley Trust to supply existing and future customers (such as GP practices and healthcare providers) of Southport and Ormskirk Trust. The merger parties also told us that St Helens and Knowsley Trust will be able to make use of the assets and premises under licence and the employees that are transferred to provide services to its own existing and future customers. The only restriction is that such use should not interfere with St Helens and Knowsley Trust's obligations to provide pathology services to Southport and Ormskirk Trust. The merger parties also told us that they will work with each other in relation to future bids for pathology services and that this coordination is likely to involve discussions to ensure that the merged organisation has sufficient capacity in advance of bidding. We have determined that while Southport and Ormskirk Trust will continue to contract with some customers (either rolling over existing contracts or potentially entering into new ones) it will not be able to bid for contracts independently in the same way that it did before the agreement.

²³ The services to which the share of supply test is applied would not necessarily be the same as the market defined for our competitive analysis. Consistent with the CMA's merger guidelines, the share of supply test can be considered on the basis of any reasonable description of a set of goods or services - the value, cost, price, quantity, capacity, number of workers employed or any other criterion may be used to determine whether the 25% threshold is reached.

27. Based on the features of the proposed transaction set out above, we have determined that the transaction will result in the activities of two separate NHS trusts being combined.

Turnover test and share of supply test

28. We found that the transaction would not meet the turnover test as the turnover of the target enterprise, in this case the pathology business of Southport and Ormskirk Trust, is £8.5 million.

29. We assessed whether the proposed transaction would meet the share of supply test. The share of supply test is distinct from our substantive assessment of the services that could be affected by the merger and the geographic area within which to assess the merger's impact (described in paragraphs 51 to 63).

30. To assess whether the share of supply test was met in this case, we looked at the supply of direct access cold pathology services to GPs.²⁴ We looked at direct access cold pathology services to GPs as this is where the merger parties generate most of their pathology revenue from external customers. We found that the merger parties currently provide these services to GPs located mainly across six CCG areas in the north-west of England.²⁵ As explained in more detail in paragraph 68, pathology providers typically contract with CCGs to provide direct access cold pathology services either to clusters of GPs within a CCG area or to all GPs within a CCG area.

31. Although the merging parties are not currently active in the same CCG areas as each other, we determined that it is possible for the merger parties to bid for and provide pathology services outside their immediate CCG areas (including in the other merger party's CCG areas). We therefore concluded that it was appropriate to look at the geographic area covered by the six CCGs for the purposes of the share of supply test.

32. We calculated share of supply on the basis of the merger parties' share of turnover of direct access cold pathology services to GPs in the area covered by the six CCGs. Using this approach, the combined share of supply of the merger parties comfortably exceeds 25%.

²⁴ Direct access cold pathology services refer to tests that are required within a primary care setting to help with diagnosis. Direct access cold pathology services are described in more detail in paragraphs 39 to 41.

²⁵ Southport and Ormskirk Trust supplies direct access cold pathology services to GPs in Southport and Formby CCG, South Sefton CCG and West Lancashire CCG. St Helens and Knowsley Trust supplies direct access cold pathology services to GPs in Halton CCG, Knowsley CCG and St Helens CCG.

33. The area we used to calculate the share of supply has a population of approximately 830,000.²⁶ We concluded that this area is a 'substantial part' of the UK.²⁷

Conclusion

34. We concluded, on the basis of the information set out above, that it was appropriate to review the proposed transaction as a merger and to advise the NHS TDA.

How patients benefit from competition in pathology services

35. Competition is a useful tool to encourage providers to deliver high quality and efficient services. Purchasers of pathology services (CCGs, healthcare providers, etc) can choose between pathology providers, giving the pathology providers incentives to continue to maintain and to improve the quality of their services and the efficiency with which they provide pathology services.

36. Competition in pathology services can benefit patients in two ways:

- by improving the speed, quality and reliability of pathology services, which can improve the speed and accuracy of diagnosis and start of treatment (or change of treatment)
- by delivering financial savings for buyers of pathology services, which can be used to continue to maintain and improve the quality of healthcare services (both pathology services and other healthcare services) or extend the scope of services.

How commissioners buy pathology services

37. In this section we explain how commissioners (that is, CCGs) buy pathology services, to provide context for our assessment of the proposed merger in the next section.

38. CCGs buy pathology services in two ways, directly and indirectly, as described below.²⁸

²⁶ See Office for National Statistics, [Clinical Commissioning Group Population Estimates, Mid-2011 \(Census Based\)](#)

²⁷ Similar to the approach of the CMA, Monitor looks at whether the area or areas considered are of such size, character and importance as to make it worth consideration for the purposes of merger review.

How commissioners buy pathology services directly

39. Pathology tests are required in a primary care setting to help with diagnosis and treatment. CCGs buy these pathology services from pathology providers on behalf of GPs. This is known as direct access cold pathology.
40. GPs can influence buying decisions by making recommendations to their CCGs and, in some cases, can choose between pathology providers when their CCG has contracted with multiple providers.
41. CCGs can choose to buy pathology services through an any qualified provider (AQP) framework. This allows GPs, acting on behalf of patients, to choose between different pathology services providers (as long as the providers meet the predefined quality standards and accept a local tariff). However, we are not aware of any examples of CCGs in the area served by the merger parties choosing to do this.

How commissioners buy pathology services indirectly

42. Pathology tests are purchased by CCGs indirectly when they are included as part of a broader healthcare episode (for example routine preoperative blood tests required before elective surgery).
43. CCGs buy pathology services indirectly as part of their purchase of broader healthcare services under the national tariff (where providers are paid for each episode of care).²⁹ Individual healthcare providers can self-supply pathology services from their laboratory or buy them from a third party.

Our assessment of the impact of the proposed merger on choice and competition

44. In this section we set out our assessment of how the proposed merger is likely to affect choice for those purchasing pathology services, and competition between providers of pathology services. We:
 - describe the situation we would expect to see if the merger did not take place
 - identify services that could be affected by the merger (including the geographic area within which to assess this impact)

²⁸ See Department of Health (2012), '[The Pathology Services Commissioning Toolkit](#)' for more information about how pathology services are commissioned.

²⁹ Each healthcare resource group (HRG) within the national tariff will include a payment reflecting the pathology tests required as part of the treatments included in that HRG.

- evaluate the impact of the merger on those services.³⁰

45. We gathered information from several sources for our assessment. This included internal documents from Southport and Ormskirk Trust and St Helens and Knowsley Trust, as well as submissions and other evidence provided by the merger parties and third parties (healthcare providers, pathology providers and CCGs).³¹

What would happen if the merger did not go ahead?

46. To evaluate the effect of the proposed merger on choice and competition for pathology services we assessed it against the situation we would expect to see if the merger did not take place. This is known as the 'counterfactual' to the merger. Comparing the outcome if the merger goes ahead with the counterfactual enables us to judge whether the proposed merger would be likely to reduce choice and competition to the detriment of patients.

47. St Helens and Knowsley Trust told us that if the merger did not go ahead it would continue to provide all the pathology services it currently provides ([&<]). As noted in paragraph 17, Southport and Ormskirk Trust told us that its pathology business is not viable as an independent service due to sustained recruitment difficulties for consultant and technical posts.

48. Despite Southport and Ormskirk Trust's concerns about the long-term viability of its pathology business, the information we reviewed did not suggest that either merger party had plans to stop providing pathology services if the proposed merger did not go ahead (though it is possible that Southport and Ormskirk Trust might seek an alternative merger partner).

49. As we explain in more detail in the following sections, we have not received information that the merger parties have bid directly against each other in response to previous tenders for contracts to provide pathology services. However, pathology providers have told us that they expect to see more tendering of pathology services contracts in the future. In our view this could increase the likelihood that the merger parties would find themselves bidding for the same tenders in the future.

³⁰ This approach is consistent with the CMA's approach – formerly the Office of Fair Trading (OFT) and Competition Commission's (CC). See section 5 of the OFT and CC's joint [Merger Assessment Guidelines](#).

³¹ These included documents produced before the proposed merger as well as responses to information requests issued as part of our review.

50. For the reasons set out above, we determined that the appropriate counterfactual was one in which the merger parties' pathology businesses continue to operate independently of each other, continue to provide the services they currently provide, and compete with each other.³²

What services could be affected by the merger?

51. To evaluate the effect of the merger on choice and competition we identified the services that could be affected by the merger and the geographic area within which to assess the merger's impact.³³

52. In this process we identified alternative providers of pathology services that would limit the merged organisation's ability to increase price or reduce investment in the quality of services it provides after the merger.

53. We started by identifying pathology services that could be affected by the merger. Pathology is broadly divided into the following specialties: blood sciences, microbiology and cellular pathology. Each pathology specialty is also associated with a number of clinical subspecialties.³⁴

54. Pathology services also include phlebotomy and mortuary services. Phlebotomy is the taking of blood samples from patients for analysis by a pathologist. Mortuary services include storing the deceased, post mortem examinations, identifications of the deceased and viewing arrangements for bereaved relatives.

55. Each pathology specialty and subspecialty includes both routine and specialist tests. Specialist tests typically require specific expertise and equipment and are generally done in low volumes.³⁵

56. Pathology tests are also categorised based on urgency. 'Hot' pathology refers to urgent tests and 'cold' pathology refers to non-urgent tests.

³² Southport and Ormskirk Trust told us that its pathology department is facing significant challenges and is unlikely to be sustainable as an independent entity in the longer term. It may therefore currently exert limited competitive constraint on St Helens and Knowsley Trust. For the counterfactual, we make the assumption that both merger parties will compete for each of the groups of pathology services we have identified in paragraph 62. We note that, even on this assumption, the proposed merger does not raise competition concerns. We assess the extent of actual and potential competition between the merger parties in the following sections.

³³ This process is known as market definition. [Annex 2: Framework for market definition](#) summarises the conceptual framework underlying market definition.

³⁴ For more information see [Annex 1: Description of pathology services](#).

³⁵ Specialist pathology services were not examined as part of the assessment because neither party offers them.

57. Both merger parties provide the following pathology specialties and related services:

- blood sciences
- microbiology
- cellular pathology
- mortuary services
- phlebotomy.³⁶

58. The merger parties also provide a range of elective and non-elective services that require pathology services as an input.

59. Having identified pathology services that could be affected by the merger, we evaluated whether, from the perspective of a clinician (and indirectly a patient), a different pathology test could be used instead of the one requested for a given diagnosis and treatment. This is known as demand-side substitution. We concluded that there was no scope for substituting a test within one pathology specialty for a test within a different pathology specialty in diagnosis and treatment.³⁷ We therefore concluded that, from the perspective of the requesting clinician, each type of pathology specialty constitutes a separate market that could be affected by the merger.

60. We also assessed whether providers of certain pathology specialties could switch to providing ones that they currently do not offer (eg if a provider offered cellular pathology but not microbiology, would it be easy for it to also provide microbiology?). This is known as supply-side substitution. We found that the ability to switch between different specialties is limited to some extent by the expertise and equipment required for each specialty.

61. Based on our evaluation of demand-side substitution and supply-side substitution, we carried out our assessment on the basis that each pathology specialty was a market that might be affected by the merger. However, we analysed groups of different pathology services that are purchased by the same type of customer and supplied by the same set of providers, as we expect the

³⁶ A full list of the pathology specialties that are provided by both trusts is listed in [Annex 3: Pathology services provided by Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust](#).

³⁷ Since each patient's requirement depends on the clinical assessment there is no scope for demand-side substitution between different specialties.

competitive effects of the merger to be the same within each of these groups of services.

62. We identified three groups of pathology services that could be affected by the proposed merger:³⁸

- direct access cold pathology services – purchased on behalf of GPs by CCGs
- cold pathology services – required by healthcare providers to assist in diagnosis and treatment
- hot pathology services – required by healthcare providers to assist in diagnosis and treatment.

63. In the following sections, we make different determinations about the geographic areas that could be affected by the merger for each of the groups of pathology services identified in paragraph 62.³⁹

Competition for direct access cold pathology services

64. As explained in paragraphs 39 to 40, CCGs buy direct access cold pathology services on behalf of GPs, with GPs having some scope to influence the purchasing decision. In this section, we describe our assessment of whether the merger would reduce the choice of pathology providers available to CCGs for direct access cold pathology.

Competition between the merger parties

65. We first evaluated the degree to which the merger parties currently compete with each other, or are likely to compete with each other in the future, to provide direct access cold pathology services to GPs. If the merger parties are not actual or

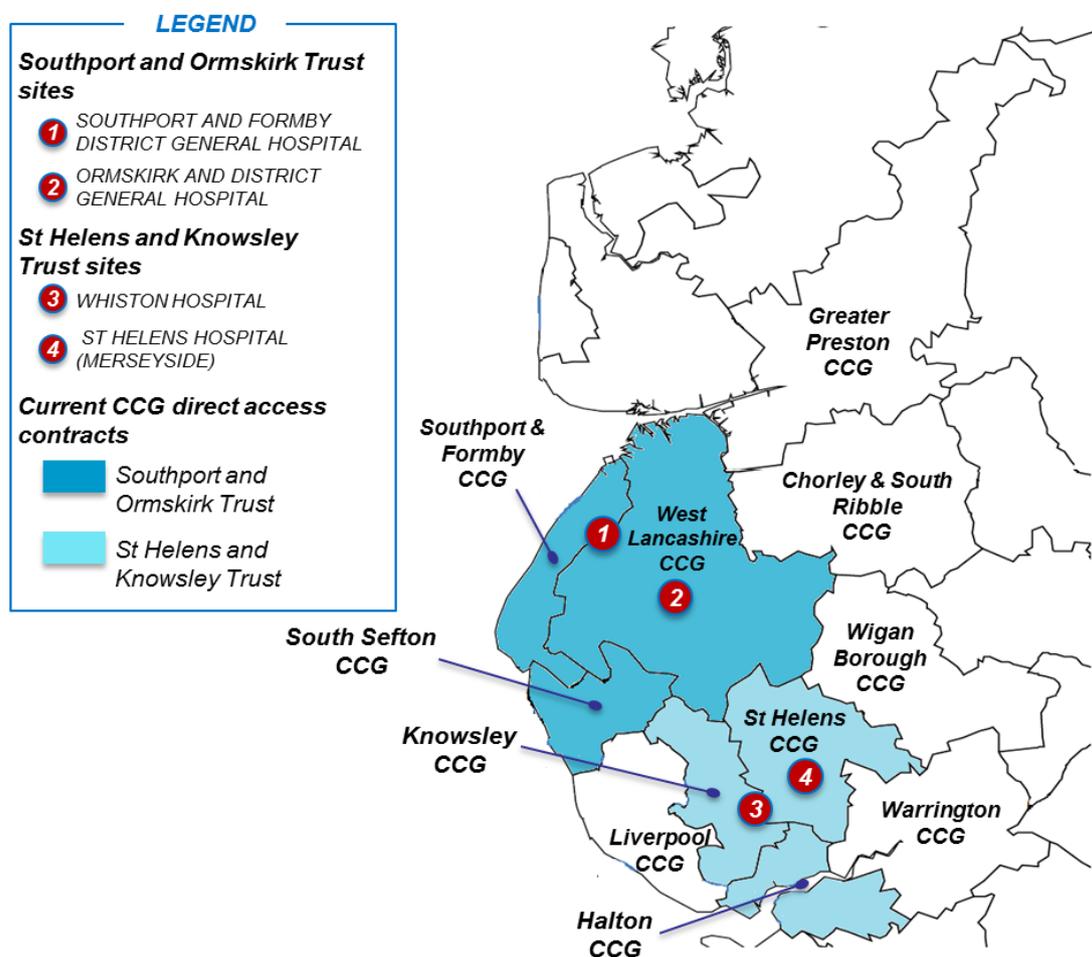
³⁸ The three groups of pathology services we identified are broadly consistent with the OFT's recent decision in this regard. OFT (2013), '[Anticipated pathology joint venture between University College London Hospitals NHS Foundation Trust, Royal Free London NHS Foundation Trust and the Doctors Laboratory Limited](#)'. Our findings are also consistent with [our advice](#) to the NHS TDA on the merger of the pathology activities of Brighton and Sussex University Hospitals NHS Trust and Surrey and Sussex Healthcare NHS Trust.

³⁹ We also considered whether the proposed merger might affect the provision of elective and non-elective services by the merger parties, given that most episodes of elective and non-elective healthcare require pathology services as an input. However, our analysis of GP referral patterns and non-elective analysis showed that the merger parties were not each other's closest competitors and that there were a number of important alternatives for each merger party in both elective and non-elective services. We concluded that incentives for the merger parties to continue improving their elective services and non-elective care are not likely to be reduced by the merger.

potential competitors the merger will not reduce choice and competition for direct access cold pathology services.

66. We looked at the contracts the merger parties currently hold with CCGs. Southport and Ormskirk Trust told us it is contracted to provide direct access cold pathology services to 50 GP practices and St Helens and Knowsley Trust told us it is contracted to provide direct access cold pathology to 83 GP practices. The merger parties told us they are not contracted to provide these services to any of the same GP practices, nor have they competed for the same contracts for direct access cold pathology services in the past. As Figure 1 below shows, each merger party holds direct access cold pathology contracts with three CCGs.

Figure 1: The merger parties' direct access contracts with CCGs



Source: information provided by the merger parties

67. The merger parties do not currently overlap in the GPs to which they supply direct access cold pathology services.
68. We then looked at the contracts for direct access cold pathology services the merger parties would be likely to compete for if the merger did not go ahead. Several CCGs told us that pathology providers can compete for contracts with clusters of GPs inside CCG areas or contracts covering entire CCG areas.⁴⁰ CCGs also told us that the distance between a pathology provider and a CCG's GP practices is an important consideration for a CCG in selecting a provider for direct access cold pathology.
69. Pathology samples deteriorate over time⁴¹ and the cost of providing a direct access cold pathology service typically increases with the travel time between where a pathology sample is taken (eg a GP surgery) and the pathology laboratory where the test takes place. However, as noted in the Carter Review,⁴² as long as the test results are available within an acceptable time, it does not matter to the patient whether their sample is tested at a local or more distant laboratory. Therefore, any pathology provider within an acceptable transport time can potentially bid for contracts to provide direct access cold pathology services to GPs.
70. Third parties gave differing views about acceptable transport time, broadly ranging from 30 to 120 minutes, with one pathology provider telling us that even greater transport times are acceptable.⁴³
71. Having reviewed the evidence on acceptable transport times submitted by both pathology providers and CCGs, we determined that pathology providers within approximately 60 minutes drive time⁴⁴ of a GP practice are likely to be potential

⁴⁰ Five CCGs told us that their GPs can choose between multiple providers for their direct access cold pathology. These CCGs are: [§<]

⁴¹ The length of time a sample remains viable depends on the nature of the test to be performed. Sample viability can be extended by centrifuging at the point of collection. However, we understand this is not commonly done because it requires additional equipment and staffing.

⁴² [The Carter Review](#), page 24.

⁴³ Four CCGs told us that drive-times up to two hours are acceptable while three other CCGs told us that 30 to 35 minutes are acceptable. The responses from pathology providers ranged from 30 to 60 minutes with one provider suggesting that a drive-time of up to four hours would be acceptable.

Specifically, we received the following responses on acceptable drive times from third parties: [§<]

⁴⁴ Our findings on acceptable drive times for direct access cold pathology are consistent with the OFT's recent [decision](#) on a pathology joint venture and [our advice](#) to the NHS TDA on a recent pathology merger (both of these decisions are also referred to in footnote 38).

bidders for contracts to provide direct access cold pathology services to that practice.⁴⁵

72. Around 1,000 GP practices are located within 60 minutes drive time of both Southport and Ormskirk Trust and St Helens and Knowsley Trust. We concluded that, without the merger, these GP practices could view both merger parties as potential providers of their direct access cold pathology services. Each of these GP practices would therefore lose a potential pathology provider as a result of the merger.⁴⁶

73. We assessed whether the merger parties would have an incentive to compete for direct access cold pathology contracts if the merger did not go ahead. We concluded that both Southport and Ormskirk Trust and St Helens and Knowsley Trust would have incentives to maintain and attract these contracts given the revenue associated with them.⁴⁷

74. We found that both merger parties currently provide direct access cold pathology, could provide direct access cold pathology to a substantial number of other GP practices (including those GPs currently supplied by the other merger party) and would have incentives to maintain and attract new direct access contracts. We concluded that the proposed merger would therefore remove a potential competitor for direct access cold pathology services.

Other competitors

75. Given our conclusion in paragraph 74, we examined whether there would be other providers of direct access cold pathology services following the merger which would be likely to compete with the merged organisation for the provision of direct access cold pathology.

76. We assessed the number of possible providers of direct access cold pathology services available to each GP practice in the areas where both merger parties could compete for contracts. We assessed the impact of the merger on competition and choice on the basis that the approximately 1,000 GP practices

⁴⁵ We tested our results in a scenario where the transport time was 30 minutes, and these results did not change our conclusions on the competitive assessment. Furthermore, we identified no competition concerns using any acceptable transport time within a 30 to 120 minute range.

⁴⁶ These GP practices will lose a potential provider because, as we explain in paragraph 26, although Southport and Ormskirk Trust will continue to contract with some pathology customers after the merger it will not be able to bid for contracts independently in the same way that it did before the agreement.

⁴⁷ Many direct access cold pathology contracts have annual revenues of over £1 million. Southport and Ormskirk Trust told us that direct access contracts are unprofitable. However, other pathology providers ([redacted]) told us that direct access cold pathology is profitable.

that we identified (see paragraph 72) would lose a potential pathology provider as a result of the merger.⁴⁸ We found that after the merger, almost all GPs (99%) located in the area where both merger parties could compete would have a choice of at least five possible pathology providers.⁴⁹

77. The results of our drive-time analysis are consistent with information we obtained from the merger parties and third parties, as described below.

78. The merger parties told us they have not competed directly with other pathology providers to date but they said they expect to face increased competition for direct access contracts in the future.⁵⁰

79. We received submissions from four of the six CCGs which the merger parties currently have contracts with to provide direct access cold pathology to GPs. They told us that the merger would not materially reduce their options were they to tender their contracts for direct access cold pathology services in the future.⁵¹

80. A number of pathology providers told us that they would consider competing with the merger parties to provide direct access cold pathology services to GPs.⁵² Their responses also suggested that their ability to compete with the merged organisation to provide these services was unlikely to be affected by capacity constraints.⁵³

⁴⁸ We determined that analysing competition from the perspective of the CCG would require assumptions about what proportion of the CCG areas would have to be within any given drive time from potential pathology providers. Basing the analysis on GPs does not require such assumptions to be made. We therefore determined that it was a reasonable way to assess the extent of choice before and after the merger across different areas. See [Annex 4: Drive-time analysis](#) for further details of our analysis.

⁴⁹ We are aware of a proposed consolidation of pathology activities between University Hospitals of South Manchester NHS Foundation Trust, Stockport NHS Foundation Trust and Tameside Hospital NHS Foundation Trust. We think that plans for this consolidation are not sufficiently far advanced that we should consider these pathology providers as a single entity. Nevertheless, we reach the same conclusions in our assessment if we treat them as a single entity.

⁵⁰ Specifically, the merger parties told us that [redacted].

⁵¹ We received responses from the following four of the six CCGs that the merger parties currently provide direct access cold pathology to: [redacted].

⁵² The pathology providers that told us they would consider competing with the merger parties to provide direct access cold pathology services to GPs were [redacted].

⁵³ While some respondents noted that staffing changes would be needed if they took on new contracts, the responses we received from third party pathology providers did not suggest that they would face significant capacity constraints that would undermine their ability to compete for contracts. For example, [redacted].

Effects of the merger on direct access cold pathology services: our conclusion

81. Based on the evidence set out in paragraphs 75 to 80, we concluded that several pathology providers are both able and likely to compete with the merged organisation to provide direct access cold pathology services. The merger is not likely to reduce the merged organisation's incentives to continue to maintain or to improve the quality and efficiency of its direct access cold pathology services. This is because we expect that CCGs will have a number of alternative pathology providers that they could switch to in the event that the quality of direct access cold pathology services provided to their GPs was to decline. We concluded that the merger is not likely to adversely affect patients through a loss of choice and competition for direct access cold pathology services.⁵⁴

Competition for cold pathology services for healthcare providers

82. As explained in paragraph 43, individual healthcare providers can choose to buy cold and hot pathology services from other providers (in addition to or as an alternative to investing in building or maintaining their own laboratory). Acute NHS trusts and other healthcare providers can therefore act as both buyers and sellers of pathology services.⁵⁵ In this section, we describe our assessment of whether the merger would reduce the choice of pathology providers available to healthcare providers for cold pathology services.

Competition between the merger parties

83. We first evaluated the degree to which the merger parties compete with each other to provide cold pathology services to other healthcare providers. The merger parties told us they have not bid against each other in response to tenders for contracts to provide these services in the past.

84. We also considered whether the merger parties would, if the merger did not go ahead, be able and likely to compete for contracts to provide cold pathology services to other healthcare providers in the future.

85. Both of the merger parties currently self-supply a cold pathology service to the acute hospitals that are part of their trusts, which suggests that they have some

⁵⁴ We also considered whether the merger could create or strengthen pathology providers' incentives and/or ability to coordinate on the price or quality (including level of investment) of their direct access cold pathology services or their hospital-based services. However, we formed the view that the presence of external competitive constraints would be likely to undermine any attempts to coordinate on increased prices or reduced investment in quality of service.

⁵⁵ Acute NHS trusts and other healthcare providers often act as both buyers and sellers of pathology services. Throughout the rest of this report we will refer to them as healthcare providers when they are acting as buyers and pathology providers when they are acting as sellers.

of the staff and equipment necessary to provide cold pathology services to other healthcare providers.

86. The evidence gathered on drive times in relation to direct access cold pathology services (as set out in paragraph 70) is equally applicable to the provision of cold pathology services to healthcare providers. Pathology providers told us that acceptable transport times would be the same for both groups of customers. In addition, the time in which pathology samples deteriorate will be the same for both groups of pathology services. We therefore determined that pathology providers within approximately 60 minutes drive time of a healthcare provider are likely to be potential bidders for contracts to provide cold pathology services to that healthcare provider.
87. There are 40 healthcare providers⁵⁶ located within 60 minutes of both Southport and Ormskirk Trust and St Helens and Knowsley Trust. We concluded that, without the merger, these healthcare providers could view both merger parties as potential providers of their cold pathology services. Each of these 40 healthcare providers would therefore lose a potential pathology provider as a result of the merger.
88. We found that the merger parties currently self-supply cold pathology services and could bid to provide cold pathology services to up to 40 healthcare providers. We concluded that the proposed merger would therefore remove a potential competitor for cold pathology services to healthcare providers.

Other competitors

89. Given our conclusion in paragraph 88, we examined whether there would be other providers of cold pathology services to healthcare providers following the merger which would be likely to compete with the merged organisation for the provision of these services.
90. We assessed the number of cold pathology providers available to the 40 healthcare providers we identified in paragraph 87 which would lose a potential

⁵⁶ This includes acute NHS trusts, community NHS trusts and independent sector providers (separate sites belonging to the same independent sector provider are treated as separate organisations). See Table 8 in [Annex 4: Drive-time analysis](#) for a full list of healthcare providers included in our analysis of cold pathology. We counted healthcare providers with multiple sites as a single organisation rather than count them by site. This is because the merger parties told us that healthcare providers would likely source pathology services for all their sites from a single provider. We also undertook the analysis at the level of individual sites as the merger parties told us that, depending on the distance between the sites, it is possible that healthcare providers might contract with multiple pathology providers to provide the same services to its different sites.

pathology provider as a result of the merger. We found that after the merger all 40 healthcare providers would have a choice of at least six providers of cold pathology services within 60 minutes drive time.⁵⁷

91. The results of our drive-time analysis are consistent with information we obtained from a number of pathology providers. Eight pathology providers told us that they would consider bidding for cold pathology service contracts to healthcare providers.⁵⁸

Effects of the merger on cold pathology services for healthcare providers: our conclusion

92. Based on the evidence set out in paragraphs 89 to 91 we concluded that several pathology providers are both able and likely to compete with the merged organisation to provide cold pathology services to healthcare providers. The merger is not likely to reduce the merged organisation's incentives to continue to maintain and improve the quality and efficiency of its cold pathology services to healthcare providers. We concluded that the merger is not likely to adversely affect patients through a loss of choice and competition for cold pathology services purchased by healthcare providers.

Competition for hot pathology services for healthcare providers

93. In this section, we describe our assessment of whether the merger would reduce the choice of pathology providers available to healthcare providers for hot pathology services.

Competition between the merger parties

94. We first evaluated the degree to which the merger parties compete with each other, or are likely to compete with each other in the future, to provide hot pathology services to healthcare providers.

95. Healthcare providers typically provide hot pathology services in-house and, other than the current transaction, we did not find any examples of tenders for hot pathology services in the area served by the merger parties.

96. However, we have found there to be an increasing number of tenders for pathology services nationally. We therefore expect opportunities to bid to provide hot pathology services to be more likely to occur in future.

⁵⁷ See [Annex 4: Drive-time analysis](#) for further details of our analysis.

⁵⁸ The following organisations told us they would bid for cold pathology contracts with healthcare providers: [X].

97. In the case of any such tender, we consider it possible, if the merger does not go ahead, that the merger parties would compete with each other. Both of the merger parties currently self-supply a hot pathology service to the acute hospitals that are part of their trusts, which suggests that they have some of the staff and equipment necessary to provide hot pathology services to other healthcare providers.

98. Based on the fact that the merger parties both have the staff and equipment required to provide hot pathology services, we concluded that the proposed merger would remove a potential competitor for hot pathology services to healthcare providers.

Other competitors

99. Given our conclusions above, we examined whether there would be other providers of hot pathology services to healthcare providers following the merger which would be likely to compete with the merged organisation for the provision of these services.

100. Hot pathology tests require very short turnaround times, so typically take place in a dedicated laboratory at the healthcare provider's premises (or very nearby). We found that, to the extent that competition could occur in this market, it was likely to take place when such services were tendered. Where hot pathology services are tendered, the healthcare provider would likely need to offer access to an on-site facility (albeit one that might require additional investment) unless they are located very nearby to the pathology provider delivering the service.⁵⁹ A pathology provider's ability to compete for hot pathology contracts with healthcare providers in these circumstances does not therefore depend on the proximity of its existing facilities to those of a given healthcare provider. This finding was supported by the fact that a hot pathology provider in the area served by the merger parties currently provides hot pathology services to another healthcare provider at an on-site facility.⁶⁰

101. Four pathology providers in the area told us that they would consider competing for contracts to provide hot pathology services to healthcare providers

⁵⁹ In a recent pathology decision, the OFT reached the view that an acute trust's options for providers of hot pathology would be limited to providers which have existing facilities within a very short distance of the acute trust or those which would be willing to set up nearby facilities or take over on-site facilities. For more detail see the OFT's [decision](#).

⁶⁰ [redacted].

in the future.⁶¹ We also determined that any pathology provider with the resources and capability to provide hot services on-site might be a potential provider of hot pathology services to healthcare providers. This might include those pathology providers identified in our assessment of cold pathology services (see paragraph 90), given that they could provide both hot and cold pathology services.

102. In addition, because the ability to compete for hot pathology service contracts is not determined by the current location of a pathology provider, pathology providers across the UK might potentially bid for these contracts. While the merger would reduce the number of potential providers of hot pathology services to healthcare providers by one, there would therefore remain at least four (and potentially more) potential bidders should healthcare providers put their hot pathology services out for competitive tender in future.

Effects of the merger on hot pathology services for healthcare providers: our conclusion

103. Based on the evidence set out in paragraphs 101 and 102 we concluded that several pathology providers are both able and likely to compete with the merged organisation to provide hot pathology services to healthcare providers. The merger is not likely to reduce the merged organisation's incentives to continue to maintain and to improve the quality and efficiency of its hot pathology services. We concluded that the merger is not likely to have an adverse effect on patients through a loss of choice and competition for hot pathology services purchased by healthcare providers.

Our advice to the NHS TDA

104. Our advice to the NHS TDA is that the proposed merger is not likely to have an adverse effect on patients as a result of a loss of choice and competition in any of the following groups of pathology services or in any of the other services the merger parties provide:

- direct access cold pathology services – purchased on behalf of GPs by CCGs
- cold pathology services – required by healthcare providers to assist in diagnosis and treatment

⁶¹ The pathology providers which told us they would consider competing for contracts to provide hot pathology services to healthcare providers in the future are: [redacted].

- hot pathology services – required by healthcare providers to assist in diagnosis and treatment.

Annex 1: Description of pathology services

1. Pathology is the branch of medicine concerned with the cause, origin and nature of disease, including changes occurring as a result of disease. It involves examining changes in the tissues and blood and other body fluids to show the potential for disease to develop, to detect its presence, to assess its cause or severity, or to monitor its progress or the effects of treatment.
2. Pathology is broadly divided into the following specialties: cellular pathology, blood sciences and microbiology.
3. Each pathology specialty is associated with clinical subspecialties:
 - cellular pathology: histopathology and cytopathology
 - blood sciences: chemical pathology (also known as clinical chemistry), haematology (including anti-coagulation) and blood transfusion
 - microbiology: bacteriology, virology, parasitology and immunology.
4. Pathology services also include phlebotomy and mortuary. Phlebotomy is the taking of blood samples from patients, for analysis by pathology. Mortuary services include storing the deceased, post-mortem examinations, identifications and viewing arrangements for bereaved relatives.
5. The provision of pathology services involves three elements:⁶²
 - i. pre-analytical work: the collection of blood (phlebotomy), logistics and transportation of samples, and clinical guidance
 - ii. analytical work
 - iii. post-analytical work: interpretation and dissemination of results and providing advice in subsequent investigations.
6. Pathology investigations take place in hot or cold laboratories. Hot laboratories provide urgent and essential clinical support for acute services. They are expected to be located within, or very near to, the acute hospital served because results need to be provided within a few hours. Cold laboratories typically process high volumes of non-urgent, routine tests and may also process specialist tests at low volumes. The laboratories can be located away from the hospital's main site as there is less urgency for clinicians to receive results.

⁶² [The Carter Review](#), page 64.

Annex 2: Framework for market definition

1. A market definition exercise should identify services, and the locations from which they are provided, that are effective substitutes for the services provided by the merged organisation. This allows the competitive effects of a merger to be analysed by identifying providers of services capable of applying competitive pressure to the merged organisation.⁶³ Market definition is not an end in itself and may not be necessary to reach a definite view on the specific boundaries of the relevant product and geographic markets.
2. In line with best practice, and consistent with CMA's guidelines, we use the hypothetical monopolist test, wherever feasible, as the basis for identifying and defining the markets affected by a merger.⁶⁴
3. The test begins by considering the narrowest set of products or services supplied by the merger organisations. It then asks whether, if there was only one supplier (a hypothetical monopolist) of the service in question, the hypothetical monopolist could raise prices or reduce service quality profitably by a small but significant non-transitory amount. If this would not be profitable, because customers would switch to other services (demand-side substitution), or new providers would start to supply the service (supply-side substitution), the closest substitute products or services are added to the group and the process is repeated. The product market is defined at the point at which a hypothetical monopolist is able to increase prices or reduce quality profitably for those services.
4. To define the relevant product market we consider substitution possibilities on both the demand side (substitution by GPs, CCGs and healthcare providers) and the supply side (substitution by providers of pathology services) of the market. In the main body of this report we began by considering which

⁶³ This approach is consistent with the CMA's (formerly the Office of Fair Trading and Competition Commission) approach. See section 5.2 of the [joint merger assessment guidelines](#).

⁶⁴ It is also consistent with the approach of the US Department of Justice/Federal Trade Commission in their [horizontal merger guidelines](#). Section 4.1 explains that the test requires that a hypothetical profit-maximising firm, not subject to price regulation, that was the only present and future seller of those products ('hypothetical monopolist') would be likely to impose at least a small but significant and non-transitory increase in price ('SSNIP') on at least one product in the market, including at least one product provided by one of the merging firms. Notably, in the NHS providers are subject to price regulation with respect to many of their services. As such it is notable that the merger guidelines explain that this SSNIP methodology is used because normally it is possible to quantify 'small but significant' adverse price effects on customers and analyse their likely reactions, not because price effects are more important than non-price effects. In the NHS the focus is often on the likely reactions of patients to changes in quality although in pathology providers can also compete on price.

services are affected by the merger and therefore what would be an appropriate starting point for market definition. We looked at demand-side substitution, that is, whether CCGs, GPs and healthcare providers would choose to switch provider if the quality of the service were to decline (or if prices were to increase). We then considered the supply side, that is, whether other providers would choose to switch to providing the service if quality of services were to decline (or if prices were to increase).

Annex 3: Pathology services provided by Southport and Ormskirk Hospital NHS Trust and St Helens and Knowsley Teaching Hospitals NHS Trust

1. Table 1 below summarises the pathology services provided across each of the merger parties' sites currently and as proposed following the merger.

Table 1: Pathology services provided by the merger parties

Site	Pathology services currently provided	Pathology services provided following the merger
Southport and Ormskirk Hospital NHS Trust		
Ormskirk and District General Hospital	<ul style="list-style-type: none"> • Blood sciences • Mortuary • Phlebotomy (pre-analytical) 	<ul style="list-style-type: none"> • Blood sciences • Mortuary • Phlebotomy (pre-analytical)
Southport and Formby District General Hospital	<ul style="list-style-type: none"> • Blood sciences • Medical microbiology • Mortuary services • Cellular pathology 	<ul style="list-style-type: none"> • Blood sciences • Mortuary services
Other sites	<ul style="list-style-type: none"> • Community phlebotomy (pre-analytical) 	<ul style="list-style-type: none"> • Community phlebotomy (pre-analytical)
St Helens and Knowsley Teaching Hospitals		
Whiston Hospital	<ul style="list-style-type: none"> • Blood sciences • Medical microbiology • Cellular pathology • Mortuary 	<ul style="list-style-type: none"> • Blood sciences • Medical microbiology • Cellular pathology • Mortuary
St Helens Hospital	<ul style="list-style-type: none"> • Phlebotomy (pre-analytical) • Blood sciences (satellite transfusion) 	<ul style="list-style-type: none"> • Phlebotomy (pre-analytical) • Blood sciences (satellite transfusion)
Other sites	<ul style="list-style-type: none"> • Phlebotomy (pre-analytical) 	<ul style="list-style-type: none"> • Phlebotomy (pre-analytical)

Source: information provided by the merger parties

Annex 4: Drive-time analysis

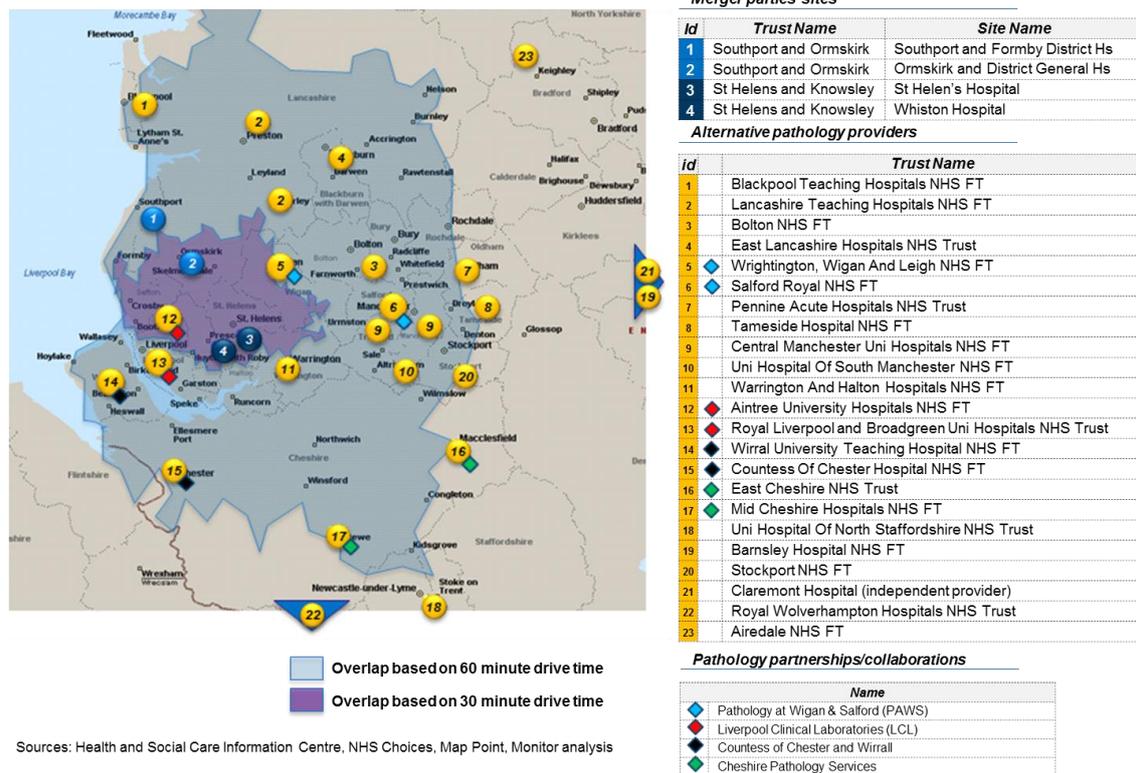
1. We assessed the impact of the proposed merger based on the number of pathology providers available to GP practices and other healthcare providers (as possible purchasers of pathology services)⁶⁵ in areas where both merger parties are likely to be potential bidders for contracts. We carried out this assessment for direct access cold pathology and for cold pathology services to healthcare providers. In this annex we explain our methodology and results.

Direct access cold pathology services

2. Based on submissions from third parties, we determined that the merger parties could provide services to GPs within approximately 60 minutes drive time of their pathology laboratories. We then determined the area in which both merger parties are likely to compete for the provision of direct access cold pathology services by looking at the overlapping area based on 60 minutes drive time. We observed that there are approximately 1,000 GP practices located within this area.
3. Figure 2 below is a visual representation of our drive-time analysis. The yellow dots represent the alternative pathology providers which would act as a competitive constraint on the merged organisation. We used 60 minutes drive time for our primary analysis while 30 minutes drive time was used as a sensitivity check. Based on the primary 60 minute drive-time analysis, 19 alternative pathology providers act as a competitive constraint on the merged organisation. We counted multi-site pathology providers and pathology networks as single entities and excluded pathology providers that do not provide a full set of pathology services.

⁶⁵ Acute NHS trusts and other healthcare providers often act as both buyers and sellers of pathology services. Throughout the rest of this annex we will refer to them as healthcare providers when they are acting as buyers and pathology providers when they are acting as sellers.

Figure 2: Drive-time analysis



4. Table 2 below demonstrates the impact of the proposed merger on the likely number of potential bidders for direct access cold pathology services available to GPs located in the overlap area (ie the area in which the merger will result in a reduction in the number of pathology providers).

Table 2: Choice of direct access cold pathology providers after the merger (60 minutes drive time)

Number of pathology providers available to GPs after the merger	Number of GPs (996 GPs total)	Share of GPs	Cumulative share of GPs
3-4	6	1%	1%
5-10	115	11%	12%
11-17	875	88%	100%

Sources: Health and Social Care Information Centre, NHS Choices, Map Point, Monitor analysis

5. Table 2 above shows that the GPs in the area have a number of pathology providers within 60 minutes drive time. Almost all GPs (99%) located in the area where both merger parties compete would have a choice of at least five pathology providers after the merger.

6. As a sensitivity check we undertook similar analysis for a 30 minutes drive time. The results of the 30 minutes drive-time analysis are displayed in Table 3 below.

Table 3: Choice of direct access cold pathology providers after the merger (30 minutes drive time)

Number of pathology providers available to GPs after the merger	Number of GPs (192 GPs total)	Share of GPs	Cumulative share of GPs
2	10	5%	5%
3-5	161	84%	89%
6-7	21	11%	100%

Sources: Health and Social Care Information Centre, NHS Choices, Map Point, Monitor analysis

7. The results in Table 3 above show that most GPs (95%) would have a choice of at least three providers of direct access cold pathology services within 30 minutes drive-time. Although this sensitivity check provides further support to our conclusions, we determined that 30 minutes drive time may be overly conservative as submissions from several CCGs suggest that the relevant drive time could be up to 120 minutes.

Cold pathology services purchased by healthcare providers

8. We did a similar drive time analysis for healthcare providers that purchase cold pathology services (including acute NHS trusts, independent sector providers, community providers and specialised providers). Consistent with our approach to direct access cold pathology services to GPs, we determined that pathology providers could provide cold pathology services to healthcare providers within 60 minutes drive time of their pathology laboratories. These drive times apply for both direct access cold pathology and cold pathology to healthcare providers as pathology providers told us that the acceptable transport times would be the same for both groups of customers.
9. The merger’s impact on choice for cold pathology services purchased by healthcare providers has been analysed at both trust⁶⁶ and at site level.
10. We carried out the trust-level analysis as the merger parties told us that healthcare providers would typically source pathology services for all their sites from a single provider.⁶⁷

⁶⁶ In this annex we do not use the term trust to refer to acute NHS trusts only. We use this term to include acute NHS trusts, independent sector providers, community providers and specialised providers.

⁶⁷ The trust-level analysis only focuses on those trusts that have all their sites inside the overlap (ie trusts where all sites could be served by the merger parties). Furthermore, separate sites belonging to the same independent sector provider are treated as separate organisations (ie each site is considered a distinct trust).

11. We also carried out the site-level analysis as the merger parties told us that a healthcare provider might contract with multiple pathology providers to provide the same services to its different sites depending on the distance between the sites (longer distances between sites may necessitate the use of different providers for different sites).

12. Table 4 below demonstrates the impact of the proposed merger on the likely number of potential bidders for cold pathology services available to healthcare providers (trusts) located in the overlap area. We also provide a full list of the healthcare providers (trusts) that we included in this analysis at the end of this annex in Table 8.

Table 4: Choice of cold pathology providers after the merger (60 minutes drive time, trust level)

Number of pathology providers available to healthcare providers	Number of healthcare providers (trusts) (40 trusts total)	Share of healthcare providers (trusts)	Cumulative share of healthcare providers (trusts)
6	4	10%	10%
7-11	5	12%	22%
12-14	19	48%	70%
15-16	12	30%	100%

Sources: Health and Social Care Information Centre, NHS Choices, Map Point, Monitor analysis

13. The results in Table 4 above show that all the healthcare providers would have a choice of at least six providers of cold pathology services within 60 minutes drive time, with 90% of healthcare provider having a choice of at least seven providers.

14. As a sensitivity check we undertook similar analysis assessing healthcare providers' choice of pathology provider based on 30 minutes drive time. The results of this 30 minutes drive-time analysis are displayed in Table 5 below.

Table 5: Choice of cold pathology providers after the merger (30 minutes drive time, trust level)

Number of pathology providers available to healthcare providers	Number healthcare providers (trusts) (9 trusts total)	Share of healthcare providers (trusts)	Cumulative share of healthcare providers (trusts)
2	1	11%	11%
4	7	78%	89%
5	1	11%	100%

Sources: Health and Social Care Information Centre, NHS Choices, Map Point, Monitor analysis

15. The results in Table 7 above show that most (89%) healthcare providers would have a choice of at least four providers of cold pathology services within 30 minutes drive time. Nevertheless, we determined that 30 minutes drive time may

be overly conservative as evidence from third parties suggests that they are both interested and capable of serving healthcare providers located at a greater distance.

16. Table 6 below demonstrates the impact of the proposed merger on the likely number of potential bidders for cold pathology services available to healthcare providers (analysed at site level) located in the overlap area.

Table 6: Choice of cold pathology providers after the merger (60 minutes drive time, site level)

Number of pathology providers available to healthcare providers	Number of healthcare providers (sites) (68 sites total)	Share of healthcare providers (sites)	Cumulative share of healthcare providers (sites)
5	1	2%	2%
6-9	9	13%	15%
11-13	19	28%	43%
14-16	39	57%	100%

Sources: Health and Social Care Information Centre, NHS Choices, Map Point, Monitor analysis

17. The results in Table 6 above show that most (98%) healthcare providers would have a choice of at least six providers of cold pathology services within 60 minutes drive time.

18. We also undertook similar analysis assessing healthcare providers' choice (at site level) for 30 minutes drive time. The results of this 30 minutes drive-time analysis are displayed in Table 7 below.

Table 7: Choice of cold pathology providers after the merger (30 minutes drive time, site level)

Number of pathology providers available to healthcare providers	Number of healthcare providers (sites) (12 sites total)	Share of healthcare providers (sites)	Cumulative share of healthcare providers (sites)
2	1	8%	8%
3	2	17%	25%
4-5	9	75%	100%

Sources: Health and Social Care Information Centre, NHS Choices, Map Point, Monitor analysis

19. The results in Table 7 above show that most (92%) healthcare providers would have a choice of at least three providers of cold pathology services within 30 minutes drive time. Nevertheless, we determined that 30 minutes drive time may be overly conservative as evidence from pathology providers suggests that they are both interested and capable of serving healthcare providers located at a greater distance.

20. Table 8 includes a full list of the healthcare providers (customers) that we included in trust-level analysis (as described in paragraph 12) of cold pathology services to healthcare providers.

Table 8: Healthcare providers included in our analysis of cold pathology

#	NHS trusts / NHS foundation trusts	#	Independent sector
1	Aintree University Hospitals NHS Foundation Trust	23	Fairfield Hospital
2	Alder Hey Children's NHS Foundation Trust	24	The Grosvenor Hospital - Nuffield
3	Bolton NHS Foundation Trust	25	Alexandra Hospital – BMI*
4	Bridgewater Community Healthcare NHS Trust	26	Beardwood Hospital – BMI
5	Central Manchester University Hospitals NHS Foundation Trust	27	Beaumont Hospital – BMI
6	Countess of Chester Hospital NHS Foundation Trust	28	Highfield Hospital – BMI
7	East Lancashire Hospitals NHS Trust	29	Lancaster – BMI
8	Lancashire Teaching Hospitals NHS Foundation Trust	30	South Cheshire Hospital – BMI
9	Liverpool Heart and Chest Hospital NHS Foundation Trust	31	Euxton Hall NHS TC** – Ramsay
10	Liverpool Women's NHS Foundation Trust	32	Flyde Coast NHS TC – Ramsay
11	Mid Cheshire Hospitals NHS Foundation Trust	33	Fulwood Hall NHS TC – Ramsay
12	Royal Liverpool and Broadgreen University Hospitals NHS Trust	34	Oaklands Hospital – Ramsay
13	Salford Royal NHS Foundation Trust	35	Renacres Hall NHS TC – Ramsay
14	Stockport NHS Foundation Trust	36	Classic Lourdes Hospital – Spire
15	The Christie NHS Foundation Trust	37	Classic Regency Hospital – Spire
16	The Clatterbridge Cancer Centre NHS Foundation Trust	38	Spire Cheshire Hospital – Spire
17	The Walton Centre NHS Foundation Trust	39	Spire Manchester Hospital – Spire
18	University Hospital of South Manchester NHS Foundation Trust	40	Spire Murrayfield Hospital (Wirral) – Spire
19	Warrington and Halton Hospitals NHS Foundation Trust		
20	Wirral Community NHS Trust		
21	Wirral University Teaching Hospital NHS Foundation Trust		
22	Wrightington, Wigan and Leigh NHS Foundation Trust		

*Note: BMI means BMIHealthcare, an independent hospital group

**Note: TC stands for treatment centre



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