

**ANTICIPATED PATHOLOGY JOINT VENTURE BETWEEN UNIVERSITY COLLEGE  
LONDON HOSPITALS NHS FOUNDATION TRUST, ROYAL FREE LONDON NHS  
FOUNDATION TRUST AND THE DOCTORS LABORATORY LIMITED**

**ADVICE TO THE OFFICE OF FAIR TRADING UNDER SECTION 79(5) OF THE HEALTH  
AND SOCIAL CARE ACT 2012**

**31 OCTOBER 2013**

**NON-CONFIDENTIAL VERSION**

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On 24 September 2013, the Office of Fair Trading (OFT) notified Monitor, under section 79(4) of the Health and Social Care Act 2012 (Health and Social Care Act), that the OFT had decided to carry out an investigation under Part 3 of the Enterprise Act 2002 (Enterprise Act) of the proposal by University College London Hospitals NHS Foundation Trust, Royal Free London NHS Foundation Trust and the Doctor's Laboratory Limited (the Parties), to enter into a joint venture in relation to the provision of pathology services (the merger).

Under section 79(5) of the Health and Social Care Act, as soon as reasonably practicable after receiving a notification under section 79(4), Monitor is required to provide the OFT with advice on the following matters:

- a. the effect of the matter under investigation on benefits (in the form of those within section 30(1)(a) of the Enterprise Act (relevant customer benefits)) for people who use health care services provided for the purposes of the NHS, and
- b. such other matters relating to the matter under investigation as Monitor considers appropriate.

This document constitutes the advice that we must provide under section 79(5) of the Health and Social Care Act.

Monitor's draft guidance on merger benefits sets out that merger parties need to identify the benefits that potentially arise from the merger and provide evidence in support of these submissions. This approach reflects the position of the merger parties as the proponents of the transaction and the organisations responsible for ensuring that the intended benefits are realised. This approach is consistent with OFT guidance on its approach to merger control which requires merger parties to produce detailed and verifiable evidence of any anticipated benefits.

In this case the parties have informed us that they have decided not to engage with Monitor in demonstrating the benefits that potentially arise from the merger. The parties have told us they are of the view that the merger cannot be expected to result in a substantial lessening of competition within any market in the United Kingdom. Therefore the parties do not believe OFT will need to consider whether there are any relevant customer benefits in relation to the merger.

We are still required to advise the OFT on the effect of the merger on relevant customer benefits. Accordingly in the absence of submissions from the parties our advice is that we are not aware of any relevant customer benefits arising from this merger.