



CO-OPERATION & COMPETITION PANEL
FOR NHS-FUNDED SERVICES

Cooperation and Competition Panel

Guidance on fast-track procedure for certain categories of mergers

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EXECUTIVE SUMMARY

1. The Cooperation and Competition Panel (CCP) is introducing a fast-track procedure because its experience indicates that certain categories of mergers are very likely to be consistent with the Principles and Rules for Cooperation and Competition (Principles and Rules). The CCP intends to deal with these more quickly, in a shorter procedure, which requires less input from the merging organisations. To preserve the benefit of certainty for the organisations and the relevant decision makers, the CCP will still issue a short document setting out its advice and recommendations in respect of mergers assessed using the fast-track procedure.¹
2. The CCP has identified a number of categories of mergers that are likely to be suitable for approval by the CCP following the fast-track procedure.² These include temporary mergers; mergers between non-competitors; mergers that have previously been approved by the CCP involving a change in degree of control exercised by the acquirer; and other mergers that are very likely to be consistent with the Principles and Rules, for example those involving providers of community health services where it can be shown that sufficient numbers of alternative providers remain post-merger. In relation to the last category, the CCP has devised a set of screens to determine the likelihood of such a merger being consistent with the Principles and Rules.
3. The CCP's experience also indicates that there are certain factors which mean that a merger merits more detailed investigation and analysis, for example if there are material questions regarding the financial and clinical capabilities of the acquirer. In addition, a more detailed investigation is likely to be required in circumstances where there are relevant complaints from third parties which, in the view of the CCP, indicate that the merger may have material adverse effects on patients and taxpayers; where there has been a previous breach of the Principles and Rules; or where a merger raises novel issues. The presence of these factors will therefore usually preclude the use of the fast-track procedure.
4. The fast-track procedure differs from the normal Phase I procedure in that the CCP aims to issue a statement setting out its advice and recommendations within ten working days (instead of 40 working days) from the date of notification that the proposed meets its acceptance criteria. The CCP aims to meet this shorter deadline in the majority of fast-track mergers. Whether this will be possible in practice will depend on factors including the number of mergers notified to the CCP at any one time, and the available resources.
5. The CCP will apply this guidance to mergers in respect of which it has received a notification that meets its acceptance criteria on or after 1 April 2010. Merging organisations are encouraged to make early contact with the CCP to discuss the possibility of the use of a fast-track procedure and consider the information requirements for fast-track mergers, set-out in this guidance.

¹ The role of the CCP in considering mergers is to advise Strategic Health Authorities, the Department of Health and, in relation to Foundation Trusts, Monitor, on whether the proposed transaction is consistent with the relevant provisions of the Principles and Rules.

² Note that approval by the CCP following the fast-track procedure does not affect the requirements and processes of other organisations in the merger process. It does not mean that other relevant approvals do not need to be obtained.

6. The fact that a merger is eligible for the CCP's fast-track procedure does not affect the role of other decision makers in the merger process. For example, it does not affect other approvals that the organisations may have to obtain from organisations such as Monitor.
7. This guidance reflects the CCP's merger experience to date. The guidance will be reviewed and updated as it gains additional experience and to take account of new developments.

INTRODUCTION

8. This guidance sets out an abbreviated and simplified procedure, referred to as a fast-track procedure, under which the CCP intends to deal with mergers that meet the CCP's acceptance criteria and which are consistent with the Principles and Rules.³
9. The CCP is introducing the fast-track procedure because its experience to date indicates that certain categories of mergers are very likely to be consistent with the Principles and Rules. The CCP's intention is to deal with these more quickly, in a shorter procedure, which requires less input from the merging organisations. To preserve the benefit of certainty for the organisations and the relevant decision makers, the CCP will continue to issue a short document setting out its advice and recommendations in respect of mergers assessed using the fast-track procedure.⁴
10. Merging organisations can use this guidance to assess whether or not their merger may be suitable for approval using the fast-track procedure. It is important to note that once the CCP has accepted a merger, it will carry out a case-specific assessment to ascertain whether, in light of the available evidence, a merger that comes within one of the categories outlined below is actually eligible for the fast-track procedure.
11. This guidance will be applied to mergers in respect of which the CCP has received a notification that meets its acceptance criteria on or after 1 April 2010. It supplements (but does not take precedence over) the CCP's Draft interim guidance on merger inquiries and the CCP's Rules of procedure.⁵ It is expected that the CCP's Draft interim guidance on merger inquiries will be updated in due course to incorporate this guidance and any other relevant developments.
12. The remainder of this guidance:
 - i. describes categories of mergers that the CCP considers suitable for approval by the CCP following the fast-track procedure;
 - ii. outlines circumstances where the fast-track procedure is unlikely to be suitable;
 - iii. explains what the fast-track procedure consists of and how it differs from the normal procedure;
 - iv. sets out an indicative timeline for review of fast-track mergers; and
 - v. outlines the sequence of review in the event that more than one merger is notified to the CCP around the same time.

³ Section 3, CCP Draft interim guidance on merger inquiries (January 2009).

⁴ The CCP provides advice to the Department of Health, Strategic Health Authorities and, in relation to Foundation Trusts, Monitor.

⁵ These documents are available on the CCP's web site at: www.ccp-panel.org.uk/reports-and-guidance/index.html.

MERGERS SUITABLE FOR APPROVAL BY THE CCP FOLLOWING THE FAST-TRACK PROCEDURE

13. The CCP's experience since January 2009 indicates that there are certain categories of mergers which are very likely to be consistent with the Principles and Rules. In other words, they are unlikely to have material adverse effects on patients and taxpayers as a result of a loss of choice or competition (or otherwise). The CCP considers that four categories of mergers are likely to be suitable for the fast-track procedure:
- i. temporary mergers with a duration of up to two years;
 - ii. mergers between non-competitors;
 - iii. transactions resulting in a change in the degree of control exercised by one party over the other (where the CCP has previously advised that the merger is consistent with the Principles and Rules); and
 - iv. other mergers that are very likely to be consistent with the Principles and Rules, for example certain mergers involving providers of community health services that pass the screening tests devised by the CCP.
14. The following sections describe in more detail the types of transactions that could fall within each category.

TEMPORARY MERGERS

15. The CCP considers mergers to be temporary in nature when they do not bring about a lasting change to the organisations concerned or to the market on which the organisations provide services or could provide services in the near future. The following cumulative factors are likely to be indicative of a temporary merger to which the fast-track procedure applies.
- The existence of a legally binding agreement which clearly sets out the relationship between the organisations, indicates that the duration of the relevant relationship is two years or less, and provides legal certainty as to the steps to be followed once the temporary arrangements terminate.
 - The existence of a legally binding agreement that provides that any liability for staff redundancy remains with the original employer of the staff concerned, for example by way of an indemnity.
 - Agreement from the relevant Strategic Health Authority (SHA) or, in the case of arrangements involving NHS Foundation Trusts, the relevant NHS Foundation Trust board, that the arrangements are temporary and will be terminated within two years.
 - The existence of appropriate information barriers. These barriers should ensure that any exchange of commercially sensitive information between the organisations is limited to delivering the benefits of the relevant arrangement and is managed to minimise the risk of an adverse effect on patients or taxpayers, for example by way of collusion or bid rigging. The risk of adverse effects arising due to the potential for temporary integration to spill over into areas not intended to be covered by the relevant arrangements. For example, a temporary merger between organisations A and B in respect of a particular group of services could provide an opportunity to coordinate bids for a contract that is unrelated to the

integration between A and B. Safeguards should be in place to ensure that commercially sensitive information is distributed on a need-to-know basis to individuals within both organisations. Individuals with access to information on bids produced by the temporary merger organisation will not be involved in submitting bids for a specified period on behalf of any of the organisations once the arrangements terminate.

16. By contrast, arrangements with duration in excess of two years and vague arrangements of indefinite duration (or those which are renewable) will not be considered temporary in nature. Similarly, temporary arrangements that do not include appropriate safeguards to minimise the risk of an adverse effect on patients or taxpayers as a result of, for example, collusion or bid rigging, are unlikely to be considered temporary mergers – even if they are intended to last for less than two years.
17. In the event that organisations are considering extending arrangements that were originally intended to last for up to two years, they should contact the CCP prior to such an extension being agreed.

MERGERS BETWEEN NON-COMPETITORS

18. Mergers between non-competitors are mergers involving organisations that do not currently provide the same type of service in the same geographic areas, and are unlikely to in the near future (ie within the next one to two years), and do not usually refer patients to one another (either before or after the merger). Mergers between non-competitors are highly unlikely to give rise to an adverse effect on patients and taxpayers. Therefore, they are suitable for approval by the CCP following the fast-track procedure. An example of such a transaction might be a merger between a non-specialist acute trust in the north of England and a non-specialist acute trust in the south of England, located hundreds of miles apart.

TRANSACTIONS WHERE THERE IS A CHANGE IN DEGREE OF CONTROL

19. Certain mergers may result in a change in the nature or degree of control exercised by one organisation over another. For example, services may initially be provided by organisation B pursuant to a management agreement with organisation A. In due course, the services and staff may transfer permanently from A to B pursuant to a transfer or merger agreement. Under the management agreement, B controls the day-to-day management of A's services. Following the merger or transfer agreement, B effectively controls all of A's transferred business. Effectively there is a change in the degree of control when A and B enter into the transfer or merger agreement.
20. In these circumstances, if the CCP has previously advised the Department of Health and / or Monitor that the merger (in the example above, the management agreement) is consistent with the Principles and Rules, then the subsequent merger will be suitable for approval by the CCP

following the fast-track procedure (provided that the initial assessment was based on the assumption of full integration).⁶

OTHER MERGERS VERY LIKELY TO BE CONSISTENT WITH THE PRINCIPLES AND RULES

21. There are other categories of mergers that are very likely to be consistent with the Principles and Rules because they do not have a material adverse effect on patients and taxpayers. For example, since January 2009 the CCP has reviewed a number of mergers involving providers of community health services. Its experience indicates that such mergers have the potential to reduce patient choice or competition for contracts through the loss of a previously independent bidder. This loss of choice or competition is much less likely to have a material adverse effect on patients or taxpayers if there remain a sufficient number of credible alternative bidders after the merger.
22. The CCP has devised a series of screens to determine the likelihood that mergers involving providers of community health services will raise concerns under Principles and Rules. In circumstances where the use of the screens, followed by a number of sense checks, indicates that a merger is very likely to be consistent with the Principles and Rules, the CCP will approve the merger using the fast-track procedure. Further details on the screens and sense checks are set out in Appendix 1.
23. As noted above, merging organisations can use the screens (and this guidance generally) to make their own assessment of whether or not their merger may be suitable for approval using the fast-track procedure. Once the CCP has accepted a merger, it will undertake its own assessment to determine if the fast-track procedure can be used.
24. As the CCP gains more experience of other types of mergers that are very likely to be consistent with the Principles and Rules, it may be able to develop a method of analysis that could lead to the use of the fast-track procedure for some of those cases. Unless this development coincides with an update of the CCP's draft interim guidance on merger inquiries, it is expected that the CCP's approach will be set out in additional guidance.

MERGERS NOT SUITABLE FOR APPROVAL FOLLOWING THE FAST-TRACK PROCEDURE

25. While many of the mergers falling into the categories referred to at paragraphs 14-24 will be consistent with the Principles and Rules, there may be situations which exceptionally require a more detailed Phase I (possibly followed by Phase II) analysis. In such cases, the CCP may revert to a normal Phase I merger procedure.
26. When the CCP decides to revert to a normal Phase I procedure, it will advise the organisations and publish a notice to this effect on its web site. The notice will invite comments from third

⁶ When the CCP reviews an arrangement which consists of a partial integration of two separate organisations, it is likely to assess whether the arrangement is consistent with the Principles and Rules on the basis that the organisations will be fully integrated. This will be clear from the CCP's advice and recommendations; in case of any doubt, organisations should contact the CCP for confirmation.

organisations and set out the relevant deadlines for the CCP's advice and recommendations. The new review period (Phase I) will start from the date the web site is updated.⁷

27. The following are some examples of instances where the CCP may decide not to use the fast-track procedure:

- Mergers where there are material questions about the acquiring party's clinical or financial capabilities (or, in the case of a merger of equals, where there are material questions about any organisations' clinical or financial capabilities). The CCP is concerned that mergers where the acquiring organisation is regarded as financially or clinically weak, and which has a strong position relative to the commissioner, may have an adverse effect on patients and taxpayers. When considering the financial and clinical strengths of acquiring organisations, the CCP generally relies on judgements made by regulators responsible for assessing these matters, in particular, the Care Quality Commission.

Based on its previous merger experience, the CCP considers that there are likely to be material questions about the acquiring party's clinical or financial capabilities where the organisation's most recent CQC rating is "weak".⁸ Where the acquiring organisation has received such a rating, the merger will not be suitable for approval following the fast-track procedure because the CCP will need to carry out a more detailed assessment of whether the merger could have an adverse effect on patients or taxpayers. Where the acquiring organisation's most recent overall CQC rating is "fair" or "good", the CCP will carry out a case-by-case assessment to ascertain whether or not the merger is eligible for the fast-track procedure.

- Instances where the CCP has received comments from a third party that indicate that, in the view of the CCP, the merger may have material adverse effects on patients and taxpayers.⁹
- Mergers that raise novel issues of general interest, for example issues which the CCP has not considered in detail in previous merger inquiries. In these circumstances, the CCP may decide that the public interest is best served by conducting a more detailed analysis and publishing detailed advice and recommendations.
- Mergers involving one or more organisations which the CCP has previously found to be in breach of any of the Principles and Rules (or involving areas where the CCP has previously found a breach of the Principles and Rules). This includes failure to notify mergers that fall within the CCP's remit.¹⁰ Such mergers are likely to merit more detailed investigation and analysis than could be conducted in a fast-track procedure.

OUTLINE OF FAST-TRACK PROCEDURE

28. The fast-track process is significantly shorter than the normal (Phase I) 40 day timetable for merger review and requires less information from, and engagement with, the organisations once

⁷ The ten working days taken for the fast-track procedure will not count towards the normal forty working day Phase I evaluation. This is because in a normal Phase I procedure, the CCP contacts third parties for information at the beginning of the evaluation period. In contrast, third parties are not normally consulted as part of the fast-track procedure.

⁸ The CCP will confirm the relevant party's CQC rating directly with the CQC; it will also ascertain whether or not there are any recent developments that may impact on the rating.

⁹ Third party comments on a merger must be submitted within the relevant timeframe indicated on the CCP's web site.

¹⁰ This covers breaches of any of the Principles and Rules relevant to the CCP's remit, namely procurement and advertising appeals and conduct and mergers cases.

the CCP has accepted the merger. The CCP will use the pre-acceptance period to ascertain whether or not a merger may be suitable for fast-track. Organisations can specifically request the CCP to consider using the fast-track procedure. The CCP may also decide on its own initiative that the fast-track procedure is, or may be, appropriate.

29. The CCP aims to deal with the majority of mergers that it deems suitable for approval following the fast-track procedure within ten working days. The CCP may review this target if, in its view, the case load becomes exceptional. Table 1 sets-out the timeline for a fast-track procedure.

Table 1 Timeline for fast-track procedure	
<i>Stage of Case</i>	<i>Actions</i>
Informal advice and pre-acceptance	<ul style="list-style-type: none"> • Informal discussions between CCP and the organisations • CCP ascertains if fast-track may be appropriate
Days -10 to 0	<ul style="list-style-type: none"> • Organisations submit notification of merger, based on information required for fast-track (see Appendix 2) • CCP determines if acceptance criteria are met and if the case is eligible for fast-track • CCP publishes on its web site <ul style="list-style-type: none"> ○ description of transaction ○ indication that CCP is considering using the fast-track procedure ○ invitation for third parties to comment (including whether or not the case is suitable for fast-track) ○ the deadline for third party comments ○ date of end of fast-track procedure
Day 0	<ul style="list-style-type: none"> • CCP publishes notice of acceptance on its web site
Day 1 – 9	<ul style="list-style-type: none"> • CCP conducts fast-track review and prepares statement that merger is consistent with the Principles and Rules • If analysis indicates that the merger is not suitable for fast-track, the CCP informs the organisations and updates its web site accordingly. The Phase I timetable will run from day zero, provided that the CCP has sufficient information to begin its Phase I analysis.¹¹
Day 10	<ul style="list-style-type: none"> • CCP publishes short form advice setting out: <ul style="list-style-type: none"> ○ The organisations ○ Details of the transaction ○ The reason for using the fast-track procedure ○ Advice that the merger is consistent with the Principles and Rules ○ Any assumptions associated with the advice

30. The fast-track procedure therefore differs from the normal procedure in that:

- the time for the CCP’s review is ten working days instead of 40 working days;
- the CCP does not make third party inquiries (although it will take into account information submitted by third parties in response to the invitation to comment published on its web site); and
- the analysis that the CCP carries out in that time may be significantly less detailed.

31. In turn, the fast-track procedure will reduce the information that the organisations are required to submit once the notification has been accepted, thereby streamlining the process. Appendix 2 of this guidance sets out the information that the CCP requires in order to reach a view on whether or not a merger is suitable for approval following the fast-track procedure.

32. Another difference between the fast-track and the normal procedure is that at the end of the fast-track process the CCP will issue only a very brief document setting out its advice and recommendations. This will have the same status as the more detailed report that is issued in the normal merger procedure.

¹¹ In other words, the 40 working day Phase I timetable begins to run from the date the CCP announces that the merger is not suitable for the fast-track procedure.

33. The CCP's experience to date has been that informal contacts with the organisations before the merger is notified (referred to as "informal advice" or pre-notification discussions) are mutually beneficial. They facilitate the CCP's understanding of the proposed transaction. They also help clarify the CCP's process and information requirements. The CCP encourages organisations to engage in pre-notification discussions so that there will be sufficient time to determine whether or not a merger would be suitable for approval by the CCP following the fast-track procedure. In this way the organisations put themselves in the best possible position to obtain the benefit of the abbreviated timeframe associated with the fast-track procedure.
34. Finally, due to the abbreviated timeline for fast-track mergers it is expected that there will be only limited involvement of the CCP Members in the review of, and decision making process for, these mergers.¹² In cases where there is material doubt as to whether or not a merger may be suitable for fast-track, the Members may be consulted, time permitting.

SEQUENCE OF REVIEW

35. Where two or more mergers are notified (or expected to complete) on the same date, the CCP must determine the most appropriate sequence of merger analysis. The sequence of analysis is important because once one merger is deemed implemented, this could affect the number of competitors in a particular area, and hence impact on the CCP's advice and recommendations in respect of the second merger.
36. This issue has not arisen to date, but it may arise in the future, for example as Primary Care Trusts strive to comply with Department of Health policy regarding separation of provider and commissioning arms and the creation of new organisational forms by 1 April 2011.¹³ Having reviewed the options, the CCP has decided to use the date and time of receipt of a notification that meets its acceptance criteria as determinative of the sequence of review.¹⁴
37. For the avoidance of doubt, this applies to all merger notifications received by the CCP, not only those that may be suitable for approval following the fast-track procedure.

¹² For a description of the involvement of Members in the CCP's processes, see *CCP Draft Rules of Procedure*, Part B, paragraphs 10-15.

¹³ Department of Health, *Transforming Community Services*, SHA assurance and approvals process (19 January 2010).

¹⁴ Section 3, *CCP Draft interim guidance on merger inquiries* (January 2009).

SCREENS FOR MERGERS INVOLVING COMMUNITY SERVICE PROVIDERS

1. Since January 2009 the CCP has reviewed a number of mergers involving providers of community health services.¹⁵ Its experience indicates that such mergers have the potential to reduce patient choice or competition for contracts through the loss of a previously independent bidder. This loss of choice or competition is much less likely to have a material adverse effect on patients or taxpayers if there remain sufficient numbers of credible alternative bidders after the merger.¹⁶
2. Based on its analysis, the CCP has identified that large NHS community service providers (generally PCT provider arms) located within, or adjacent to, the area(s) affected by the merger are typically credible bidders for contracts to provide community health services. The CCP's analysis also indicates that acute trusts are increasingly bidding for community health services. Acute trusts may be credible bidders, especially where they already provide a considerable proportion of services to the patients within the area(s) affected by the merger. This is because where they already serve the local population the acute trust will have prior experience of tailoring services to meet the needs of that population and is likely to have good accessibility to that population. Paragraph 7 below outlines how we take these alternative providers into account.
3. The CCP has also identified factors that are likely to warrant more detailed investigation regardless of the number of alternative providers that remains after the merger. Firstly, if there is (or could be) a material patient referral relationship between the merging organisations, the merger in question has the potential to reduce competition and choice through affecting referral volumes (referred to as vertical concerns).¹⁷ Vertical concerns are likely to arise in two contexts: mergers between community services providers and acute or mental health providers; and mergers involving GP organisations.
4. With regard to mergers between community services providers and acute or mental health providers, if the CCP considers that the merged entity does not have in place adequate safeguards to deal with potential vertical concerns, the merger will not be suitable for approval by the CCP following the fast-track procedure.
5. The involvement of GP organisations in mergers of community services providers or acute trusts is of particular concern given the gatekeeper function of GPs, the large volume of referrals that they make, and the difficulties the CCP has found in establishing their precise role in transactions and post-merger.¹⁸ These mergers will therefore not be suitable for approval by the CCP following the fast-track process.

¹⁵ The CCP's advice in previous mergers is available on its web site at www.ccp-panel.org.uk/cases/case-archive.html.

¹⁶ The CCP is also aware that a small number of PCT provider arms currently offer elective secondary care services to patients. Where this is the case it will be important for the merging organisations to notify the CCP accordingly because, depending on the types of organisations involved in the merger and the services that they provide, the fast-track procedure may not be appropriate.

¹⁷ Principle 10 states "vertical integration is permissible when demonstrated to be in patient and taxpayers' best interests and protects the primacy of the GP gatekeeper function and there remains sufficient choice and competition to ensure high quality standards of care and value for money."

¹⁸ The impact of the GP gatekeeper function in mergers is explained in paragraphs 5.38-5.40 of the CCP's *Draft interim guidelines on merger inquiries* (January 2009). The GP gatekeeper function is central to a system in which GPs are generally the first person that patients see for non-urgent care and in which clinicians make appropriate referrals for further care.

6. Secondly, mergers where there are material questions about the acquiring party's clinical or financial capabilities could potentially result in an adverse effect on patients and taxpayers once the merger is completed if the acquiring party has a strong position compared to that of the commissioner.¹⁹ A financially challenged organisation may have an incentive to reduce the quality of services acquired in order to reduce its financial deficit. A clinically challenged organisation may reduce the quality of the services from the level of quality that was provided prior to the acquisition.²⁰
7. The CCP has therefore devised the following screening tests which will be used to frame its competitive assessment during the fast-track procedure to determine if a merger involving providers of community health services is likely to be consistent with the Principles and Rules.
8. Firstly, mergers involving GPs, mergers involving organisations (other than GPs) with a (potential) material referral relationship which is not adequately safeguarded following the merger, or mergers where there are material questions about the acquiring party's clinical or financial capabilities (and mergers where there are vertical concerns that the CCP considers have not been adequately addressed) are likely to require more detailed investigation and analysis. Mergers of this type are therefore not suitable for approval by the CCP following the fast-track procedure and will be considered during a Phase I inquiry.²¹
9. Secondly, if there are four or more large NHS community services providers located within the area(s) affected by the merger, or in PCT areas adjacent to the area(s) affected by the merger, then the merger is likely to be consistent with the Principles and Rules.²² If there are three large NHS community services providers, the CCP will additionally consider the number of acute trusts which are already providing a substantial number of health services to patients within the area(s) affected by the merger and which are independent of each other and the large NHS community services providers that have already been taken into account.²³ If there are three large NHS community services providers and two or more of these acute trusts, the merger is likely to be suitable for fast-track. If there are three large NHS community services providers and fewer than two of these acute trusts, or if there are two or fewer large NHS community services providers, the merger is likely to require further analysis and investigation during a Phase I inquiry and so will not be approved by the CCP following the fast-track procedure.

¹⁹ The acquiring party might have a strong position compared to the position of the commissioner in circumstances where the commissioner is unable to monitor and safeguard the quality of services or if it was unable to re-procure the services that are being merged should quality decline.

²⁰ When considering the financial and clinical strengths of acquiring organisations, the CCP relies on evaluations made by regulators responsible for assessing these matters, in particular, the Care Quality Commission and the relevant SHA.

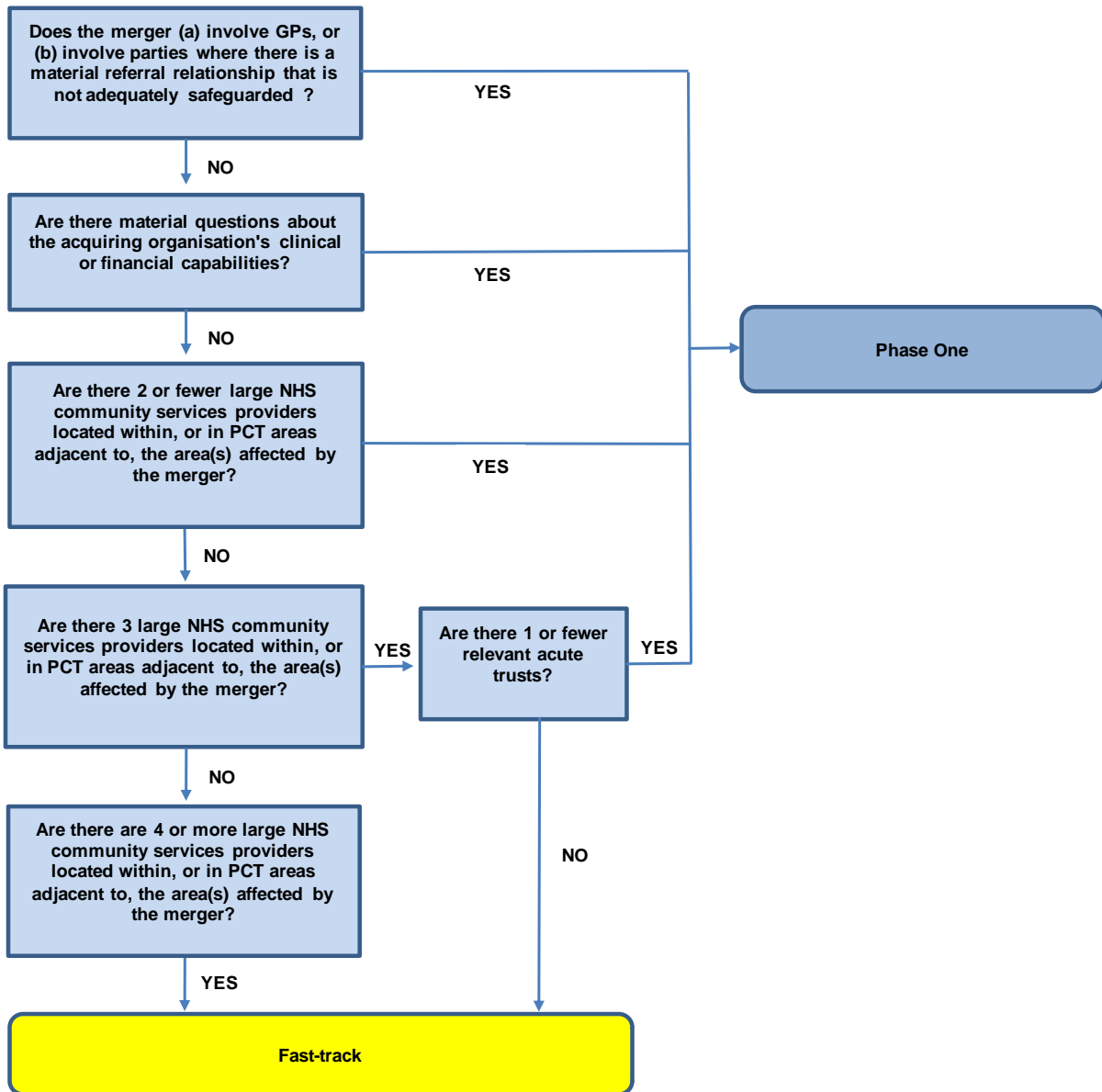
²¹ Once the CCP gains more experience in these areas it may be possible to deal with these types of mergers by way of the fast-track procedure.

²² We use the term "large NHS community services providers" to identify those NHS providers which have experience of providing a wide range of community health services in their 'local' PCT area. Currently these are generally PCT provider arms, but over time it may increasingly include other organisations, such as: mental health trusts, acute trusts, social enterprises and community foundation trusts. An adjacent PCT area is one which shares a land border (or can easily be accessed via tunnels or bridges) with the area(s) affected by the merger. The number of large NHS community service providers should include the merged entity.

²³ We use patient referral data to identify acute trusts which are already providing services to patients within the area(s) affected by the merger. For the purposes of the fast-track procedure, the CCP considers that acute trusts which receive ten per cent or more of all acute care referrals from the area(s) affected by the merger are providing a substantial amount of health services to the local population and are likely to be credible bidders for community services in the area(s) affected by the merger.

10. The CCP's competitive assessment during the fast-track procedure, as to whether a merger is likely to be consistent with the Principles and Rules, will only take into account a limited range of potential competitors. This approach recognises that whilst there may be a range of other competitors in the relevant area(s), including more distant large NHS community services providers and acute trusts, mental health trusts, independent and third sector organisations and GP organisations, the presence and effectiveness of these organisations in affecting the intensity of competition has been variable in the mergers that the CCP has reviewed to date.
11. Given the limited time available during the fast-track procedure, the CCP will not undertake any of the third party inquiries which are necessary in order to establish the strength of other potential competitors in a particular area. However, should a merger not be approved via the fast-track procedure, then gathering third party evidence will be an important aspect of the competitive assessment that will be undertaken during the subsequent Phase I process.
12. The screens used to frame the CCP's competitive assessment during the fast-track procedure are summarised in Figure 1. It should be noted that these screens set the framework for the competitive assessment during the fast-track procedure. They will not be applied mechanically; each stage of the screening process is subject to sense checks by the CCP. This will include a consideration of whether the organisations identified as competitors are in fact credible bidders in the commissioning area(s) of interest. This assessment might be based on the financial and clinical performance of the organisations identified. It might also be based on any specificity of the relevant geographic area(s) affected by the merger, or on any additional relevant information regarding credibility of bidders that is available to the CCP. In addition the CCP will need to consider the relevant set of commissioners in the case. This is important where the merger is between non-adjacent PCTs.

FIGURE 1
Summary of screening tests



INFORMATION TO BE SUBMITTED TO THE CCP FOR THE FAST-TRACK PROCEDURE

1. The following is intended to assist organisations in compiling a merger notification to the CCP with a view to benefiting from the fast-track procedure. When requesting the CCP to review a merger, the organisations should submit the information outlined below as part of their original notification to explain the reasons for the transaction; how it is structured and who is involved; what is transferring; the status of the organisations; and why the fast-track procedure applies:
 - i. Description of, and contact details for, each of the organisations involved in the transaction and their role (if any) in the merged organisation;
 - ii. Rationale for the proposed transaction, for example:
 - basis on which the PCT decided to externalise its provider arm;
 - basis for selecting the merger partner, including details on how patients and taxpayers are expected to benefit from the merger; and
 - why the merger being notified was preferred over other options that were considered.
 - iii. Details on the nature of the proposed transaction being undertaken including:
 - which services (including any mental health or secondary care services) are transferring and to what organisation;
 - where available, the value of each service that is transferring and the number of patients treated pursuant to each service;
 - the date when the services will transfer;
 - an explanation of the process by which the services will be transferred;
 - which of the transferring services (including any mental health or secondary care services) are already provided by the acquiring organisation; and
 - the value of each service provided by the acquiring organisation and the number of patients treated pursuant to each service.
 - iv. Most recent CQC quality and financial rating of the acquiring party.
 - v. An explanation of why the organisations are of the opinion that the merger may be suitable for approval by the CCP following the fast-track procedure, accompanied by relevant supporting evidence. For example, if the organisations are of the opinion that the relevant arrangements will last for up to two years (ie there is a temporary merger), then they should explain why they think this is the case and submit appropriate supporting evidence.
2. We would expect information on the organisations involved in the transaction and rationale for the transaction to be contained within the (draft) business case and relevant consultancy reports, option appraisals, board papers and minutes. This information may also be contained within a proposal submitted to the SHA for the assurance process. Details on the nature of the proposed transaction being undertaken will primarily be contained within the (draft) business transfer agreement, or heads of terms, but there may be other documents as well. The CCP will not accept a case for review under the fast-track procedure unless the relevant transaction documents are provided as part of the original notification of the merger.