



CO-OPERATION & COMPETITION PANEL
FOR NHS-FUNDED SERVICES

Cooperation and Competition Panel

**Merger of South-West Essex's provider services arm and North East London
NHS Foundation Trust**

17 September 2010

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EXECUTIVE SUMMARY

1. The Cooperation and Competition Panel (CCP) has reviewed the proposed merger of South-West Essex Community Services (SWE Community Services), the community services provider arm of South-West Essex Primary Care Trust (PCT), with North East London NHS Foundation Trust (NELFT). Our advice to Monitor is that the proposed merger is consistent with the Principles and Rules for Cooperation and Competition (Principles and Rules).
2. SWE Community Services provides the majority of community services in South-West Essex, worth around £63 million per annum. NELFT, by acquiring SWE Community Services, will provide these community services for the period 1 April 2011 to 31 March 2013, pursuant to a standard NHS contract for community services.
3. The CCP, in reaching its findings, considered the effect of the proposed merger on patient choice and competition in community and mental health services. We considered the effect of the proposed merger on competition for community services contracts in South-West Essex and Havering. We concluded that the number of other credible competitors for community services contracts in these areas meant that the proposed merger was unlikely to have a material adverse effect on patient choice and competition. In respect of mental health services, SWE Community Services does not currently provide any and we consider it is unlikely to do so in the future, thus we do not consider that the merger would have a material adverse effect on competition for mental health services contracts.
4. Given our finding that the transaction is unlikely to have a material effect on the extent of patient choice or competition in the area, it has not been necessary for us to evaluate the patient and taxpayer benefits that might accrue as a result of the transaction.

PARTIES

5. SWE Community Services is the community services provider arm of South-West Essex PCT. South-West Essex PCT is responsible for commissioning health services for approximately 400,000 people in the areas of Basildon, Billericay, Brentwood, Thurrock and Wickford.¹ SWE Community Services has been operating as an autonomous provider organisation since April 2008 and has budgeted income for 2010/11 of £63.4m.² It provides almost all of its services in South-West Essex (see Appendix 1).³ In the assessment year 2008/09 the Care Quality Commission (CQC) rated South-West Essex PCT on quality of commissioning as 'Fair', financial management as 'Fair' and providing services as 'Fully Met'. We contacted the CQC to learn if there were any other issues relating to its assessment of South-West Essex PCT that we should be aware of and we were told that there were not.

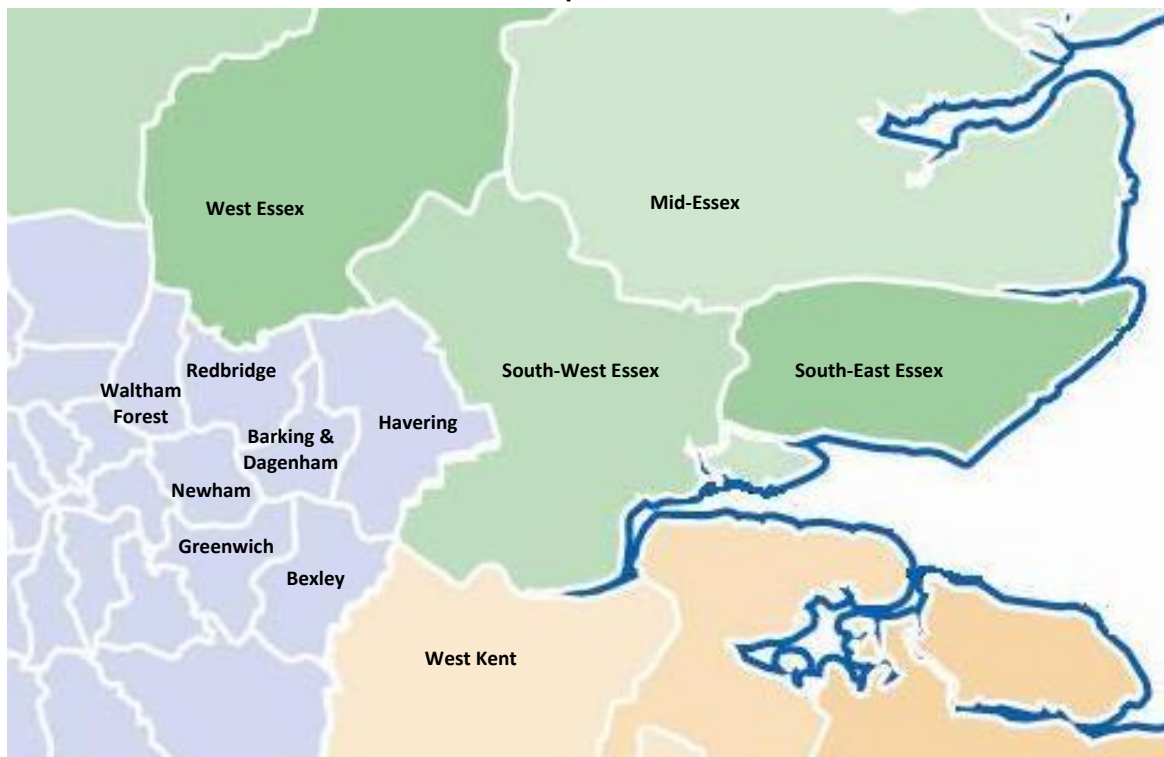
¹ South-West Essex PCT was formed on 1 October 2006 following the amalgamation of Basildon PCT, Billericay, Brentwood and Wickford PCT, and Thurrock PCT.

² The contract prices are to reduce over the term of the service contract between South-West Essex PCT and NELFT to £62.1m in 2011/12 and £60.9m in 2012/13.

³ SWE Community Services also provides a Dietetic service to South-East Essex PCT and Sickle Cell and Thalassemia services to all Essex PCTs. In total these services are worth less than £200,000.

6. NELFT provides mental health services for people living in the areas of Waltham Forest, Redbridge, Barking & Dagenham and Havering. Following a merger in 2009 with the provider services arm of Barking and Dagenham PCT, NELFT also provides a full range of community services in Barking and Dagenham and these are listed in Appendix 2.⁴ NELFT also provides some mental health services in other areas. For example, it provides Children and Adolescent Mental Health Services (CAMHS) worth around £250,000 per annum to a group of Essex PCTs, including South-West Essex PCT. With annual budgeted income of around £150 million (around £35 million of this income is for community services provided in Barking and Dagenham) care and treatment is provided for approximately 36,000 mental health service users and more than 400,000 community service visits each year. The CQC rated NELFT as ‘Excellent’ for quality of services and ‘Excellent’ for financial management in the assessment year 2008/09. We contacted the CQC to learn if there were any other issues concerning its assessment of NELFT that we should be aware of and we were told that there were none.

FIGURE 1
PCT Map of Local Area



TRANSACTION

7. The transaction being reviewed by the CCP is the proposed acquisition of SWE Community Services by NELFT.

⁴ The arrangement between NELFT and Barking and Dagenham PCT is for NELFT to provide community services in Barking and Dagenham worth around £36 million, pursuant to a standard NHS contract for community services with a term until 31 March 2011. There is an option to extend this arrangement for a further six months after 31 March 2011. NELFT told us that they are expecting most of the community services they currently provide in Barking and Dagenham to be tendered in the period leading up to the end of their contract.

8. In early 2009 South-West Essex PCT reviewed the future provision of community services in its area. On 25 March 2009 several options for future organisational form of community services were appraised by South-West Essex PCT, namely:
 - i. a community foundation trust for the area of South Essex or South-West Essex;
 - ii. hosting SWE Community Services with an existing foundation trust;
 - iii. transfer of SWE Community Services to a private sector organisation;
 - iv. managed dispersal to a foundation trust and other organisations;
 - v. retaining SWE Community Services as an arms-length provider organisation; or
 - vi. a social enterprise.
9. It was decided on 29 April 2009, after consultation with staff and stakeholders, that SWE Community Services would be hosted by an NHS Foundation Trust for a period of two years.⁵ At that time four NHS Foundation Trusts were identified as potentially interested in delivering community services in South-West Essex.⁶ On 17 June 2010 it was decided by South-West Essex PCT that NELFT was preferred as the organisation to acquire SWE Community Services.
10. The term of the contract for the provision of community services is intended by South-West Essex PCT to be from 1 April 2011 to 31 March 2013. During this period South-West Essex PCT intends to review all community services provided in South-West Essex and competitively tender community services where this is determined to be appropriate. Where community services are not competitively tendered by 31 March 2013, it is intended by South-West Essex PCT that arrangements will be reached with NELFT to continue providing community services in South-West Essex. An option has been included in the agreement between NELFT and South-West Essex PCT for a one year extension at the PCT's request and an additional one year extension by mutual agreement of the parties.⁷ East of England Strategic Health Authority (SHA) has approved the proposal by South-West Essex PCT for the option to extend the contract, on the basis that a condition is included in the arrangements between NELFT and South-West Essex PCT that there is a formal service review at least nine months before the end of the initial contract term. East of England SHA stated that the service review should determine whether it is appropriate for the community services contract to be extended and, if so, which services will remain with NELFT and which should be subject to competitive tender.⁸
11. The proposed merger has been described by South-West Essex PCT as a hosting arrangement and a number of steps have been taken in the agreement to hold SWE Community Services as a separate part of NELFT. The terms of the agreement may provide South-West Essex PCT with more flexibility when it commissions community services in the future. However, it is clear that this arrangement will lead to one less potential provider of community services existing after the merger (i.e. SWE Community Services will become part of NELFT).

⁵ Although the transaction is described as a hosting arrangement by the PCT, while it reviews the potential for the services to be tendered in future, NELFT will acquire SWE Community services in its entirety, including staff, equipment and any leases and licences.

⁶ Basildon and Thurrock University Hospital NHS Foundation Trust, North-Essex Partnership NHS Foundation Trust, South East Essex Partnership NHS Foundation Trust, and Southend University Hospital NHS Foundation Trust (note that at this time, July 2009, NELFT had not been identified as a potential provider).

⁷ The potential to extend the contract means that the term of this contract could be for a period of up to five years.

⁸ See letter from East of England SHA dated 15 April 2010.

12. The signed Heads of Agreement between South-West Essex PCT and NELFT contain the following provisions:

- Surpluses generated under the service contracts will be ‘ring-fenced’ and made available for reinvestment into developing community services provided in South-West Essex, where a business case is made for reinvestment. This means that surplus income arising from the provision of community services in South-West Essex is not intended to be available for NELFT to accumulate or use in other parts of its organisation. NELFT will work with SWE Community Services leadership to implement the strategic projects outlined in the SWE Community Services Integrated Business Plan and SWE Community Strategy for Change 2013 (for example, Health Improvement Services, developing and expanding specialist clinics and providing clinics in residential homes).⁹
- The Financial Risk Rating (FRR) contribution generated in SWE Community Services towards NELFT’s consolidated FRR needs to be consistent with FRR contributions of other parts of the business and will need PCT approval if different by more than one per cent.¹⁰ This requirement also limits the use to which surplus income arising from the provision of community services in South-West Essex is generally available for NELFT to use or accumulate for the benefit of other parts of its organisation.
- NELFT will appoint the managing director of SWE Community Services as an associate board member with the same status as the other managing director of community care business units who reports directly to the NELFT Chief Executive.
- Premises are to be retained by the PCT and leases or licences executed for NELFT for the term of the services contract.
- The PCT will retain a right to block any ‘major organisational changes’, as it is to be defined in the contractual arrangements, that the PCT considers will or may be detrimental to future contestability plans including proposed changes to the organisational structure of SWE Community Services, governance arrangements and any other proposed changes with an assumed value impact of at least £500,000.¹¹ This provision is intended to prevent integration or other changes in the way community services are currently delivered by SWE Community Services, in a way that might prevent services from being successfully tendered in the future.

JURISDICTION

13. The merger between SWE Community Services and NELFT is a transaction requiring review under the merger provisions of the Principles and Rules, as it will result in SWE Community Services coming under the control of NELFT. Following notification of the transaction to the CCP, we decided that it met our acceptance criteria for a merger case. Specifically:

- i. the proposed arrangement falls within the scope of Principles 9 and 10 of the Principles and Rules (as set out at paragraph 18);
- ii. the CCP is the most appropriate body to consider this matter;

⁹ Available at the website: www.swessex.nhs.uk.

¹⁰ The FRR is a financial measure used by Monitor to assess the liquidity of an NHS Foundation Trust.

¹¹ This term has also been explained in a letter of assurance to East of England SHA on 12 April 2010 and in the draft transfer agreement.

- iii. SWE Community Services and NELFT had made available sufficient relevant and applicable information on the case to the CCP; and
 - iv. the combined turnover of SWE Community Services and NELFT exceeds the relevant threshold of £35 million.
14. As a result, we accepted the case on 23 July 2010, published a notice to this effect on our website on that date, and invited submissions by interested individuals and organisations. Consistent with our draft interim merger guidelines we are required to complete our Phase I review by 20 September 2010.¹² We note that the Essex County Council representative told us that he did not have any comment to make to the CCP on this case. We did not receive any response from the LINKs representatives that we contacted.
15. Our review of this merger, and our advice and recommendations in relation to it, fall within the broader regulatory framework for transactions within the NHS overseen by the Secretary of State for Health and Monitor, in relation to NHS Foundation Trusts. Monitor will consider our advice and recommendations in relation to the proposed merger.
16. We have reviewed the merger under Principles 9 and 10 of the Principles and Rules. We have not reviewed for consistency with the Principles and Rules the process by which NELFT was selected as the preferred partner for SWE Community Services. Pursuant to the CCP's terms of reference, to the extent that this process gives rise to any procurement questions, the CCP will consider these questions only on appeal from the SHA's dispute resolution process; to the extent that it gives rise to any conduct issue(s), a complaint must be made to the CCP before it can investigate.
17. Responsibility for the selection of NELFT as the acquirer of SWE Community Health, and for the commissioning of community services in South-West Essex following the merger, remains with South-West Essex PCT. In relation to service quality, the CQC is responsible for continuously monitoring health care providers to make sure they are meeting essential standards.

FRAMEWORK FOR MERGER ASSESSMENT

18. The framework that we use to assess mergers between healthcare providers is set out in the Principles and Rules and our draft interim merger guidelines. The relevant provisions of the Principles and Rules are Principles 9 and 10, which state:

Principle 9: 'Mergers, acquisitions, de-mergers and joint ventures are acceptable and permissible when demonstrated to be in patient and taxpayers' best interests and there remains sufficient choice and competition to ensure high quality standards of care and value for money.'

Principle 10: '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.'

¹² The CCP's draft interim merger guidelines are available at www.ccp-panel.org.uk.

19. Our draft interim merger guidelines set out a cost-benefit framework for the assessment of mergers under these Principles.¹³ That is, where a merger may give rise to costs to patients or taxpayers as a result of a loss of choice or competition, then these will be weighed up against any benefits to patients and taxpayers that may arise from the merger. From this analysis the CCP will determine whether the proposed transaction is likely to result in a net benefit to patients and taxpayers.¹⁴
20. Consistent with this framework, this report provides an assessment of the costs to patients and taxpayers that may arise from the proposed merger. We have not considered it necessary to assess the benefits to patients and taxpayers that may arise from the proposed merger, as we have not identified any material costs.

DEVELOPMENT OF PATIENT CHOICE AND COMPETITION

21. The merger between SWE Community Services and NELFT takes place in a broader policy context for patient choice and competition in community and mental health services. This broader context forms the backdrop to our assessment of how the merger will affect patient choice and competition in community and mental health services in South-West Essex, and other relevant PCT areas, both currently and in the future. SWE Community Services provides community services and NELFT provides mental health services. We set out in the following paragraphs the key points of policy relevant to our assessment of this merger.
22. In general there are two models of competition in healthcare services. First, competition *for* the market, where service providers compete for the right to provide services across a PCT or other locality, generally on an exclusive basis. Second, competition *in* the market, where patients can choose between competing providers of the same service. Competition *for* the market by way of competitive tendering is the predominant form of competition in community services. There were 100-150 PCT-led tenders for community services in England in 2009 compared with 60-80 tenders in 2008.
23. The Government has signalled greater use of patient choice in community services in the future. The revised Operating Framework for the NHS for 2010/11 states: 'Looking forward, we shall develop proposals for a phased move towards an "Any Willing Provider" model for community services, addressing barriers to entry to greater participation by the independent and voluntary sector' (p.11). Further, the Government's White Paper *Equity and Excellence: Liberating the NHS*, states that the NHS will move to an 'Any Willing Provider' (AWP) approach as soon as possible for community services (paragraph 4.24).¹⁵

¹³ A merger might give rise to costs to patients and taxpayers if it diminishes patient and commissioner choice and competition. As set out in the *Framework for Managing Choice and Competition*, published by the Department of Health on 16 May 2008, patient choice and competition in the NHS can be expected to improve quality and safety in service provision, improve health and well-being, improve standards and reduce inequalities in access and outcomes, lead to better informed patients, generate greater confidence in the NHS, and provide better value for money.

¹⁴ Where the CCP finds that there are no costs to patients or taxpayers arising from a merger, it will not necessarily critically evaluate patient or taxpayer benefits ascribed to the merger by the merger parties.

¹⁵ Available at the website: www.dh.gov.uk/en/Healthcare/LiberatingtheNHS/index.htm.

24. Mental health services have stood somewhat separate from the development of patient choice as there is no requirement for PCTs to ensure patient choice for users of mental health services in England.¹⁶ The majority of mental health services continue to be funded on a 'block contract' basis (such as the number of beds or the provision of certain teams) and only some mental health tendering has occurred in this service area. However, the Government has also signalled greater use of patient choice in mental health services in the future. In the Government's White Paper *Equity and Excellence: Liberating the NHS*, choice of treatment and provider in some mental health services is to be introduced from April 2011 and extended wherever practicable (p17). Further, the White Paper states the Department for Health will implement a set of currencies for adult mental health services for use from 2012/13 and develop currencies for child and adolescent services (paragraph 3.18).

DEVELOPMENT OF PATIENT CHOICE AND COMPETITION IN SOUTH-WEST ESSEX AND HAVERING

25. The merger between SWE Community Services and NELFT is most likely to have a material adverse effect on patient choice and competition in the South-West Essex and Havering areas by removing one potential credible bidder from these areas. SWE Community Services provides services in South-West Essex and NELFT provides services in Barking and Dagenham PCT area (Havering is located in-between South-West Essex and Barking and Dagenham, see Figure 1). We review the services provided, in each of these areas, in the following paragraphs.

SOUTH-WEST ESSEX

26. Most community services provided in South-West Essex are provided by SWE Community Services. NELFT, Outer North East London (ONEL),¹⁷ the Mid-Essex PCT provider arm, South-East Essex PCT provider arm, and South Essex Partnership Trust (SEPT) also provide a number of community services in the South-West Essex PCT area. NELFT provides Paediatric Audiology services worth £133,000 per annum.¹⁸ Improving access to psychological therapy services worth £2.6 million per annum are provided by South Essex Partnership Trust, Mind and Rethink. ONEL provides a wheelchair, orthotic podiatry, and dietetics services from Brentwood community hospital (in South-West Essex), and prosthetics for all of Essex (except for North-East Essex), worth in total around £1.4 million per annum. South-East Essex PCT provider arm provides podiatry, nursing and incontinence services worth in total £3.5 million per annum. South-West Essex PCT told us that there are also some GPs which provide some special interest primary care services worth around £400,000 per annum (Diabetes, Dermatology, Sexual health, Hearing and Balance, and Ophthalmology) and a local hospice provides some social care services worth around £1.5 million per annum.

¹⁶ The Primary Care Trusts (Choice of Secondary Care Provider) Directions 2009, with application from 1 April 2009, require primary care trusts to ensure that patients have a choice of provider for their NHS care when referred for their first outpatient appointment with a service led by a consultant. The Directions specify the services covered by these arrangements. Section 3(1)(d) excludes mental health services from the duty to ensure persons are offered choice of secondary care provider.

¹⁷ In 2008 the provider arms of Havering, Redbridge and Waltham Forest PCTs became the community services provider, Outer North East London (ONEL).

¹⁸ Prior to NELFT becoming an NHS Foundation Trust three years ago, some community services were provided under its earlier organisation form: North East London Mental Health Trust. These services were decommissioned at that time, although some GPs up until recently continued to refer to Drug and Alcohol services provided by NELFT in the absence of another provider.

27. South-West Essex PCT tendered one new community service in 2009: Cardio Pulmonary Rehabilitation worth around £440,000 for two years (won by the Mid-Essex PCT provider arm). South-West Essex PCT has also tendered between 20 and 30 services in the past two years, the majority of these are acute services delivered from the Brentwood community hospital.¹⁹
28. South-West Essex PCT told us that it has a three year plan to review all of the community services it commissions for this area (worth approximately £63 million in 2010/11). The details of this plan are shown in Appendix 1 and indicate that around £5 million of community services will be reviewed in 2010/11 and £30 million in 2011/12, with the remaining £30 million in 2013/14. In paragraph 11 we have noted that the Heads of Agreement between South-West Essex PCT and NELFT includes a provision intended to prevent NELFT from engaging in organisational changes that would prevent South-West Essex PCT from tendering individual community services in the future.
29. In respect of mental health services in the South-West Essex PCT area, NELFT provides a number of inpatient beds for Children and Adolescent Mental Health Services (CAMHS) worth £0.25 million per annum to a group of Essex PCT commissioners. All other mental health services in South-West Essex are provided by South Essex Partnership NHS Foundation Trust. South-West Essex PCT told us that it has no immediate or specific intention to competitively tender mental health services in the future.

HAVERING

30. Community services in Havering are almost all provided by ONEL, although there are a small number of services provided by others within the Havering PCT area. Historically Havering was part of the Barking, Havering and Brentwood commissioning authority and six services worth around £1.6m are provided by NELFT (previously provided by the Barking and Dagenham PCT provider services arm).²⁰
31. Havering PCT has tendered two new community services in recent years. One in 2008/09, low vision services, worth £57,164 per annum (won by a partnership of Havering Council, Royal National Institute for the Blind, Action for Blind People and Sight Action Havering). The second was in 2007/08 for Psychological Therapies worth £426,000 per annum (won by KCA (UK) Psychological Therapies).
32. We were told by Havering PCT that it plans to review all of their community services it commissions (worth around £50.6 million in 2010/11), in stages, over the period 2010/11 to 2013/14. The details of the review timetable are in Appendix 3 and show that around £22.7 million will be reviewed in 2010/11, £11.5 million in 2011/12, £2.1 million in 2012/13 and £14.3 million in 2013/14.

¹⁹ South-West Essex PCT tendered 18 lots for provision of services from Brentwood community hospital including some diagnostic services. These were all won by acute trusts, although IAPT attracted unsuccessful bids from Mid-Essex and South-East Essex community service provider arms and Audiology attracted an unsuccessful bid from NELFT.

²⁰ These services are Paediatric Audiology, Regional Integrated Child Health System, Speech and Language Therapy (Adults), Child Protection Medicals, Community Liaison, and Community Dental Service.

33. Of the mental health services provided in Havering area around £26 million, of a total of £32 million, is provided by NELFT. Around £6 million of the total mental health services commissioned by Havering PCT are provided mental health providers with single areas of focus.²¹ Havering PCT told us that it does not have any plans to tender mental health services.

ASSESSMENT OF MERGER COSTS

34. Our analysis of the services and geographic area (the market or markets) in which the merging organisations compete is set out in Appendix 4. We consider that the relevant product market for analysing this merger could either be individual community services or it could include all community services. The relevant geographic markets for analysing this merger are the South-West Essex PCT and Havering PCT areas. For the purposes of explaining our competitive assessment we refer to the market for community services, in the areas of South-West Essex and Havering as the markets being affected by this merger.

35. We have also considered the relevant product market for the provision of mental health services, which could be either individual mental health services or all mental health services (see Appendix 4). For the purposes of explaining our competitive assessment we refer to the market for mental health services, in the areas of South-West Essex and Havering as the markets being affected by this merger.

36. When assessing the impact of a merger on patient choice and competition, we compare the effect of the merger with the likely situation if the merger did not take place. This alternative scenario is known as the 'counterfactual'. In many merger reviews, the most appropriate counterfactual will be the pre-merger situation. However, all PCTs are required to divest their community services provider arms prior to April 2011 which implies that the pre-merger situation will necessarily change to some extent.²² As a result, it may not be appropriate to consider the pre-merger situation as the counterfactual. Nevertheless, any alternative merger would also have to be reviewed for consistency with the Principles and Rules. Given this, for the purposes of accurately assessing the competitive effects of the proposed merger between NELFT and SWE Community Services, we assume that if this merger did not take place there would be a merger that does not raise concerns under the Principles and Rules or the provider arm would become a standalone organisation.

37. In the following paragraphs we analyse the potential impact on patient choice and competition in community services. In paragraphs 59 to 62 we analyse the potential impact on patient choice and competition in mental health services.

COMMUNITY SERVICES

38. The proposed merger may reduce patient choice and competition in community services by:

- removing a potential bidder for community service contracts; or

²¹ For example, MIND, Outlook Care Trust, The Guinness Trust, and the Share Trust.

²² The *Revision to the Operating Framework for the NHS in England 2010* (21 June 2010), states at page 9: 'Separating PCT commissioning from the provision of services remains a priority. This must be achieved by April 2011, even if this means transferring services to other organisations while sustainable medium-term arrangements are identified and secured.'

- removing an actual provider of community services and thereby reducing patient choice either now or in the future.
39. If the merger removes a competitor for community services contracts, and there are insufficient other credible providers of community services in South-West Essex or Havering, the merger may have a material adverse effect on patient choice and competition.
 40. SWE Community Services and NELFT are the largest providers of community services in South-West Essex and Barking and Dagenham respectively. They do not provide community services in the same areas but they provide almost all the same types of community services including: intermediate care, specialist nursing, and specialist children's care.²³ We estimate that this overlap in current services represents more than 95 per cent of SWE Community Services' revenue and more than 95 per cent of NELFT's revenue from the community services it delivers in Barking and Dagenham.²⁴
 41. Both SWE Community Services and NELFT share a border with the Havering PCT area and appear to be potential competitors for community service contracts in this area, as well as the South-West Essex PCT area. Given this we have looked at whether there are other possible competitors that might participate in future competitions for community services in these areas
 42. In assessing whether there are sufficient other credible bidders for community services contracts in each of South-West Essex and Havering, we grouped other potential bidders into three broad categories: current and former PCT provider arms; other NHS organisations, such as acute and mental health trusts; and independent and third sector providers.

South-West Essex – current and former PCT provider arms

43. In relation to other PCT provider arms, there are three (Mid-Essex and South-East Essex PCT provider arms and ONEL) that are currently contracted to provide community services in South-West Essex.²⁵ South-West Essex PCT's willingness to contract with these providers could be seen as indicative of the credibility of these PCT provider arms to supply services to the PCT more generally. In addition, we have previously been told by ONEL that they would bid for all types of community service contracts in this area, given that their current portfolio is extensive. We understand that ONEL have previously bid to provide community services in North London and South-East Coast [redacted] but were unsuccessful in those tenders.
44. We also asked PCT provider arms near South-West Essex PCT (during this case and in previous cases) whether they would bid in future tenders for community service contracts in nearby PCT areas. One provider [redacted] told us that it would be likely to bid for community service contracts in

²³ The only difference is that NELFT does not provide Sexual Health services in Barking and Dagenham and SWE Community Services do not provide podiatry in South-West Essex.

²⁴ Community services represent almost 25 per cent of total NELFT revenue when including revenue from Mental Health services delivered across various PCT areas.

²⁵ Mid-Essex PCT provider arm recently won a pulmonary rehabilitation contract worth around £440,000 over two years (is calculated via a tariff system) and South-East Essex run the McMillan nursing team, Podiatry and incontinence services worth in total around £3.5 million ([redacted] they expect to compete for tenders of community services in South-West Essex). ONEL provides wheelchairs, orthotic, podiatry, and dietetics from Brentwood community hospital, and prosthetics for all of Essex except for North East Essex. These services from ONEL are worth around £1.4 million annually.

South-West Essex in the future and said that it had bid to provide services in another adjoining PCT area [X]. We were told by another provider [X] that it is interested in bidding for community service contracts in South-East London, West Kent, North East London, and South Essex and had obtained the information on bidding for SWE Community Services.²⁶ That provider also told us that it has previously considered their potential to provide community services in Havering and Newham and would continue to be interested in these areas.²⁷

45. Based on current patterns of service provision and future bidding intentions, we consider that following the merger there would be at least five providers of a wide-range of community services that are credible competitors in South-West Essex [X]. We note that there may also be other current and former PCT provider arms located further away but are willing and credible bidders of community services in South-West Essex.

South-West Essex – other NHS organisations

46. In relation to other NHS organisations, one potential provider [X] progressed to an advanced stage as a potential acquirer of SWE Community Services, alongside NELFT.²⁸ That provider told us that it is particularly interested in bidding for community services that will integrate well with acute services that it provides. Services that reduce load on Accident and Emergency services at the hospital and intermediate care beds or early discharge services would be community services that it would be interested to bid for in the future.

47. In respect of the future intentions of other NHS organisations, one provider [X] provides a wide range of [X] services in South-West Essex, Bedfordshire and Luton. They told us that they are interested in bidding for contracts to provide community services that have the potential to integrate with their current [X] services in the area.

South-West Essex – independent and third sector providers

48. We have been told recently, in a previous case, that one provider [X] (an independent sector provider) is interested in bidding for contracts to provide a full range of community services, especially where the contracts are located near its existing infrastructure. That provider provides a number of mental health and nursing services in Essex.

49. In conclusion, we consider that there are a number of credible bidders for community services contracts in South-West Essex. Even though the merger would remove a bidder for future community services contracts, there would be a sufficient number of other credible bidders following the merger to ensure service quality and value for money.

Havering - current and former PCT provider arms

50. Community services in Havering are almost all provided by ONEL: an arms-length organisation of Havering PCT and an amalgamation of the arms-length community service provider arms of

²⁶ [X]

²⁷ This provider was also interested in Barking and Dagenham as a local area, although as that PCT provider services arm was acquired by NELFT last year it had not spent time considering its strategy for that area

²⁸ [X]

Havering, Redbridge and Waltham Forest. As noted in paragraph 30, NELFT also provides a small number of services in the Havering area.

51. We asked current and former PCT provider arms near Havering whether they would be likely to bid in future tenders for community services in this area:
- One told us that it is likely to bid for community service contracts anywhere in North-East London [X].
 - Another told us that it is likely to bid to provide a range of community services anywhere in North-East London [X]. It currently provides a [X] service in Waltham Forest and is participating in a tender for a [X] service in Redbridge.
 - In paragraph 44 we have already noted another provider [X] that would be likely to bid in Havering.
 - One provider [X] recently acquired the PCT provider services arm of [X], and told us that it would be likely to bid for contracts to provide community services anywhere in North East London. It told us that they are particularly interested in bidding for services in the area that ONEL provides services and already provide some [X] services in Hackney, near Havering.
52. Based on current patterns of service provision and future bidding intentions, we consider that following the merger there would be at least five providers of a wide range of community services that are credible competitors in Havering [X]. We note that there may also be other current and former PCT provider arms located further away, but are willing and credible bidders of community services in Havering.

Havering – other NHS organisations

53. In relation to other NHS organisations Barking, Havering and Redbridge University Hospitals NHS Trust currently provides some community services in Barking and Dagenham, Redbridge and Havering (Sexual Health, Family Planning, Health Promotion and Genito-Urinary Medicine clinics).
54. In terms of future intentions of other NHS organisations to bid for community service contracts in Havering, two organisations told us that they would be likely to bid for community service contracts in this area [X]. One of these providers [X] is focused on bidding for community services that would integrate well with its acute care. The other provider [X] is also likely to bid to provide community services that would integrate with acute care provision and told us that it already has some community service links with Redbridge and Waltham Forest and would look to expand this further if possible.

Havering – independent and third sector providers

55. One independent provider [X] is likely to bid for contracts to provide community services for the same reasons provided in paragraph 48.
56. In conclusion, we consider that there are a number of credible bidders for community services contracts in Havering. Even though the merger would remove a bidder for future community

services contracts in Havering, there would be a sufficient number of other credible bidders following the merger to ensure service quality and value for money.

INTRODUCTION OF PATIENT CHOICE AND 'ANY WILLING PROVIDER' MODEL INTO COMMUNITY AND MENTAL HEALTH SERVICES

57. The Government, as discussed in paragraph 23, intends to introduce the Any Willing Provider model of patient choice into community services and a greater degree of patient choice into mental health services. Details of these policies are still being developed, but once introduced could have a significant effect on our analysis of the competitive effects of mergers involving community services providers and mental health trusts. Referral relationships between these organisations may need to have safeguards to protect patient choice where an organisation provides both mental health services and community service, in the same way as this is addressed in CCP reviews of mergers between acute trusts and community services providers. Further, the implementation of an Any Willing Provider model of competition may change the dynamics of market entry and thus our analysis of which organisations provide an effective competitive constraint on merged service providers.²⁹
58. As policy in relation to the introduction of patient choice and Any Willing Provider in community services and mental health services is still under development, we cannot reach a view on the effect of the merger on referrals between mental health and community care. In addition, we cannot reach a view on how competition in community services or mental health services might be affected by the merger in these circumstances. As a result, we did not conclude that the integration of SWE Community Services and NELFT is likely to have material adverse effect on patient choice and competition.

COMPETITION IN MENTAL HEALTH SERVICES

59. We also considered patient choice and competition in the supply of mental health services in South-West Essex and Havering prior to, and in the absence of the merger and whether this changes as a result of the merger. As noted at paragraph 24, there is currently no patient choice in mental health services and most contracts are funded on a block contract (e.g. number of beds or provision of certain teams), although there is some scope for competition for mental health contracts. There have been no tenders for mental health contracts in either of these areas the past. This means that at the present time there is no patient choice in mental health services that could be impacted by the merger.
60. In paragraphs 29 and 33 we have noted that both South-West Essex and Havering commissioners have told us that do not plan to review the potential for tendering any mental health services. However, at paragraph 24 we note that the Government intends that choice of treatment and provider in some mental health services is to be introduced from April 2011. Given this, we have considered and dismissed two possible ways in which the merger might impact on patient choice and competition in the provision of mental health services in South-West Essex in the future.

²⁹ The CCP has considered this issue in greater detail in its report: Merger of Buckinghamshire PCT's provider services arm with Buckinghamshire Hospitals NHS Trust. This report is available at the website: www.ccp-panel.org.uk.

61. We first considered whether the merger might have an adverse impact as a result of South-West Essex no longer having the possibility of starting to provide mental health services in the area independently of NELFT. We do not think that in the absence of the merger that this is likely as SWE Community Services does not provide any mental health services and has told us that it has not ever intended to provide these services.³⁰ We next considered whether the proposed merger might reduce, now or in the future, the level of patient choice and competition for secondary referrals (i.e. non-GP referrals) from community services into mental health services for patients in South-West Essex.³¹
62. In paragraph 57 we note that Government policy could have a significant effect on our analysis of the competitive effects of mergers involving community services providers and mental health trusts. In paragraph 58 we conclude that as this policy is still under development, we cannot reach a view on the effect of the merger on referrals between mental health and community care or on how competition in community services or mental health services might be affected by the merger in these circumstances. Given this, we did not conclude that the integration of SWE Community Services and NELFT was likely to have a material adverse effect on patient choice and competition.

ADVICE AND RECOMMENDATIONS

63. We consider that the proposed merger between SWE Community Services and NELFT is unlikely to have a material adverse effect on the extent of patient choice and competition. Even though the merger would remove a potential bidder for community services contracts tendered in the future in South-West Essex and Havering, there would be a sufficient number of competitors for future tenders of those services following the merger. We found that SWE Community Services does not currently provide any mental health services, and were unlikely to do so in the future, and thus the proposed merger would not reduce the number of actual or potential competitors for these services. Given the early stage of patient choice arrangements in community and mental health services, we were unable to conclude that after the merger NELFT might have the ability to restrict patient choice for patients moving between community services and mental health services, and thus have a material adverse effect on patient choice and competition.
64. As we have not identified any material costs to patients and taxpayers from the proposed merger, it has not been necessary to consider any benefits to patients and taxpayers that could be expected from it.
65. We conclude that the proposed transaction is consistent with Principles 9 and 10 of the Principles and Rules.
66. The analysis, advice and recommendations set out in this report have been given by the CCP on the basis of information it has received to date. Should there be any material change to the terms of the transaction we expect the parties to re-refer the matter to us.

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³⁰ We were told that SWE Community Services does not provide any community based mental health services such as Improving Access to Psychological Therapies.

³¹ It is not necessary to consider the PCT area of Havering as NELFT does not currently provide any community services in this area.

COMMUNITY SERVICES PROVIDED BY SOUTH-WEST ESSEX

<i>Service (value at 2010/11)</i>	<i>To be market tested by end of 2011/12</i>	<i>To be market tested by end of 2012/13</i>	<i>To be market tested by end of 2013/14</i>
1 Wheelchair Services	£538,300		
2 End of Life Team		£500,300	
3 Vitality			£2,368,300
4 Other Health Promotion			£2,887,500
5 Integrated Community Teams (District Nursing, Matrons, Collaborative Care Team)			£14,714,100
6 Primary Care Assessment and Treatment Centre / Day Hospitals			£2,326,900
7 Intermediate Care Beds		£8,841,500	
8 Children's Community Medical (Specialist Paediatric) (0-19 Progressive)		£2,439,500	
9 Other 0-19 Progressive		£5,618,800	
10 0-19 Universal Services (Health Visiting/School Nursing)		£9,296,300	
11 Genito Urinary Medicine (sexual health)			£2,755,300
12 Other Sexual Health/Family Planning			£1,554,900
13 Specialist Nursing Services		£3,229,100	
14 Support Services		£479,600	
15 MSK Physiotherapy			£2,287,800
16 Other Therapies			£1,947,600
17 Minor Injuries Unit	£733,100		
18 Community Dental Services	£1,079,000		
19 Community Equipment Services	£3,000,000		
Total	£5,350,400	£30,842,400	£30,405,100

COMMUNITY SERVICES PROVIDED BY NELFT

<i>Service</i>	<i>Value</i>
1 Paediatric Audiology	£1,233,927
2 Child Health Systems	£670,569
3 Community Medical Paediatric Services (CMPS)	£648,722
4 Rapid Response, Overview Panel and Designated Doctor Function	£1,188,919
5 Community and Unique Care Matrons	£947,958
6 Community Learning Disability Team	£913,134
7 Community Liaison Service	£120,197
8 Community Phlebotomy Service	£108,290
9 Community Rehabilitation	£429,644
10 Continuing Care Nurse Assessment Team	£196,059
11 Community Coronary Heart Disease Service	£432,047
12 Domestic Violence Strategic Implementation Lead	£1,347,500
13 Integrated Diabetes Service	£430,621
14 Nutrition and Dietetics Service	£309,675
15 Discharge Facilitators	£381,510
16 District Nurse	£3,109,883
17 Education and Training / Infection Prevention and Control	£632,835
18 Intermediate Care Inpatient Beds	£4,835,891
19 Integrated Respiratory Service	£910,995
20 Intermediate Care Team	£930,773
21 Occupational Therapy and Physiotherapy for Children	£609,169
22 Physiotherapy Musculoskeletal Service / Musculoskeletal Clinical Assessment Service	£2,840,699
23 Podiatry	£776,409.06
24 Special Care and Community Dental Service	£1,685,552
25 Specialist Community Public Health Services (SCPHN)	£3,175,588
26 Therapy Service for Children with Delays and Disorders of Speech, Language and Communication	£1,643,337
27 Speech and Language Therapy (Adult)	£818,378
28 Health Advisors in Schools	£607,781
29 Stop Smoking Services	£1,033,357
30 Stroke Beds and Community Service	£200,994
31 Tissue Viability	£125,681
32 Urgent Care Centre Upney Lane	£1,088,220
33 School Nurses	£1,486,672
Total	£35,871,000

COMMUNITY SERVICES COMMISSIONED IN HAVERING

<i>Service (value at 2010/11)</i>	<i>To be market tested by end of 2010/11</i>	<i>To be market tested by end of</i>	<i>To be market tested by end of</i>	<i>To be market tested by end of</i>
1 Rapid Response Team/UCC				
2 Personal Health Budgets				
3 Integrated Care Management				
4 Diabetes Pathway				
5 Dental Practices				
6 Dental Out of Hours				
7 Speech and Language Therapy				
8 Haematology Advice Service	[><]	[><]	[><]	[><]
9 8 Consultant Led Services				
10 Community District Nursing				
11 Children's Team Health Visitors				
12 Ambulatory Services				
13 In patient services inc. Rehab Pathway				
14 Children's Specialist Services				
15 Learning Disabilities				
16 Disablement Services Centre				
Total	£22,771,000	£11,462,000	£2,121,000	£14,268,000

MARKET DEFINITION

1. To assess the effect that a merger has on competition we first identify (or define) the markets in which competition between the merging parties takes place. There can be two dimensions to any market definition: a definition of the product (or service) and a definition of the relevant geographic area. The following paragraphs discuss the products (or services) and the geographic area in which competition between SWE Community Services and NELFT takes place.¹
2. A number of approaches have been employed by economists to define markets and use as a basis for assessing the effect of a transaction. Consistent with international best practice, and our draft interim guidelines, the CCP uses the so-called 'hypothetical monopolist' test to identify and define the market(s) affected by a merger.² Specifically, the test helps us to identify a service (or group of services) and a geographical area where they are supplied. With this information we can identify the relevant competing providers of those services. Once the market is defined we can then assess the effect of a merger.
3. Under the hypothetical monopolist test, consideration is given to the extent to which consumers (in this case, patients or taxpayers) would respond if a hypothetical single provider of a service (or group of services) were to offer a poorer quality (or higher priced) service (see paragraph 4.23 of the CCP's draft interim merger guidelines). Patients or commissioners may respond to lower quality (or higher prices in the case of commissioners) by using or commissioning a smaller volume of the service in question and they may use or commission other services or the same services from a provider in a different geographic area. When defining the product market, consideration is given to the other services patients and commissioners might use and when defining the geographic market, consideration is given to the other geographic areas where patients and commissioners might access services.
4. Healthcare markets are different from other markets because of the role played by both patients and commissioners. We review patient and commissioner views when assessing whether alternative service providers are part of the market affected by a merger. The capacity of patients or commissioners to access alternative service providers could be affected by, for example, whether the any willing provider model or competitive tendering is used to supply services to patients.
5. In a merger, the services or geographic area(s) that are included in the market(s) may materially impact the extent to which patient choice and competition are affected by the merger. However, it is also possible that a merger does not give rise to a material adverse effect on patients and taxpayers regardless of how the markets affected by the merger are defined. In these cases it will not usually be necessary for the CCP to reach a definitive conclusion on market definition and the CCP may choose not to do so in these cases.

¹ We use the terms 'product' and 'service' interchangeably in this appendix.

² See paragraph 5.23 of the CCP's draft interim merger case guidelines.

PRODUCT MARKET

6. The services supplied by SWE Community Services and NELFT are set out in Appendices 1 and 2. In this case the relevant product market(s) for our analysis might be:
 - separate product markets for individual community and mental health services;
 - separate product markets for sets of individual community and sets of mental health services;
 - a product market for all community services and a separate product market for all mental health services; or
 - a product market that includes community services, mental health services and other health services such as acute services and/or primary care services.

7. We considered the extent to which service providers (e.g. community service providers) face competition from care provided in other settings (e.g. in a hospital). If services provided in these other settings do compete against community or mental health services then it is possible they should be included in the same market for our assessment. In relation to mental health services we note that some of these services are provided in the community whilst others are provided in hospital; therefore since there is not a single mental health setting, we refer to either a community or a hospital setting in which mental health services are provided.

8. To consider the appropriate market definition for community services we use the framework of the hypothetical monopolist test. This test reviews how patients might respond to changes in service quality if only one community or mental health service provider is available to them.³ The product component of each community service can consist of two elements: the treatment that is provided (e.g. a dental treatment or a physiotherapy treatment) and the setting for that treatment (e.g. at home or at a community health facility). If there is only one community service provider available to a patient then that patient could, in principle, select the alternative setting.⁴ If a sufficient number of patients were to choose the alternative setting in response to a small but significant reduction in service quality then the alternative service should be included in the same product market.⁵

9. We consider that it is unlikely that patients would materially reduce their use of community or mental health services, in response to a small but significant reduction in the quality.⁶ We reached this view for a number of reasons, including the inconvenience to patients of accessing treatments in an alternative setting. Commissioners are also unlikely to fund the same service being provided in both a community and hospital setting.⁷ We consider that it is unlikely that the product market for individual community or mental health services or all community

³ The PCT as commissioner could respond to a small but significant change in quality by changing provider. However, this would require them to facilitate entry of a new provider. We consider this to be more consistent with entry. The need for a PCT to contract with a new service provider for that service provider to be in a position to offer services to patients also means that we do not consider supply-side substitution (i.e. providers of care in non-community settings responding to a small but significant deterioration in quality by relatively quickly starting to offer community services in a community setting) to be possible at this stage.

⁴ For simplicity this assumes that patients would not stop treatment altogether if they were dissatisfied with the quality of service in a particular setting.

⁵ This, in essence, is the 'hypothetical monopolist' test.

⁶ This assumes that the range of existing service provision remains and that provision in a community setting is not closed.

⁷ The provision in an acute setting would be more expensive and would run counter to the Department of Health policy of moving healthcare into settings closer to the home.

services and all mental health services includes the same or substitute services provided in an acute setting.

10. We conclude that, for the purposes of our analysis, the relevant product market is the supply of individual services or a single market for the supply of all community services, and a separate market for the supply of all mental health services. We consider it unlikely that the relevant product markets also includes other healthcare services, such as acute services.

GEOGRAPHIC MARKET

11. The second dimension to a market is its geography. That is the area over which suppliers compete for community and mental health patients. Candidate geographic markets for analysing this merger might, for example, be:
 - individual PCT areas (e.g. South-West Essex and Havering PCT areas);
 - individual PCT areas and some or all adjacent PCT areas; or
 - wider than individual PCT areas and some or all adjacent PCT areas.
12. In this case, residents in the areas affected by the merger do not currently have the opportunity to choose alternative providers outside of their PCT area. This is because residential location determines where patients are eligible to access NHS-funded services. In this context, if there was a reduction in service quality from their service provider, patients cannot choose another provider from outside the PCT area.
13. The inability for patients to choose would only change if community or mental health services started to be jointly commissioned with other PCTs or if an 'Any Willing Provider' model of provision was introduced for some services. If there was joint-commissioning then patients could access services from other providers elsewhere in the joint commissioning area. We conclude that the relevant geographic markets for assessing the impact of the merger are individual PCT areas.

FINDINGS ON MARKET DEFINITION

14. The relevant product market for analysing this merger may be individual community and mental health services or all community services and all mental health services. The relevant geographic markets for analysing the effects of this merger are PCT areas. As our assessment of the effect of this merger would not vary with our findings on market definition, we do not consider it necessary to more precisely define the market. For the purposes of explaining our competitive assessment, we refer to the markets for community and mental services in the South-West Essex PCT and Havering PCT areas.