EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.9829 - AON / WILLIS TOWERS WATSON

(Only the English text is authentic)

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8(2) Regulation (EC) 139/2004
Date: 09/07/2021

EUROPEAN
COMMISSION

Brussels, 9.7.2021
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COMMISSION DECISION

of 9.7.2021

declaring a concentration to be compatible with the internal market and the EEA agreement

(Case M.9829 – Aon / Willis Towers Watson)

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1],

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings[2] [3], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 21.12.2020 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

1. INTRODUCTION

(1) On 16 November 2020, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which Aon plc (Ireland, hereinafter "Aon" or the "Notifying Party") will acquire sole control of Willis Towers Watson Public Limited Company (Ireland, hereinafter "WTW"), by way of acquisition of the entirety of the issued and outstanding shares of WTW (the "Transaction").[4] Aon and WTW are collectively referred to as the "Parties" whilst the undertaking that would result from the Transaction is referred to as the "Merged Entity".

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1 OJ C 115, 9.8.2008, p.47.

2 OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this Decision.

3 For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period. Accordingly, any references made to the EEA in this Decision should be read as also including the United Kingdom.

4 Publication in the Official Journal of the European Union No C 398, 23.11.2020, p. 18.

2. THE PARTIES AND THE OPERATION

(2) **Aon** is a publicly traded global professional services firm domiciled in Ireland, headquartered in London and listed on the New York Stock Exchange. Aon is active in more than 120 countries. Its activities include: (i) commercial risk brokerage, (ii) reinsurance brokerage, (iii) investment solutions, (iv) retirement solutions, (v) health & welfare benefit solutions and (vi) human capital consulting.

(3) **WTW** is a publicly traded global professional services firm headquartered in London and listed on the NASDAQ Global Select Market. WTW is active in more than 140 countries. Its activities include: (i) commercial risk brokerage, (ii) reinsurance brokerage, (iii) investment solutions, (iv) retirement solutions, (v) health & welfare benefit solutions and (vi) human capital consulting.

(4) The Transaction concerns the acquisition of sole control of WTW by Aon.

(5) On 9 March 2020, Aon entered into a Business Combination Agreement with WTW to combine in an all-stock transaction. The Transaction will be implemented by a court-sanctioned scheme of arrangements pursuant to which Aon will acquire the entire issued and to be issued share capital of WTW in exchange for shares of Aon. Upon completion of the Transaction, existing Aon shareholders will own approximately 63% and existing WTW shareholders will own approximately 37% in the Merged Entity.

(6) The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Aon: EUR 9 783 million; WTW: EUR 8 075 million). Each of them has an EU-wide turnover in excess of EUR 250 million, (Aon: EUR […] million; WTW: EUR […] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. THE PROCEDURE

(8) On 16 November 2020, the Commission received formal notification of the Transaction pursuant to Article 4 of the Merger Regulation.

(9) During its phase 1 market investigation, the Commission reached out to a large number of market participants (customers and competitors of the Parties), by requesting information through questionnaires, telephone calls and written requests for information pursuant to Article 11 of the Merger Regulation. Conducted a targeted market reconstruction analysis by requesting data from the Parties and major market participants, as well as reviewed bidding data of the Parties.

(10) In addition, the Commission also sent numerous written requests for information pursuant to Article 11 of the Merger Regulation to the Parties.

(11) Based on a market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market. On 7 December 2020, the Commission informed the Notifying Party of these serious doubts in a State of Play meeting. Subsequently, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 21 December 2020 (the "6(1)(c) Decision").

(12) On 21 December 2020, the Commission provided a number of key documents to the Notifying Party. Additional key documents were provided to the Notifying Party on 6 January 2021.

(13) The Notifying Party submitted its written comments to the Article 6(1)(c) decision on 12 January 2021 ("Reply to the 6(1)(c) Decision") and elaborated on those orally during a State of Play meeting on 13 January 2021.

(14) During the in-depth market investigation in phase 2, the Commission:

(a) held calls with market participants and sent requests for information in the form of questionnaires;

(b) sent numerous requests for information pursuant to Article 11 of the Merger Regulation to the Notifying Party, including a request for submission of internal documents of selected custodians based on keyword searches and reviewed such responsive internal documents submitted by the Parties;

(c) Reviewed the submissions of the Parties, sent numerous requests for information to the Parties and reviewed responses, and had a number of telephone calls with the Parties and their economic and legal advisors;

(d) Further refined market reconstruction and bidding / tender data analysis carried out in phase 1.

(15) On 9 February 2021, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation suspending the merger review time limit for initiating proceedings and for decisions, due to the failure of the Parties to provide certain requested documents. The suspension lasted from 8 February 2021 until 9 April 2021, when the Parties provided the requested documents.

(16) The Commission provided feedback on the results of its phase 2 market investigation to the Notifying Party in a State of Play meeting on 5 March 2021. During the meeting, the Commission informed the Notifying Party of the preliminary results of the phase 2 market investigation and the scope of the Commission's preliminary competition concerns.

(17) In order to address the Commission's preliminary competition concerns, the Notifying Party submitted commitments on 9 April 2021. The Commission launched a market test of those commitments on 12 April 2021.

(18) On 15 February, independently of this Transaction, the Commission approved, under the EU Merger Regulation, WTW's sale of Miller Insurance Services LLP ("Miller") to Cinven Capital Management (SSF) and Raffles Private Holdings Limited.[5] Miller is active in the provision of non-life insurance and reinsurance brokerage services. Under the simplified merger review procedure the Commission concluded that the *Cinven/Raffles/Miller* transaction would not raise competition concerns because of Miller's limited market position in the EEA. Thus, Miller's activities will not be taken into account in the remainder of this Decision.

(19) On 13 April 2021, the Commission extended the merger review time limit by 10 working days following a request by the Notifying Party pursuant to Article 10(3) of the Merger Regulation.

5 M.10076 – *Cinven/Raffles/Miller*; Notifying Party's submission on the sale of Miller, 2 December 2020.

(20) On 3 May 2021, the Commission extended the merger review time limit by a further 5 working days following a request by the Notifying Party pursuant to Article 10(3) of the Merger Regulation.

(21) The Notifying Party submitted final commitments on 12 May 2021 (the "Final Commitments").

(22) On 16 June 2021, the Commission sent a draft of this Decision to the Advisory Committee with the view of seeking the Committee's opinion. A meeting of the Advisory Committee took place on 30 June 2021 and the Committee issued an opinion on 30 June 2021.[6]

5. INTRODUCTION TO THE COMMISSION'S ASSESSMENT

(23) The Parties' activities overlap in a wide number of areas, which will be assessed below: (i) commercial risk brokerage (Section 6); (ii) reinsurance brokerage (Section 7); (iii) retirement solutions (Section 8); (iv) investment solutions (Section 9); and (v) health and welfare benefits solutions (Section 10).

(24) The present Section sets out the applicable legal framework for the Commission's assessment of horizontal mergers and summarises the markets on which the Commission considers that, as notified, the Transaction is incompatible with the internal market.

5.1. Legal test

(25) Under Article 2(2) and (3) of the Merger Regulation, the Commission has to assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(26) In this respect, a merger may entail horizontal and/or non-horizontal effects. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different, but related, relevant markets.

(27) As concerns the assessment of horizontal overlaps, the Commission's guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[7] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

(28) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in

[6] The United Kingdom was invited to attend the Advisory Committee in accordance with Articles 94(3) and 128(5) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

[7] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, p.5-18.

competitive pressure on non-merging firms in the same market that could be brought about by the merger.[8]

(29) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies both for assessing whether a merger would create or strengthen a dominant position, and for assessing whether a merger would significantly impede effective competition due to non-coordinated effects in the absence of dominance. Not all of these factors need to be present to make it likely that a merger will result in a significant impediment to effective competition and it is not an exhaustive list.[9]

(30) As set out in recital 25 of the Merger Regulation and paragraph 25 of the Horizontal Merger Guidelines, a merger in an oligopolistic market can lead to a significant impediment to effective competition due to non-coordinated effects without the creation or strengthening of a dominant position, but instead through the removal of important competitive constraints (i) that the merging parties previously exerted upon each other together with (ii) a reduction of competitive pressure on the remaining competitors.

(31) A merger in a concentrated market may also significantly impede effective competition due to horizontal coordinated effects where, through the creation or the strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[10]

(32) To assess whether a merger gives rise to horizontal coordinated effects, the Commission should examine, first, whether it would be possible to reach terms of coordination and, second, whether the coordination would be likely to be sustainable.[11]

5.2. Summary of competitive concerns raised by the Transaction

(33) The results of the Commission's phase 2 investigation show that the Transaction will likely result in a significant impediment to effective competition in the following markets:

(a) commercial risk brokerage for large multinational customers ("LMCs")[12] (see Sections 6.1.4 and 6.2), for the following risk types, at global level: property & casualty, FinPro and cyber;

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8 Horizontal Merger Guidelines, paragraphs 22 to 25.

9 Horizontal Merger Guidelines, paragraph 26.

10 Horizontal Merger Guidelines, paragraph 39.

11 Horizontal Merger Guidelines, paragraph 42.

12 For the purposes of this Decision, large multinational customers ("LMCs") designate those companies headquartered in the EEA and/or sourcing in this geography at least a significant proportion of their insurance needs, with a global turnover equal to or higher than EUR 1 billion and requiring insurance needs in more than five countries. In view of the specificities of such definition, whenever recalling

(b) commercial risk brokerage for all other customers (non-LMCs), for the following risk types at national level: property & casualty (Netherlands) and cyber (Spain);

(c) commercial risk brokerage for all customers (LMCs and non-LMCs), for the following risk types, at global level: aerospace manufacturing and space;

(d) treaty non-life reinsurance brokerage and facultative non-life reinsurance brokerage, both at global level; and

(e) pension administration in Germany.[13]

6. COMMERCIAL RISK BROKERAGE

(34) The insurance industry provides financial protection to individuals, companies and government entities when certain specified events occur. This protection is referred to as insurance cover and an event against which a party seeks protection is referred to as the risk. Cover is typically provided by companies known as insurance carriers, or insurers.

(35) Insurers undergo a process of underwriting, in which they examine risks, classify the risks covered by their policies and determine the premium they will charge for the coverage provided. The terms of an insurance agreement are detailed within an insurance policy between the insurer and its customer (policy holder). Policyholders will make regular premium payments to an insurer in return for the insurer agreeing to pay a sum of money if the risk materialises.

(36) Insurance may be broadly categorised into the provision of life and non-life insurance cover. Life insurance typically involves an insurer providing protection in the event of the policy holders' death or serious illness. Non-life insurance covers all other kinds of risk, from personal risks for individuals to commercial risks for companies. Generally, commercial risks encompass broad categories of liability cover (e.g. property & casualty risks) as well as other more special risk types (e.g. aviation, energy and marine).[14]

(37) The Parties are both primarily active in the provision of non-life insurance brokerage services. The overlap between the Parties' activities leads to affected markets in the commercial risk brokerage services, across different risk types.

(38) The Parties primarily operate as insurance brokers servicing large, generally multinational companies with highly technical operations – such as energy companies or airline operators – by placing their risk in the insurance market. The Parties also act as brokers for medium-sized and smaller corporate customers.[15]

(39) The activities of brokers are different from those of insurers and subject to a different regulatory framework.[16] The broker services provided by the Parties include assisting clients in securing suitable cover to achieve their risk management goals at

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references by the Notifying Party in its arguments or internal documentsto large accounts, large customers, large multinational customers or multinational customers ("MNCs") these terms cannot be considered as synonymous to the term LMCs.

13 Whether the Transaction gives rise to a significant impediment to effective competition in the retirement benefits consulting market in Germany is left open, as any such concerns are ultimately remedied.

14 The different risk types are defined in more details further down below in Section 6.2.5.

15 Form CO, section 2.

16 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 12.

competitive terms. For that purpose, brokers will search the insurance market for an insurer or a consortium of insurers capable of carrying the customers' risks.

(40) In addition, brokers typically also provide risk management advice and may provide other services such as the assessment and quantification of the customer's risk, the ideal proportion of risk to be retained, policy wording, or advice on and handling of claims vis-à-vis the insurer. These additional services are equally valued by customers, and form part of brokerage services, distinct from other insurance distribution channels (as defined in Section 6.2.3).

(41) The Parties are also active in reinsurance brokerage services, which refers to the transfer of risk from an insurer (the primary insurer) to a reinsurer (the secondary insurer). Reinsurance brokerage services are discussed in Section 7 on reinsurance brokerage.

6.1. Relevant product markets

(42) For the definition of the relevant product markets in the present case, the Commission, firstly, presents the Commission's previous decisional practice applicable in this case. Secondly, the Commission will address the Notifying Party's arguments, by discussing: (i) how, for the purposes of defining the relevant product markets, the Parties' activities and brokerage services in general relate to risk management alternatives (Section 6.1.2) and direct placement (Section 6.1.3); (ii) the possibility to distinguish a separate market for LMCs (Section 6.1.4), for each underlying risk type (Section 6.1.5); and (iii) the possible existence of a distinct market for captive-related services (Section 6.1.6).

6.1.1. Commission's previous decisional practice

(43) In its past decisional practice, the Commission acknowledged that corporate customers clearly distinguish between the types of services they can procure from brokers, on the one hand, and the types of services they can procure from direct dealing with insurers, on the other hand,[17] and considered, for the purposes of its assessment, a market limited to insurance brokerage. The Commission therefore relied on the differentiation between broker services and insurer services as a starting point to determine whether the different distribution channels, *i.e.* brokered placement and direct placement should be considered as separate markets.

(44) In *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, the Commission specified that the distribution of insurance via brokers constituted a separate product market.[18] This conclusion was supported by responses to the Commission's market investigation that revealed that most customers consider that the other risk management channels, such as risk retention are not substitutes for brokerage services.[19] Furthermore, the responses to the Commission's market investigation also indicated that (i) customers (in particular large corporate customers) clearly distinguish between the types of services they can procure from brokers; (ii) customers (in particular large corporate customers) do not consider that insurers compete directly with brokers in the distribution of insurance for large risks; and (iii) insurers typically do not operate their own distribution network, nor consider it viable to create one.[20] Accordingly, the Commission concluded that the relevant

17 M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 13.
18 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraphs 10 to 15.
19 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraphs 10 to 15.
20 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 14.

product market is limited to the intermediated distribution of insurance through brokers. With respect to risk retention, the Commission also held that broker services are also distinct from other insurance management channels such as risk retention.[21]

(45) Lastly, the market investigation carried out in *Marsh & McLennan Companies/Jardine Lloyd Thompson Group* indicated that it is appropriate to distinguish, within insurance brokerage, between the different risk types, in view of the lack of supply-side substitutability between the different risk types.[22] The Commission therefore concluded in that case that the relevant product market was the provision of non-life insurance brokerage services, with a further segmentation per risk type.

6.1.2. Insurance and risk management alternatives (risk retention and alternative capital)

(46) As an alternative to traditional insurance, corporate customers may choose to retain their risk (for example: by way of accepting it, increasing capital or setting up a captive[23]), or place their risk on the alternative capital markets,[24] *i.e.* ceding their risk to entities operating in financial markets, e.g. hedge funds, mutual funds, sovereign wealth funds, through various forms of vehicles.

(47) As indicated at recital (44), the Commission has previously considered that the broker services are also distinct from other insurance management channels such as risk retention.[25]

6.1.2.1. The Notifying Party's view

(48) The Notifying Party submits that the distribution of insurance must be understood as part of the broader risk mitigation strategy a company chooses to implement. According to the Notifying Party, a company has a range of options available when assessing how to address its commercial risks. The Notifying Party argues in this respect that the relevant market should include all risk management channels available to customers, i.e. (i) retaining the risk, including through the use of captive insurers, and (ii) accessing alternative forms of capital.[26]

(49) In the Reply to the 6(1)c Decision, the Notifying Party recalls the arguments above in the context of the product market definition, and further develops the argument that risk retention acts as a constraint on the Parties, in the context of the competitive assessment.[27]

6.1.2.2. The Commission's assessment

(50) As a preliminary point, the Commission observes that it is a well-established practice that the insurance market does not include other risk management strategies such as risk retention or alternative capital products. In previous decisions relating to the insurance sector, the Commission has distinguished between three broad categories

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21 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 15.

22 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraphs 16 to 22. See also M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 18.

23 A company may establish a subsidiary referred to as a captive, whose sole purposes is to insure its parent's risk exposure. As a form of self-insurance, the parent company assumes its own risk by setting aside its own capital within the captive. A broker may then also place reinsurance for such a captive.

24 Alternative capital is a non-technical term for forms of capital other than debt, equity or traditional insurance.

25 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 15.

26 Form CO, paragraphs 150 to 153.

27 Reply to the 6(1)(c) Decision, paragraphs 143 and 144.

of insurance products: life insurance, non-life insurance and reinsurance, but has never considered other risk management tools as belonging to the same market.[28]

(51) In its previous decisional practice, the Commission has also concluded that risk management alternatives are not considered in the same market as distribution of insurance. In *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, where the Commission considered that broker services are distinct from other insurance management channels such as risk retention, because risk retention: (i) can only be used for a limited proportion of the portfolio, (ii) depends on the risk appetite of the company; and; in any event, (iii) does not decrease the need for broker services, as brokers may intervene in the company's risk management strategy.[29]

(52) In the present case, the results of the market investigation did not provide any elements that would justify departing from the Commission's previous practice. The Commission assesses each of the risk management alternatives put forward by the Parties in turn below.

(53) *Firstly*, with regard to risk retention, the Commission notes that there are different degrees to which the risk retention option is relevant, depending on the industry considered, as well as the size of the risk. Indeed, the range of corporate risks varies extremely and some very large risks may arise in certain specialties (e.g. indemnities deriving from an accident in aviation, liabilities arising from accidents in the hydrocarbon energy sector etc.). For these risks for example, respondents indicated that retention is not an option, due to the sums at stake.[30]

(54) Furthermore, if customers may decide to retain a certain proportion of their risk to reduce the cost of insurance, there is a limit to the (small) proportion of risk that can be retained.

(55) In this regard, the results of the market investigation indicated that customers would typically retain only a small proportion of their risk portfolio and require the services of brokers to place the largest part of their risk in the insurance market, thereby not decreasing their need for broker services.[31]

(56) Moreover, while risk retention is typically done *via* the set up and management of a captive, the vast majority of customers[32] indicated that they do not make use of captives. Only LMCs indicated that they used captive,[33] and even then, only approximately half of the respondents within that group indicated that they make use of captives.[34]

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28 See M.6957 – *IF P&C/Topdanmark*; M.6217 – *Baloise Holding / Nateus/Nateus Life*; M.6053 – *CVC / Apollo/Brit Insurance* or M.7233 – *Allianz/Going concern of UnipolSai Assicurazioni* in which the Commission assessed the insurance market without considering other risk management strategies.

29 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 15.

30 Replies to questions 9 and 12 of questionnaire Q1 to Customers.

31 Replies to questions 9 and 12 of questionnaire Q1 to Customers; Replies to questions 23 and 24 of questionnaire Q5 to Competitors.

32 In this Decision, in the context of reporting the results of the market investigation, the term "customers", typically refers to all customers concerned by a given relevant market which responded to the market investigation. Likewise, the term "competitors" typically refers to the competitors which contributed to the market investigation.

33 For the purposes of this Decision, large multinational customers ("LMCs") designate those companies headquartered in the EEA and/or sourcing in this geography at least a significant proportion of their insurance needs, with a global turnover equal to or higher than EUR 1 billion and requiring insurance needs in more than five countries.

34 Replies to question 12 of questionnaire Q1 to Customers.

(57) In this respect, the results of the market investigation highlighted that the decision to set up a captive depends on strategic considerations, such as risk appetite and prevailing market prices of insurance cover.[35] For example, customers may choose to make use of captives to reduce the cost of the overall programme of primary insurance when conditions on the insurance market are hard or for risks which are difficult to insure in the primary insurance market. On this point, the results of the market investigation are relatively mixed, with a significant number of respondents viewing captives as an alternative to primary insurance while others did not consider captives as an alternative to insurance at all.[36]

(58) Nevertheless, when it comes to determining whether captives can be used as an alternative to broker services, the overwhelming majority of customers indicated that they did not consider the use of captives as an alternative to the use of brokers.[37] This is linked to the fact that brokers typically provide a number of captive-related services, ranging from the setting-up of the captive, to its management.

(59) More generally, the Commission notes that brokers play an advisory role in the strategic decision of customers to retain a proportion of their risk and/or use a captive.

(60) In fact, among those customers that have a captive, the large majority confirmed that they use broker services for the design or management of the captive.[38] Respondents explained they normally use them for risks which cannot be insured on the insurance market, to insure part of the risk to reduce costs by managing and covering some of the risk, but not for all types of risks and not for the full required insurance cover.[39]

(61) Accordingly, the overwhelming majority of customers explained that they would not increase the proportion of risk assumed by their captives if broker fees were to increase permanently by 5 to 10%,[40] so that the option for captive insurance does not constrain brokers.

(62) *Secondly*, with regard to the possibility of insuring a risk on alternative capital markets, the results of the market investigation underlined that a very significant proportion of customers does not consider the use of alternative capital as an alternative to insurance,[41] and only a very small proportion of customers actually consider this as an alternative to broker services.[42] Similar to risk retention, the very small number of customers actually using alternative capital put forward in the course of the market investigation that they still require broker services, either for placement or for advisory services, as they do not have the knowledge and/or capabilities to place risks on the alternative capital market without using brokers.[43]

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35 Replies to questions 12 to 14 of questionnaire Q1 to Customers.

36 Replies to question 13 of questionnaire Q1 to Customers.

37 Replies to question 13 of questionnaire Q1 to Customers.

38 Replies to question 12 of questionnaire Q1 to Customers.

39 Replies to questions 12 and 13 of questionnaire Q1 to Customers.

40 Replies to question 14 of questionnaire Q1 to Customers. According to paragraph 17 of the Commission Notice on the definition of relevant market, where customers would not switch to readily available substitutes in response to a hypothetical small but permanent relative price increase in the product being considered, these substitutes will not typically be considered within the same product market.

41 Replies to question 17 of questionnaire Q1 to Customers.

42 Replies to question 15 of questionnaire Q1 to Customers.

43 Replies to question 15 of questionnaire Q1 to Customers.

(63) In this respect, the overwhelming majority of customers indicated that they would not increase their use of alternative capital if broker fees were to increase permanently by 5 to 10%,[44] so that the possibility to insure its risk on the alternative capital markets does not act as a competitive constraint on brokers.[45]

(64) For the reasons listed above, and in line with its previous decisional practice, the Commission considers that it is appropriate to define a relevant product market for insurance distribution distinct from other risk management alternatives, namely risk retention and alternative capital markets.

6.1.3. Distribution channels for commercial risk insurance distribution: direct placement and brokers

(65) Insurance may be arranged either by direct dealing between the primary insurer and the reinsurer, or through a reinsurance broker.

(66) As indicated at recital (44), the Commission has previously considered that other risk management channels are not substitutes for brokerage services.[46]

6.1.3.1. The Notifying Party's view

(67) The Notifying Party submits that both channels offer a range of choices to clients, from which they can and do select when assessing the best way to manage and cover their insurance needs. According to the Notifying Party, direct distribution operates as a real competitive constraint on the Parties and other brokers in many segments globally and in the EEA, particularly in more commoditised segments such as property & casualty.[47]

(68) *Firstly*, the Notifying Party argues that clients can, and do, commonly place a significant part of their business directly with insurers, at least in certain business lines. Clients can also place risk directly using in-house broker capabilities. Customers with in-house broker capabilities are able to place large and complex risks with multiple insurers without involvement of external brokers.[48]

(69) *Secondly*, large insurers across Europe are many times the size of the Parties in revenue terms and have deep relationships with clients.[49]

(70) *Thirdly*, in relation to placing risk with multiple insurers, whilst the Notifying Party recognises that clients may often find it easier to use a broker (or brokers) for the placement of large risks with multiple insurers to help coordination and administration of the placement process and any post-placement issues, such as claims handling, the Notifying Party notes that many times clients use their relationships with insurers for placing larger risks, and large insurers will often have the capacity to cover those risks.[50]

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44 Replies to question 16 of questionnaire Q1 to Customers.
45 Replies to question 17 of questionnaire Q1 to Customers.
46 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraphs 10 to 15.
47 Form CO, paragraph 97 et seq. and 153 to 158.
48 Form CO, paragraph 99 et seq.
49 Form CO, paragraph 99 et seq.
50 Form CO, paragraph 99 et seq.

(71) Finally, the Notifying Party argues that the placement of risks via Lloyd's of London,[51] for which a broker is typically needed, play a limited role in the market, as it only accounts for a small proportion of overall commercial risk.[52]

(72) In the Reply to the 6(1)(c) Decision, the Notifying Party maintains that the relevant product market, should encompass all risk management channels available to customers, and further develops the argument that the direct channel acts as a constraint on the Parties, in the context of the competitive assessment.[53]

6.1.3.2. The Commission's assessment

(73) As stated above in Section 6.1.1, in its previous decisional practice, the Commission concluded that the relevant product market is limited to the intermediated distribution of insurance through brokers, as (i) customers clearly distinguish between the types of services they can procure from brokers, (ii) customers do not consider insurers to compete directly with brokers in the distribution of insurance for large risks, and (iii) insurers typically do not operate their own distribution network, nor consider it viable to create one.[54]

(74) As acknowledged by the Notifying Party, brokers are risk advisers and intermediaries in the transfer of risk as opposed to providers of insurance.[55]

(75) Brokers are perceived as acting in the client's interest while underwriters are seen as acting in their own profit interest. As a matter of law, insurance brokers act for the prospective policyholder so that their legal and regulatory obligations are to act in their clients' best interests both as to advice and as to any risk transfer arrangements they negotiate for their clients, including the negotiation of insurance coverage terms and conditions. As such, broker services are requested where independent advice is needed.

(76) Moreover, the range of services which customers seek from brokers normally goes beyond the actual placement of insurance cover, and may include an array of services which can be tailored to meet the client's needs, such as identification and assessment of risk, independent risk management advice, security rating of insurers, insurance market intelligence, independent actuarial services and claims support.

(77) In the present case, the results of the market investigation confirmed the Commission's previous practice in that it distinguishes the distribution of insurance through brokers from the direct placement of insurance with insurers.

(78) *Firstly*, the results of the market investigation confirmed that the services offered by brokers are much wider than risk placement, so that the use of brokers bear an added value which is not compensated when placing the risk directly.[56] As described by the

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51 Lloyd's of London is a specialised insurance market which brings together brokers and insurance companies. The business written at Lloyd's is brought to specialist syndicates, who price and underwrite risk, via brokers and cover holders. Much of the capital available at Lloyd's is provided on a subscription basis – where Lloyd's underwriters join together as syndicates and where syndicates join together to underwrite risks and programmes.

52 Form CO, paragraph 127 et seq.

53 Reply to the 6(1)(c) Decision, paragraphs 143 and 144.

54 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 14. See also M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 13.

55 Form CO, paragraph 153.

56 Replies to question 9 of questionnaire Q1 to Customers; Replies to question 4 of questionnaire Q1 to Competitors.

Notifying Party,[57] the role of a broker involves *inter alia* an understanding of the nature of a client's business, an assessment of its risks, the collection of detailed information on its relevant assets, operations, financial information, the general nature of its business, loss history, regulatory landscape and other factors which contribute to a full understanding of risk profile. As such, brokers may provide advice on steps to prevent or mitigate, control and manage loss.

(79) Accordingly, the first step for brokers, even before placing the risk is to advise clients on their insurance needs and potential strategies to mitigate such risks. After that, brokers seek and negotiate coverage for the risk that should be insured and have access to valuable information to benchmark insurance premiums. Moreover, brokers advise on or are involved in the negotiation, drafting and issuing of policy documents, in the negotiation of policy changes and in the production of evidence of coverage and certificates of insurance to third parties on behalf of clients.

(80) Brokers also provide their expertise to advise and assist clients throughout the claims process either by providing advice and advocacy on disputed losses or by helping to process the claim with insurers. In the latter case, a broker will typically be closely involved in providing insurers with claims documentation, loss adjuster reports and relaying legal advice from a client's or underwriter's legal adviser where appropriate.

(81) In this respect, respondents to the market investigation indicated that they value a number of services equally to the placement of risks: advice on risk management, benchmark and negotiation of premiums, access to the insurance market, policy wording, assistance on claims handling, access to the Lloyd's of London market, analytics on the impact of changing insurance conditions or advice on prevention measures to mitigate risks.[58] It follows that a customer deciding not to use the direct channel, would be deprived from the broad range of value-added services offered by brokers.

(82) *Secondly*, the results of the market investigation highlighted that, in practice, the proportion of risks placed directly by customers is limited and varies significantly across different risk types and the features of the risks.

(83) Respondents to the market investigation indicated that the types of risk for which direct placement is difficult are those requiring (i) several insurers on one policy, (ii) very specialised knowledge (for example space-related risks), (iii) access to the Lloyd's of London market, (iv) global programs compliant with national rules in different countries. Respondents to the market investigation underlined that the placement of all of these risks required the market overview and knowledge of a brokerage firm.[59]

(84) In line with this, the large majority of customers indicated that they place all of their risks *via* brokers. Only a limited proportion of customers use the direct channel and only for a limited part of their insurance needs, while only a very small number of companies place all or the majority of their risks directly. A majority of LMCs also indicated that they place all of their risks *via* brokers.[60]

(85) This is explained by a lack of in-house resources and knowledge of customers. In this regard, approximately half of the customers explained that they do not consider it

[57] Form CO, paragraph 153.
[58] Replies to question 9 of questionnaire Q1 to Customers.
[59] Replies to question 6 of questionnaire Q1 to Customers.
[60] Replies to question 5 of questionnaire Q1 to Customers.

feasible to place their risk directly without the intermediation of a broker, as they do not have the capabilities or the necessary expertise. This is also true for LMCs as, while they typically have more resources, they tend to require large and more complex insurance programs, sometimes with a consortium of insurers (co-insurance).[61]

(86) Additionally, brokers may be involved with customers placing their risk directly. As mentioned above for risk retention, and acknowledged by the Notifying Party, brokers may be involved in advising which proportion of risk can be retained and which proportion should be insured, prior to any placement.[62]

(87) As to the argument put forward by the Parties according to which customers are able to place a significant part of their insurance directly, through the use of in-house brokers,[63] the market investigation revealed that the overwhelming majority of customers do not make use of in-house brokers. On the contrary, only a very small number of customers use in-house brokers.[64]

(88) Furthermore, a majority of customers confirmed that in-house brokers cannot replace the services of external brokers, as it would be uneconomical and in-house teams do not have the same level of capabilities, knowledge of the market and the specialties, as well as lack of access to the market compared with brokers.[65] In addition, customers value the network that brokers have with insurers, their experience with large and complex risks and their ability to negotiate the best premiums available on the market, as some of the most important characteristics for selecting a broker.[66]

(89) *Thirdly*, the market investigation also indicated that for very large and complex risks requiring insurance by a consortium of insurers, direct placement is not considered as a viable option, as customers do not have the resources nor the capacity necessary to coordinate the placement of risks with a large number of insurers. Conversely, brokers typically intervene to coordinate consortia of insurers.

(90) In this regard, the vast majority of customers, including LMCs, confirmed that they are not able to place risks with a consortium of insurers directly.[67] Risk involving a consortium of insurers represents a very significant part of the market, and the largest part for several risk types.

(91) For example, according to data submitted by the Parties, [a significant percentage] of the Gross Written Premium ("GWP") placed by WTW is placed with more than […] insurers. With regard to aviation (aircraft operator and aerospace manufacturing) and space, the proportion of GWP placed with more than […] insurers is over [a very high percentage], and specifically with regard to space the proportion placed with more than […] insurers is above [a very high percentage].[68]

(92) *Fourthly*, LMCs which are active in several countries tend to require brokers with a local presence in each and every country where they have operations, to assist them in the placement. For this type of customer, a thorough knowledge of local markets is

61 Replies to question 6 of questionnaire Q5 to Competitors.
62 Form CO, paragraph 156.
63 Some companies have in-house teams that have risk-management capabilities, interact directly with insurers and negotiate and place risk on behalf of the company.
64 Replies to question 18 of questionnaire Q1 to Customers.
65 Replies to question 19 of questionnaire Q1 to Customers.
66 Replies to question 20 of questionnaire Q1 to Customers.
67 Replies to question 7 of questionnaire Q1 to Customers.
68 Form CO, paragraph 127.

required to ensure a harmonious compliance with national rules in different countries, requiring the market overview and knowledge of a brokerage company.[69]

(93) *Fifthly*, for some risk types as well as for LMCs, a significant proportion of risk is placed via the Lloyd's of London market. In this respect, the Notifying Party acknowledged that whilst customers could theoretically place a risk directly via Lloyd's of London, in practice almost all risks placed at Lloyd's of London are done so through brokers who facilitate the risk-transfer process between clients and underwriters.[70]

(94) In this regard, while the Notifying Party submits that only [a small percentage] and [a very small percentage] of the global GWP respectively placed by Aon and WTW goes through the Lloyd's of London market, the Commission notes that looking at the EEA GWP, this proportion is […] higher. In fact, approximately 25% of the customers responding to the market investigation indicated that they place risks in the Lloyd's of London market.[71]

(95) Finally, the large majority of customers, including LMCs, indicated that if broker fees were to permanently increase by 5 to 10%, they would not switch to direct placement of commercial risk insurance,[72] so that the possibility for the direct placement of risks does not act as a competitive constraint to brokers.

(96) In view of the available evidence and in line with its previous decisional practice, the Commission considers that it is appropriate to distinguish the distribution of insurance through brokers from the direct placement of insurance with insurers.[73,74]

6.1.4. Large multinational customers

(97) As noted in Section 6.1, the supply of commercial risk brokerage services to large, international companies with highly technical operations account for a significant portion of the Parties' overlapping activities. This, combined with the fact that the market investigation evidenced that a significant number of large customers with complex and global insurance needs considered that they could only use the Parties and Marsh as brokers and that Tier two brokers and smaller brokers would not be able to meet their needs, led the Commission to investigate whether defining a distinct market for large multinational customers ("LMCs") would be appropriate[75] separate from customers with less complex needs (i.e. non-LMCs) that are generally medium- and small-sized customers.

6.1.4.1. The Notifying Party's view

(98) The Notifying Party argues that defining separate markets according to customer's size is not appropriate, notably because a wide range of brokers can service clients of varying sizes, so that there is no particular group of client which has a more limited choice in their selection of a broker. According to the Notifying Party, large,

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69 Replies to questions 31 and 33 of questionnaire Q1 to Customers.

70 Form CO, paragraph 132.

71 Replies to question 10 of questionnaire Q1 to Customers.

72 Replies to question 8 of questionnaire Q1 to Customers.

73 The Commission refers to this market also as "brokered channel" in this Decision, in line with the terminology as used by the Notifying Party; Form CO, paragraph 97.

74 The Commission will, nevertheless assess the potential competitive constraint caused by direct placement in the context of the competitive assessment as an out-of-market constraint.

75 LMCs are defined in contrast to medium- and small-sized customers (non-LMCs), i.e. those companies which do not meet the following criteria (i) a global turnover equal to or higher than EUR 1 billion and (ii) requiring insurance needs in more than five countries.

regional, local and specialised brokers all compete for, and provide services to, clients of all sizes, and the Parties are significantly constrained by the presence of smaller brokers across the entire spectrum of clients that they serve. The Notifying Party explains that large clients use a wide range of brokers to place their risks and that smaller brokers have shown that they can win and service major clients on a regular basis from larger brokers.

(99) In its Reply to the Article 6(1)(c) Decision, the Notifying Party further submits that defining separate markets according to the size of customers is not appropriate, on the basis of the following factors: (i) legal precedents (or rather, lack thereof), (ii) demand-side considerations, (iii) supply-side considerations and (iv) the results of the market investigation which the Notifying Party considers to be inconclusive.[76]

(100) *Firstly,* the Notifying Party submits that, segmentation by client size is relatively uncommon as a matter of market definition in the Commission's past practice. The Commission has not previously made a distinction based on customer size in decisions concerning the insurance brokerage industry (notably in the *Marsh & McLennan Companies / Jardine Lloyd Thompson Group* decision).[77]

(101) Furthermore, in the cases where the Commission has considered making a distinction based on customer size, such a distinction was ultimately not adopted for reasons that apply in the present case. In this respect, the Notifying Party provides a number of examples, such as cases related to the supply of IT services,[78] where the Commission acknowledged that large businesses and smaller organizations procure their services in different ways, but ultimately found that the high degree of supply-side substitutability for these services undermined a segmentation based on customer size. The Notifying Party submits that this is also the case for the present transaction.[79]

(102) The Notifying Party further referred to previous Commission decision[80] in which the Commission concluded that segmenting the market by the customer's sector of activity was a good proxy for a possible segmentation based on customer size. The Notifying Party submits that in any case, the same reasoning should be applied to the present case.

(103) Moreover, the Notifying Party highlights that the relatively few cases in which a large customer segment was defined are clearly distinguishable from the present case. According to the Notifying Party, this is because these cases related to sectors where large customers have needs that are different to those of smaller customers by reference to some objective quantifiable factor as the supply of gas and electricity,[81] the distribution of office supplies,[82] or the provision of enterprise application

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76 Reply to the 6(1)(c) Decision, paragraph 93.

77 Reply to the 6(1)(c) Decision, paragraphs 94 to 105.

78 See *inter alia*, M.8864 – *Vodafone / certain Liberty Global businesses*, paragraph 599; M.7480 – *Cargill / ADM chocolate business*, paragraph 274; M.7018 – *Telefónica Deutschland/E-plus*, paragraph. 837 and M.6458 – *Universal Music Group / EMI Music*, paragraph 720.

79 Reply to the 6(1)(c) Decision, paragraph 99.

80 M.8287 – *Nordic Capital / Intrum Justitia AB*, paragraphs 45 to 52. See also M.9759 – *Nexi / Intesa Sanpaolo*, for which the Notifying Party submits that the difficulty in defining markets on the basis of customer size was discussed, but the Commission ultimately concluded that since there was no correlation between customer size and the service required there could not be a market fragmentation due to customer size. The Notifying Party submits that the same reasoning shall apply to the present case.

81 M.7929 – *EPH / ENEL / SE*; and M.5802 – *RWE Energy / Mitgas*.

82 See M.7555 – *Staples / Office Depot*; M.3108 – *Office Depot / Guilbert* and M.2286 – *Buhrmann / Samas Office Supplies*.

software.[83] In this regard, the Notifying Party notes that, in contrast to these sectors, the needs of large multinational customers in relation to broker services are not sufficiently distinct from the needs of other customers to merit segmentation by customer size.[84] Lastly, the Notifying Party submits that even in cases where the Commission has identified a market for large customers, it has not necessarily resulted in competition concerns (e.g. *Oracle/Peoplesoft*) and this is true in this case too.[85]

(104) *Secondly,* the Notifying Party submits that, on the demand-side, there is not a differentiation between the needs of larger and smaller customers that distinguishes the service offering and pricing for each hypothetical customer group.[86] In this regard, the Notifying Party challenges the specific LMC needs identified by the Commission, namely (i) global outreach; (ii) expertise with large complex risks; (iii) complex claims management; (iv) strong professional capabilities and, (v) full range of insurance services.[87]

(105) To begin with, the Notifying Party submits that the need for a broker with global outreach is not a specific need for LMCs, as (i) customers look for a broker that can satisfy the brokerage needs of its own operations (i.e. in the countries where they operate), (ii) there is no clear relationship between the size of the customer and the number of countries in which a client has insurance needs and, (iii) a global outreach can be achieved not necessarily through a large owned network but also via partner and corresponding networks.[88]

(106) In addition, the Notifying Party submits that there is no clear relationship between the size of the client and the complexity of their risk needs, as the complexity and expertise required tends to be defined by the nature of the risk and not by the size of the customers.[89] In the same vein, the Notifying Party submits that there is no causal relationship between the size of the customer and the complexity of the claims management required, as the level of claims management is dependent on the type of risk involved and not the size of the customer.[90]

(107) Lastly, the Notifying Party submits that all customers –regardless of their size– would expect and need strong professional capabilities and the provision of ancillary services beyond the brokerage function of risk transfer, and, hence, they are not element that can differentiate LMCs from non-LMCs.[91]

(108) The Notifying Party also highlights that switching patterns of large and smaller customers are similar, which supports the Parties' contention that there are no bright lines between larger and smaller customers.[92] Therefore, the Notifying Party argues that the customer differentiation test set forward in paragraph 43 of the Market Definition Notice is not met.[93]

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83 See M.3216 – *Oracle / Peoplesoft*.
84 Reply to the 6(1)(c) Decision, paragraph 101.
85 Reply to the 6(1)(c) Decision, paragraphs 94 to 105.
86 Reply to the 6(1)(c) Decision, paragraphs 106 to 125.
87 Reply to the 6(1)(c) Decision, paragraph 109.
88 Reply to the 6(1)(c) Decision, paragraphs 111 to 116.
89 Reply to the 6(1)(c) Decision, paragraph 118.
90 Reply to the 6(1)(c) Decision, paragraph 121.
91 Reply to the 6(1)(c) Decision, paragraphs 124 and 125.
92 Reply to the 6(1)(c) Decision, paragraph 108.
93 Reply to the 6(1)(c) Decision, paragraphs 107 and 108.

(109) *Thirdly,* the Notifying Party submits that supply-side dynamics do not support segmentation on the basis of client size, as established by paragraphs 20 and 21 of the Market Definition notice.[94]

(110) In this regard, the Notifying Party submits that brokers of varying sizes, including smaller brokers, have all of the capabilities that are necessary to service large clients, namely: level of expertise and experience required to support large clients and/or complex risks, size of the team required to support large clients and/or complex risks, a global network and ability to handle multi-country risk programmes, ability to access a sufficiently deep pool of coverage on behalf of large clients and access to data and analytics necessary to support large clients/complex risks.[95]

(111) Therefore, no particular size of client has a more limited choice in their selection of a broker. Larger, regional, local and specialised brokers all compete for, and provide services to, clients of all sizes, and the Parties are significantly constrained by the presence of smaller brokers across the entire spectrum of clients that they serve. Moreover, large clients use a wide range of brokers to place their risks and that smaller brokers specifically have shown that they can win and service major clients on a regular basis from larger brokers.

(112) In the same vein, the Notifying Party highlights that the internal organisation of the Parties does not indicate that segmentation by client size would be appropriate, as both Aon and WTW are organized by risk class or business type.[96] In any event, the Notifying Party submits that some limited differentiation in terms of commercial strategy or approach is hardly indicative of a separate market.[97] Similarly, the Notifying Party submits that the fact that WTW internal documents [business secrets regarding commercial strategy] does not indicate that the Parties are "*accordingly organised*" as it is a purely a strategic, commercial decision, and does not indicate that there is any appropriate segmentation between client sizes in any specific brokerage market.[98]

(113) *Fourthly*, the Notifying Party submits that the results of the market investigation are inconclusive, as from the responses it cannot be said that the market investigation definitely indicates that a separate market exists for the provision of commercial risk brokerage services to LMCs.[99] In this regard, the Notifying Party submits that the few customer questionnaires provided to the Parties reveal mixed results with nuanced responses that reflect the particular needs and characteristics of individual customers rather than of a wider customer group. Moreover, the Notifying Party submits that in concluding that it is appropriate to define a separate market for large multinational customers, the Commission relies heavily on feedback from competitors – and Marsh in particular – with limited consideration of responses from customers.[100]

6.1.4.2. The Commission's assessment

(114) To determine whether defining a separate market for LMCs would be appropriate, the Commission had, as a preliminary step, to identify the group of relevant large,

94 Reply to the 6(1)(c) Decision, paragraphs 126 and 127.
95 Reply to the 6(1)(c) Decision, paragraphs 126 to 129.
96 Reply to the 6(1)(c) Decision, paragraph 130.
97 Reply to the 6(1)(c) Decision, paragraph 132.
98 Reply to the 6(1)(c) Decision, paragraph 133.
99 Reply to the 6(1)(c) Decision, paragraphs 135 to 139.
100 Reply to the 6(1)(c) Decision, paragraphs 140 to 142.

international corporate customers (the LMCs) which sources brokerage services for the design and management of global insurance programs. The results of the market investigation have highlighted, in this regard, that LMCs typically fulfil a number of criteria that allow for a homogeneous group of customers to be defined.

(115) In this respect, the results of the market investigation carried out in phase 1, indicated that customers, with a relatively high annual turnover and, geographically widespread operations had complex and global needs which translated into a reduction in their choice of suitable brokers, compared to other types of customers. Building upon these findings, in the course of the phase 2 market investigation, the Commission researched these features in more detail (and per risk type as detailed in Section 6.1.5). Although there exists no clear delineation to determine the market for LMCs, the Commission considers that the homogeneity of the group that it has identified on the basis of these criteria render it an appropriate proxy for identifying those sizeable companies with international operations requiring insurance for specific complex risks.

(116) The first criterion relates to the size of the company, as LMCs are, by definition, large. In this respect, approximately half of the Parties' competitors which contributed to the market investigation indicated that they have an internal structure and organisation following customers' size,[101] and more generally consider that there is an industry-wide practice to segment the commercial insurance market according to the size of companies seeking insurance cover.[102] More specifically, players of the industry use a variety of values as a benchmark to determine the size of their customers, notably the revenues achieved with the broker, the amount of premium, the number of employees or the overall annual turnover.[103] In this respect, the Parties' main competitor for example indicated that it operates a distinction according to client size, depending on the turnover of its clients "*because client size roughly indicates client complexity (large clients are more likely to have multinational exposures across multiple risk types and devoted internal risk management functions).*"[104] [This competitor] indicated that it has three tiers of clients, and that its top group is constituted of companies having an annual turnover over USD 500 million for clients based in the United States and USD 1 billion for companies established outside of the United States. Similarly, another competitor of the Parties indicated that its large complex client segment is "*broadly aligned to the Forbes 2000 list with extensions for similar private companies and significant para-statal or public sector organisations.*"[105] This competitor continues by highlighting that one of the common features of these companies is their annual turnover: "*These companies tend to have a turnover exceeding $2bn.*"[106] Likewise, WTW's internal documents discussed below (See Figures 1 and 2), show […] are used to determine

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101 Replies to question 3 of questionnaire Q16 to Competitors.

102 Replies to question 4 of questionnaire Q16 to Competitors.

103 In this regard, the Commission notes that a Swiss Re industry report explains that the commercial insurance market is often segmented into three groups (small, medium-sized and large customers), and defines each group according to the number of employees. See Sigma 05/2012 Insuring ever-evolving commercial risks, https://www.swissre.com/institute/research/sigma-research/sigma-2012-05.html, last accessed 1 June 2021, 12:07.

104 Replies to question 3 of questionnaire Q16 to Competitors (Document ID 9055).

105 Replies to question 3 of questionnaire Q16 to Competitors (Document ID 8961).

106 Replies to question 3 of questionnaire Q16 to Competitors (Document ID 8961).

different types of clients.[107] In Figure 1 for example, clients with revenues above USD […] are considered as "Large and complex".[108]

(117) Furthermore, the results of the market investigation highlighted that, more than 75% of the companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated that they have insurance needs in more than 5 countries (as explained in more detail below, the number of countries in which a company has insurance needs constitutes a relevant benchmark for assessing the complexity of its requirements). Conversely, the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered 5 countries or less.[109]

(118) On this basis, the Commission considers that it is appropriate to take as a benchmark the global annual turnover of companies that is equal to or higher than EUR 1 billion.[110]

(119) The second criterion aims at capturing the complexity of the placement which characterises this group of customers. The results of the market investigation show that large customers with operations in several countries around the world require brokers with a local market knowledge in the country of operations of their customers. Respondents to the market investigation also clearly underlined that the substantive international activities of customers drives more complex risks to be insured. In this respect, the Commission considers that operations requiring insurance in more than 5 countries acts as an appropriate benchmark to determine the complexity of the insurance needs of a given company.[111]

(120) Furthermore and as a last point, in line with the findings with respect to the geographic scope of the market defined in Section 6.2.1, the Commission considers it appropriate to put a focus on companies headquartered in the EEA and/or sourcing in this geography at least a significant proportion of their insurance needs.

(121) In this respect, in the course of the market investigation, LMCs indicated that it is important that their broker has a local presence in the same geographic area where the customer is headquartered.[112] The selection of a broker handling a global program is typically taken centrally by customers. Services such as strategic risk consulting are typically provided in proximity to the location of the headquarters, and the main contact between a broker and the customer, for instance with the entity within the customer's organisation responsible for the handling of its commercial risks, takes place in the geographic area where the customer is based.

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107 WTW internal document […] ID 314, US DOJ reference WTW-2R-000063980; WTW internal document […] ID 314, US DOJ reference WTW-2R-000063980.

108 WTW internal document […] ID 314, US DOJ reference WTW-2R-000063980.

109 Replies to questions 1.2 and 21 of questionnaire Q1 to Customers.

110 Based on customer responses in the course of the phase 1 market investigation, the Commission was also able to carry out some modelling indicating that the customers with annual turnover of equal to or higher than EUR 1 billion had more complex insurance needs that limited their options of a broker. This was further refined and assessed in phase 2 and largely confirmed for the relevant risk types.

111 In the course of the market investigation, the Commission asked customers about the number of countries they require commercial insurance brokerage services in, and responses (taken together with qualitative feedback) indicated that largely more than 5 countries serves as a proxy to distinguish customers that require global and complex brokerage services. The Commission did further modelling, which indicated that the higher the number of countries the customer needed brokerage services for, the more their choice of a suitable broker is restricted.

112 Replies to questions 17 to 18 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty; Replies to questions 17 to 18 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

(122) Customers point at benefits of having a broker with knowledge of the insurance market in the customer's home market and applicable local legislation. Customers also value the ability of a broker to provide services in local language, join meetings personally or operating in the same time zone as the broker.[113] In this respect, while the need for headquarter proximity of a broker may depend to some degree on customer preference, internal organisation of the client as well as the type of risk and the degree of consultancy services involved, the Commission notes that this stated preference was clearly underlined by respondents in the context of the market investigation.[114] On this basis, the Commission considers that it is appropriate to focus on those companies headquartered in the EEA and/or sourcing a significant proportion of their insurance needs in this geography for the purposes of its assessment.[115] In the same vein, the market investigation indicated that while the majority of EEA-based customers consider the geographic market to be global (see Section 6.2.1), the same customers also indicate that they mostly use an EEA-based broker,[116] indicating that the local/EEA element is relevant for the product market definition. Similarly, internal documents of the Parties (namely customer tender examples) indicate that global service is provided via the EEA-based offices to EEA-based customers. Noting this interplay between local and global elements, as an example, one of WTW's customer-facing tender document states: "*[…]*"[117]

(123) Therefore, for the purposes of this Decision, the Commission considers that the term LMCs designate those companies headquartered in the EEA and/or sourcing in this geography a significant proportion of their insurance needs, with a global turnover equal to or higher than EUR 1 billion and requiring insurance needs in more than five countries (the relevant geographic market is assessed in Section 6.2.1).[118] Conversely, those companies which do not meet these criteria are distinguished from LMCs and referred to, in the context of this Decision, as medium- and small-sized customers ("medium- and small-sized customers"/"non-LMCs").

(124) In this respect, as demonstrated below, the results of the market investigation have revealed that, in some instances, depending on the risk type concerned, it is

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113 Replies to question 53.1 of questionnaire Q1 to Customers.

114 Replies to questions 17 to 18 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty; Replies to questions 17 to 18 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

115 As the Commission's jurisdiction in the present case is the EEA, putting a focus on companies headquartered in the EEA and/or primarily sourcing in this geography, rather than customers of other jurisdiction sourcing in the EEA in an ancillary manner, is the appropriate scope for the purposes of the assessment of the competitive landscape. In the meantime, as detailed below in Section 6.3.1, the Commission considers a global scope for the sourcing of brokerage services by LMCs.

116 For example, reply to questions 6 and 7 questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 9560).

117 Reply to RFI 48, Annex 5.

118 The Commission notes that this approach is in line with that of other national competition authorities in the world. By way of comparison, the Australian Competition & Consumer Commission (ACCC) has in its Statement of Issues (SOI) dated 18 February 2021 used a range of criteria to define large commercial insurance customers, acknowledging that there is no "bright lines" to segment the marker. In its SOI, the ACCC's preliminary view is that large customers are likely to have (i) insurance premium in excess of at least $500 000, and/or (ii) annual revenue in excess of $150 million, and/or an ASX150 listing, which identifies the list of Australia's top 150 companies. The SOI is available on the ACCC's website at the following link: https://www.accc.gov.au/system/files/public-registers/documents/Aon%20WTW%20-%20Statement%20of%20Issues_0.pdf, accessed on 4 June 2021, at 08:00).

appropriate to distinguish between LMCs and medium- and small-sized customers with respect to the supply of commercial risk insurance brokerage services.

(125) *Firstly*, with respect to the Notifying Party's first argument that the Commission's previous decisional practice, in particular in insurance brokerage, does not support a segmentation by client size of the customers, and that it is not appropriate to do so in this case, the Commission recalls as a preliminary point that its previous decisional practice is not binding and that any assessment is dependent on the facts of the case. In this respect, while the Commission acknowledges the Notifying Party's references to other cases where a distinction by customer was not warranted, or competition concerns for a specific customer segment were not found, the definition of the relevant product and geographic markets and the competitive assessment are carried out on a case-by-case basis, relying on the facts relevant to each case and the results of the market investigation.

(126) Additionally, the Commission further considers that the Notifying Party's argument is not supported by the facts of the present case.

(127) In its decision in *Marsh&McLennan/Sedgwick,*[119] the Commission considered that commercial brokerage specialty markets could be further segmented based on, amongst other factors, customer size or type, while ultimately leaving the exact product market definition open. More recently, in *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, contrary to the Notifying Party's argument the Commission also left this question open and did not assess further the possibility to segment the market for commercial risk brokerage based on customer size or type.[120] In this respect, the Commission notes that these two decisions, unlike the present Transaction, did not involve two of the largest global brokers with significant capabilities and focussed on catering for the largest global companies as their primary customer base (JLT was a smaller player in size than Marsh and the Parties), so that further market segmentation investigation was not warranted in light of the market investigation feedback. On the contrary, in the present case, the Commission considers that the Parties overlapping activities justifies that it assess whether it is relevant to segment the market depending on the size of customers.

(128) More generally, the Commission notes that in a number of cases in the past it was appropriate to distinguish a market based on customer size/type or other characteristics. For example, in the case *Staples/OfficeDepot*, the Commission distinguished a market for certain contracts further segmented into a market for large business customers, depending on the number of employees.[121] In this respect, the Commission notes, as acknowledged by the Notifying Party, that it was found in *Staples/OfficeDepot* that smaller office suppliers did not have the physical infrastructure to support large customers, which is similar to the situation in the present case, as discussed in further detail below in the present Section. Moreover, there are additional prior decisions in the energy sector where the Commission decided that it was appropriate to distinguish customers by size.[122]

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119 M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 19.

120 M.9196 – *Marsh & Mclennan Companies/Jardine Lloyd Thompson Group,* paragraph 17, notably reads "*For the purpose of this decision, the Commission thus does not further assess the possibility to segment the market of non-life insurance broking based on customer size/type*."

121 M.7555 – *Staples/OfficeDepot*, paragraph 170.

122 For example, M.7602 – *Deutsche Telekom Group/MET Holding/ JV*, paragraphs 10-14; M.8870 – *E.On/Innogy.*

(129) Furthermore, a number of respondents to the market investigation have drawn parallels to the audit sector[123] and in particular the UK Competition and Market Authority's market study that focused on the audit services provided to the largest corporate customers (FTSE 100 and 250 listed companies).[124] A distinction based on customer size and type was warranted because it was a distinct market where challenger audit firms outside of the so-called *Big Four* where not able to compete because of: (i) smaller international networks; (ii) lack of capacity to put together a team of sufficient scale; (iii) quality concerns; and (iv) track record of providing services to FTSE listed companies.

(130) *Secondly*, contrary to the Parties' contention that demand side competition dynamics do not justify a separate market for LMCs, the results of the market investigation revealed that LMCs have specific needs, differing from other types of customers.

(131) In the course of the market investigation, LMCs indicated that, that due to their operations in a high number of countries around the world, they have different needs compared to smaller customers with operations in a limited number of countries.

(132) In this respect, a significant proportion of LMCs indicated that it is important that their broker has a local presence in a majority of the countries where the customers carries out its operations. LMCs require brokers to provide local services in countries others than the one of its headquarters, where it has business activities, for example where subsidiaries are located.[125]

(133) Insurance of commercial risk is often subject to regulation, which may differ between jurisdictions. Customers rely on local expertise of a broker to ensure compliance with such local regulation, for example mandatory insurance. Some risks need to be placed locally with local insurers, depending on national legal requirements applicable. Knowledge of the local insurance market is therefore another criterion that customers value. Customers typically do not only expect local expertise from a broker, but often indeed a physical presence. Among the services provided locally by a broker are the issuing of local policies, providing local support to the subsidiary in local language, including all necessary documentation, and handling claims.[126]

(134) One customer therefore described the procurement process as follows: "We negotiate master insurance policies centrally and deploy them with the assistance of our brokers worldwide. It is important that the brokers is able to provide an international network and to be able to assist with local knowledge on local legislation to ensure we are compliant with local laws."[127]

(135) Furthermore, LMCs risks tend to be higher value, which calls for a broker with sufficient resources. LMCs indicate that the size of the risk to be insured may be a limiting factor when they choose a broker,[128] this is somewhat dependent on the risk

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123 For example, replies to question 47 of questionnaire Q 9 to commercial risk brokerage Customers for FinPro.

124 UK CMA Statutory audit services market study: Final report, 19 April 2019 (publishing.service.gov.uk).

125 Replies to question 4 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty; Replies to question 4 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

126 Replies to questions 12 and 13 of questionnaire Q16 to Competitors.

127 Response to question 22.1 of questionnaire Q1 to Customers (Document ID 9772).

128 For example, replies to question 5 of questionnaire Q 9 to commercial risk brokerage Customers for FinPro. The Commission notes that similar questions were asked for property & casualty and cyber risks as discussed in Sections 6.1.5.2 and 6.1.5.4 respectively.

type as discussed in the relevant sub-sections of Section 6.2.5. Similarly, LMCs have indicated that the risk they need to insure are more complex and this also may limit the number of brokers that would have sufficient expertise to deal with such complex risks.[129] The Parties indicate that they use their capabilities as a differentiating factor, for example one customer tender document of WTW states: "*[…]*"[130]

(136) The market investigation also revealed another differentiating factor, in that LMCs tend to have more complex arrangements in place and require broader range of commercial risk brokerage services and expertise. For example LMCs may have an in-house team or a captive, which means that, while they may not rely on external brokers for less transactional and simple requirements, they require the support of brokers to address more complex and sizeable insurance needs, which are typically data and expertise intensive.[131]

(137) *Thirdly*, on the supply side, the results of the market investigation indicate that brokers take into account the size of customers and the specific needs of LMCs which impacts brokers' internal organisation and the ordinary course of their activities.

(138) With respect to internal organisation, as mentioned above in recital (115), approximately half of the Parties' competitors which contributed to the market investigation indicated that they have an internal structure and organisation following customers' size, and more generally consider that there is an industry-wide practice to segment the commercial insurance market according to the size of companies seeking insurance cover.[132]

(139) In this respect, the results of the market investigation provided multiple example of brokers and insurers segmenting their business and operations between LMCs and other types of clients. A competitor explains in this regard that within reinsurers, Allianz distinguishes between Allianz SE, which is focused on more general clients, and Allianz Global Corporate Solutions which is focused on LMCs. Similarly AXA XL has a stand-alone operation focused on LMCs, initially branded AXA Corporate Solutions and now operating as XL Insurance Company.[133] As to brokers, the same competitor explains that Marsh has a Risk Management practice which contains client service professionals exclusively focused on large corporate clients in general industries, Aon has Aon Global units which perform a similar function.[134] In a similar vein, WTW also has a dedicated unit that performs a network coordination function, Global Services and Solutions ("GSS") as well as a dedicated leadership to LMCs ("WTW Head of Large Accounts").[135] In contrast to the Parties' arguments, competitors state that the Parties have a dedicated department serving LMCs. In this respect, the mere fact that the Parties' activities are also organised according to other criteria such as risk class or business types is not sufficient to discard a segmentation of the market per type of customer.

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129 For example, replies to question 6 of questionnaire Q 9 to commercial risk brokerage Customers for FinPro. The Commission notes that similar questions were asked for property & casualty and cyber risks as discussed in Sections 6.1.5.2 and 6.1.5.4 respectively.

130 Reply to RFI 52, Annex 7, page 40.

131 Non-confidential minutes of conference call with a customer, 3 February 2021 (Document ID 10 116).

132 Replies to question 3 of questionnaire Q16 to Competitors.

133 Replies to question 4 of questionnaire Q16 to Competitors (Document ID 8961).

134 Replies to question 4 of questionnaire Q16 to Competitors (Document ID 8961).

135 Reply to RFI 16, Annex 1.

(140) More generally, among those competitors which responded that they are able to serve LMCs, a majority indicated that they have dedicated staff who specifically serve LMCs.[136]

(141) Furthermore WTW's own internal documents contradict the Parties' assertions. For example, the WTW internal document below, dated 13 December 2018, relates to […].

Figure 1: [Internal document]

[Internal document]

Source: WTW internal document "[...]" dated 13 December 2018. ID 314, US DOJ reference WTW-2R-000063980.

Figure 2: [Internal document]

[Internal document]

Source: WTW internal document "[...]" dated 13 December 2018. ID 314, US DOJ reference WTW-2R-000063980.

(142) Similarly, in an internal document named "*CRB NA*", dated February 2019, covering "*CRB [commercial risk brokerage] North America Strategic Priorities*", WTW […].

Figure 3: [Internal document]

[Internal document]

Source: WTW internal document "[...]" dated February 2019. ID 226, US DOJ reference WTW-2R-000279202.

(143) Likewise, the internal documents of Aon show that they have […][137].

(144) An internal document entitled "*[...]*" for example, acknowledges the specific needs of these types of clients, and the servicing of these specific clients through its global network, as shown in the two below figures.

Figure 4: [Internal document]

[Internal document]

Source: Aon internal document "[...]" dated March 2018. ID 10262-018154.

Figure 5: [Internal document]

[Internal document]

Source: Aon internal document "[...]" dated March 2018. ID 10262-018154.

(145) More crucially, another of Aon's internal documents shows a working strategy […].

Figure 6: [Internal document]

[Internal document]

Source: Aon internal document "Budget Presentation 2019" dated December 2018, ID 10262-59212.

(146) Contrary to the Parties' arguments, these documents show a differentiated organisation between middle market and large accounts, suggesting an internal organisation according to customer size, which in turn has an impact on the strategy adopted by brokers in the context of their activities (as explained in more detail in Section 6.3.4). Moreover, the Parties use these differentiating factors in their

136 Replies to question 6 of questionnaire Q16 to Competitors.

137 Note that whenever the Notifying Party refers to large accounts, large customers, large multinational customers or multinational customers ("MNCs"), in the context of their arguments or their internal documents, these terms cannot be considered as synonymous to the term LMCs.

customer facing tender documents, specifically describing their track-record with large customers. For example, one WTW client tender document states: "*[…]*"[138]

(147) In the ordinary course of their business, brokers adapt their offer depending on the size of the client, to cater for their specific needs.

(148) In this regard, the large majority of competitors responding to the market investigation indicated that they consider that LMCs constitute a customer category with specific demands, which, in light of those specific demands, has to be clearly distinguished from other customer groups.[139]

(149) A competitor explains that "*LMCs have clearly distinct needs*",[140] linked to the fact that (i) sales activity involves multiple stakeholders, bid management and multi-year sale cycles, (ii) account management involves large teams, extensive co-ordination across products/countries and specific technology solutions (iii) the range of services offered comprises captive management, risk management, actuarial and broking services, and (iv) brokerage services require global market access, multiple product lines and significant structuring, all features which require sufficient capabilities and are very different to those required to serve medium- and small-sized customers.[141]

(150) A competitor of the Parties further explains that LMCs tend to take meaningful risk retention, which creates a need for a broker able to provide a full range of services, ranging from actuarial analysis to modelling, captive management or access to alternative capital markets: "*These clients typically have needs across a wide range of insurance product areas. This drives a need for more sophisticated client / project management. These clients generally require substantive limits / specialty lines. This creates needs for global broking capability with strong presence in specialty markets. These clients have international footprint and insurance needs. This generates need for global co-ordination, policy issuance, servicing and digital systems*".[142]

(151) Another significant competitor explains that "large multinational clients typically require brokers to provide enhanced technology offerings, including online platforms to help them manage their global insurance programs. They also require claims support in multiple territories, and the ability to support large claims worth hundreds of millions of EUR and involving multiple insurers. Large clients have also shown a preference for large, well-capitalised brokers, knowing that such brokers will be able to support them in case of substantial claims or any errors or omissions".[143]

(152) Brokers further indicated that they adapt their strategy depending on the size of the client. A competitor thus explains that it applies different commercial strategies within its business for different client groups as larger clients tend to have complex, multinational needs and distinct buying styles, linked to the fact that they have dedicated resources managing risk and insurance, whereas smaller clients typically do not have dedicated risk functions and require less bespoke solutions.[144]

(153) *Thirdly*, the necessary additional requirements for servicing LMCs leads to a competitive landscape of brokers that is different from that of servicing medium- and

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138 Reply to RFI 52, Annex 7, page 40.
139 Replies to question 27 of questionnaire Q5 to Competitors.
140 Replies to question 4 of questionnaire Q16 to Competitors (Document ID 8961).
141 Replies to question 4 of questionnaire Q16 to Competitors (Document ID 8961).
142 Replies to question 27 of questionnaire Q5 to Competitors (Document ID 4838).
143 Replies to question 28 of questionnaire Q5 to Competitors (Document ID 5195).
144 Replies to question 26 of questionnaire Q5 to Competitors (Document ID 5195).

small-sized customers. While the Parties argue that a wide range of brokers can and do service clients of all sizes, the large majority of competitors confirmed in this respect that the brokers competing for LMCs are different from brokers that compete for small and medium-sized customers,[145] and that LMCs have a smaller choice of providers as a result.

(154) On the supply side, if a sizeable proportion of competitors indicated that they are able to serve LMCs, a majority of those players indicated that there are limitations to the brokerage services that can be offered to this type of customer. Several Tier two brokers explained for example that they are limited in servicing LMCs from various angles: (i) product lines, as they are not able to provide services for all lines of business; (ii) the type and range of services, as they are able to offer placement but none of the wider services such as risk management, captive management, technology, insurer consulting etc.; and (iii) the geography as they do not have the full global coverage required to assist LMCs in their global operations.[146]

(155) A vast majority of competitors indicated that they have already turned down a request for proposal or refused to take part in tenders of LMCs because they could not meet the needs and requirement of such customers,[147] and underlined that, in any event, they have a set limit to the number of LMCs they could serve at the same time without requiring additional resources or making further investments.[148]

(156) A competitor states that "large clients overwhelmingly use the Big Three, and the Big Three compete for such clients all over the world. Mid-size clients may use second tier brokers like Gallagher, Hyperion or Lockton in addition to the Big Three (though all of these brokers have geographic and expertise limitations even for this class of clients). Small clients have many smaller brokers to choose from, a large number of which are national competitors. Brokers, insurers and underwriters organise teams/offerings around large international companies as a distinct group".[149]

(157) Similarly on the demand side, as demonstrated in Sections 6.3.5.1, 6.3.5.3 and 6.3.5.5 for the relevant risk types, in the course of the market investigation, the overwhelming majority of LMCs indicated that (i) their wide geographic footprint, (ii) the size of their risks, as well as (iii) their complexity, call for brokers having a sufficient scale and capabilities, which translates into having a more limited choice of suitable brokers than medium- and small-sized customers.

(158) Lastly, the Commission also notes that the combination of the Willis group and Towers Watson in 2016 aimed at enabling the newly created entity to compete with Aon and Marsh. According to an article from the Capital Forum, Willis' CFO repeatedly made public statements indicating that the merger between Willis and Towers Watson had created a newly-formed "*third option*" for large corporate risk brokerage while Willis alone was not able to compete against Aon and Marsh: "*At $4 billion in historical financial results, [Willis] wasn't positioned such that it was a third option*".[150] Internal documents of WTW also show that WTW in the years following the merger […].

145 Replies to question 30 of questionnaire Q5 to Competitors.
146 Replies to question 6 of questionnaire Q16 to Competitors.
147 Replies to question 8 of questionnaire Q16 to Competitors.
148 Replies to question 7 of questionnaire Q16 to Competitors.
149 Replies to question 28 of questionnaire Q5 to Competitors (Document ID 5195).
150 The Capital Forum, vol8 No.372, 26 October 2020 (Document ID 6637).

(159) One of those documents is a document named "*CRB NA*" and dated February 2019. The first page of the document indicates that it covers "*CRB [commercial risk brokerage] North America Strategic Priorities*". In this document it is stated that: "*[...]*".[151] While this document relates to North America, the Commission considers that it is relevant for the purposes of this Decision, as it shows that, contrary to the Notifying Party's arguments, […].

(160) As such, and for the reasons described above, the Commission considers that the results of the market investigation suggest that – for at least certain risk types – it is appropriate to distinguish a separate market for the supply of brokerage services for commercial risk for LMCs. However, as such segmentation may not be warranted for all risks types, the applicability of this distinction is assessed on a risk type-by-risk type basis below.

6.1.5. Separate risk types

(161) In *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, the Commission considered that the market for non-life insurance brokerage can be further segmented based on risk types. The Commission concluded from the market investigation that "*a segmentation based on business sectors / risk types corresponds with customer's identification of homogenous risks and competitors' preference to structure their company based on the different risk types*".

(162) Considering the Parties' business activities in that case, the Commission defined separate product markets for brokerage services for aircraft operators, aerospace manufacturing and space. The Commission further discussed potential separate product markets for brokerage services for energy and FinPro, but left the product market definition open in that regard.[152]

(163) In the present case, for the purposes of its assessment of the different risk types, the Commission will firstly address those broader risk types, which are applicable to all corporate customers irrespective of their business activities, such as property & casualty, FinPro and credit & political and then turn to specialty risks which are only relevant to companies operating in a specific sector, such as marine, aerospace manufacturing and space.

6.1.5.1. Property & casualty

(164) Property & casualty risk brokerage comprises a broad range of commercial non-life insurance. Property insurance covers risks associated with losses arising from damage to commercial property, which may include losses from business interruption, repair costs, accidental damage, natural disasters and emergency services. Casualty insurance covers risks associated with losses arising from damage caused to third parties by the action or the negligence of the policyholder. This may include product liability, public liability, accident, employer liability or damage caused to the property of third parties.

A. The Notifying Party's view

(165) The Notifying Party proposes that the Commission should assess a relevant product market for the distribution of non-life commercial risk insurance for property & casualty risk with no further sub-segmentation, as (i) it would be challenging to

151 WTW internal document "CRB NA" dated February 2019. ID 226, US DOJ reference WTW-2R-000279202.

152 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 18 et seq.

segment such services by type of risk or any other delineation into neat product markets; (ii) property & casualty risks represent relatively commoditised and general forms of insurance and a further sub-segmentation would not reflect how customers think of the market; (iii) at the provision of the insurance level, property & casualty risks are often packed into single insurance products for scale benefits.[153]

(166) Furthermore, the Notifying Party considers that more or less all brokerage firms and insurance carriers are active across property & casualty risks and no barriers prevent individual brokers from broking different types of risks, as (i) competing brokers are active across property & casualty risks; (ii) individual brokers can move between property & casualty risks; (iii) there are no regulatory or other barriers for specific property & casualty risk types or potential sub-segments; (iv) insurance carriers are active across property & casualty risk; (v) in previous cases, the Commission has not defined, but taken into account, a separate market for property & casualty risk brokerage.[154]

(167) In response to the Commission's Article 6(1)(c) Decision, the Notifying Party argues that customers of all size would seek a broker that can satisfy the brokerage needs of its own operation, and that local expertise required for serving small to mid-size customers are no different from the needs of large customers. The Notifying Party further notes that the Commission's 6(1)(c) Decision suggests, based on the results of the market investigation, that half of the property & casualty customers would not require a high level of expertise by a broker for their business. Finally, the Notifying Party argues that the majority of GWP placed by the Parties is for clients active in five countries or fewer, indicating that the vast majority of the clients – including large customers – require relatively limited geographic coverage.[155]

B. The Commission's assessment

(168) As stated above, in Marsh & McLennan Companies/Jardine Lloyd Thomson Group, the Commission considered a "segmentation based on business sectors / risk types corresponds with customer's identification of homogenous risks and competitors' preference to structure their company based on the different risk types" to be appropriate.[156] In past practice, however, the Commission did not define such a segment for property & casualty commercial risk brokerage.

(169) Property & casualty is a widely recognised risk type in the industry among customers, brokers and insurers. It comprises a broad range of (i) different types of insurance; and (ii) customers from different industries, whose business activities and therefore risk portfolios may differ significantly. Risks or industries not considered a specialist commercial risk brokerage service are typically included in the general property & casualty line to the extent they concern insurance for the property of a commercial customer or liability towards third parties.

(170) This definition does not indicate that brokerage services for property & casualty risks are of lesser importance or that they can be easily substituted. Only a small minority of customers responding to the market investigation overall consider that managing property & casualty risks without the use of a broker to be more feasible compared to

153 Form CO, paragraphs 252 et seq.
154 Form CO, paragraphs 254 et seq.
155 Reply to the 6(1)(c) Decision, annex 1, paragraphs 3-6.
156 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 18 et seq.

other risk classes.[157] Regarding a potential further segmentation of the broad property & casualty risk class, the question is whether differences in specific risks or customers by industry would be considered distinct due to a lack of demand-side and/or supply-side substitutability. For the purposes of this Decision, the Commission investigated a potential segmentation of the property & casualty market into (i) property risks and casualty risks; (ii) commercial motor risks; and (iii) construction risks.

(171) The results of the market investigation, however, do not support a further segmentation of the property & casualty risk class. From the *demand-side*, the Commission notes that the majority of customers responding to the market investigation source property risk brokerage services and casualty risk brokerage services from the same broker, most often together under one contract, but less frequently also under separate contracts.[158] One customer provided that there is a *"cross over between P&C for underwriting information for these largely tangible classes of risks. Both have potential to involve physical damage and bodily injury."*[159] The Commission notes that overall, companies pursue different strategies for purchasing brokerage services, and that a sizeable minority of responding customers indeed distinguish between property brokerage and casualty brokerage services. While some respondents indicated that they would do so where they consider different brokers to be the most suitable for each respective type of risk, other respondents split services in the context of a multi-sourcing strategy. One customer provided in this regard: *"In order to have competition and keep the brokers on their toes, we have different brokers service the property and the casualty"*.[160]

(172) Similarly, most customers indicate that they source commercial motor risk brokerage services along with other property & casualty brokerage services, again mostly under the same but also under separate contracts.[161] The Commission understands that sourcing policy of commercial motor risk insurance is handled very differently between companies, depending *inter alia* on internal organisation and the importance of a motor fleet for the business of the company. One customer provided: *"Usually, it* [the provision of commercial motor risk insurance brokerage] *is the same broker which we use for our P&C risk. But, commercial motor risks are the responsibility of the local legal entities* […]. *We do not manage the purchase of coverage or service needed for motor on corporate level."*[162] A second customer, however, explained: *"We have a global broker who places locally required insurances, including motor insurance. The P&C placements are handled by a range of different brokers, some of which are the same as the motor broker"*.[163] The Commission notes that for many customers, commercial motor risk insurance only account for a small share of the overall property & casualty risk insurance, and understands that services are often purchased in combination with other brokerage services in this risk class.

157 A further small share of customers consider that a replacement of brokers was possible for some property & casualty risks. The Commission understand that it depends *inter alia* on the business of the customer what risk may be placed directly. These findings are valid for both LMCs and smaller customers; Replies to question 44.1 of questionnaire Q1 to Customers.

158 Replies to question 45 of questionnaire Q1 to Customers.

159 Reply to question 45.1 of questionnaire Q1 to Customers (Document ID 5213).

160 Reply to question 45.1 of questionnaire Q1 to Customers (Document ID 4995).

161 Replies to question 46 of questionnaire Q1 to Customers.

162 Reply to question 46.1 of questionnaire Q1 to Customers (Document ID 5321).

163 Reply to question 46.1 of questionnaire Q1 to Customers (Document ID 4398).

(173) Further, the Commission considered a potential separate market for construction risks, as some large customers pointed to the specificities of this segment. The Commission understands that especially for large construction projects, specific expertise, such as engineering expertise, is required.[164] Generally, however, the Commission understands that, as with other property & casualty risks, the needs for construction risk brokerage services are very much customer-specific, depending on factors such as the size of the construction project or the complexity. Large construction projects for infrastructure of energy companies[165], for example, may be typically more complex compared to insurance for the construction of an office building.[166] One customer explained: *"Construction insurance is placed on an ad hoc basis. Construction projects under a certain threshold are covered under* [customer name] *property insurance. However, above that threshold, we rely on the P&C broker to assist with a per project placement. Typically, we rely on the same broker who places our main Property program to also place any Construction specific insurance required."*[167] Other customers indicated that they typically bundle construction risk brokerage services with other property & casualty risk brokerage services.[168]

(174) Overall, the Commission considers therefore that sourcing specific types of risks included in the property & casualty risk class separately depends foremost on individual customer preference and the importance of the respective risk for the individual business model of the company. Consequently, there are variations on the demand-side in the sense that customers pursue different sourcing strategies for their property & casualty risk class needs. This, however, would not be sufficient to distinguish risks included in the property & casualty risk class further into distinct product markets, but suggests an overall – albeit heterogeneous – property & casualty market.

(175) From the *supply-side*, the Commission understands that the internal organisation of a broker depends largely on the size of the brokerage company. Smaller competitors responding to the market investigation typically have one property & casualty team providing services for both property brokerage and casualty brokerage,[169] or that the property & casualty risk brokerage team would also be responsible for commercial motor risk insurance brokerage.[170] Larger competitors, in turn, typically have specialists or sub-teams for a multitude of different risks included in the property & casualty risk class which are much more granular than, for example, a mere differentiation between property brokerage and casualty brokerage. One international competitor explained: *"Property team members tend to have a specific regional / industry (e.g.) focus but these are focuses rather than sub-dedications. Casualty team has individuals focused on product recall and employment practices liabilities. Larger businesses tend to have separate dedicated teams for US, International and UK originated risks"*.[171] A second international competitor indicates to cover *"a*

164 Non-confidential minutes of a conference call with a customer, 7 October 2020 (Document ID 6352).

165 The Notifying Party refers in this context to a "Power" segment within property & casualty risk insurance brokerage; Form CO, paragraphs 263 et seq. As explained in Section 6.1.5.6., "Power" is considered as part of the property & casualty risk class for the purpose of this Decision.

166 Replies to question 6.1 of questionnaire Q12 to commercial risk brokerage Customers for construction.

167 Reply to question 47.1 of questionnaire Q1 to Customers (Document ID 4625).

168 Replies to question 47.1 of questionnaire Q1 to Customers.

169 Replies to question 11 of questionnaire Q5 to Competitors.

170 Replies to question 11.2 of questionnaire Q5 to Competitors.

171 Reply to question 11.4 of questionnaire Q5 to Competitors (Document ID 4838).

myriad of P&C risks and many of them are housed within dedicated and specialist teams".[172] A third international competitor explained to have *"various risk and industry-specific teams across its P&C business, such as Mining, Education and Public Entities. However, the most significant segmentations within P&C are by client size."*[173]

(176) Again, the Commission considers that the internal organisation of a broker within the property & casualty risk category is not uniform and depends on the size and the customer structure. Therefore, supply-side considerations, such as internal organisation that varies between competitors, do not provide sufficient evidence to distinguish risks included in the property & casualty risk class further into distinct product markets, but suggests an overall – albeit heterogeneous – property & casualty market.. The Commission notes, however, that brokers that have specific expertise, either by individuals or sub-teams, for risks or industries within the property & casualty risk class are likely to provide services more tailored to the needs of individual customers compared to brokers without such expertise.

(177) On the other hand, the Commission considers it appropriate to distinguish the property & casualty brokerage market by customer size. The Commission explains in Section 6.1.4 of this Decision why distinct markets for LMCs for commercial risk brokerage may exist for certain risk types. In addition to these general considerations, there are specific features of property & casualty risk brokerage that further evidence the existence of a separate market for LMCs in this risk class from a demand and supply side view.

(178) *Firstly*, the fact that LMCs require by definition insurance needs in a number of jurisdictions distinguishes them from smaller companies which seek to insure risks in only one or a small number of countries. Customers that source brokerage services for a high number of jurisdictions require their broker to co-ordinate between different locations and provide consistent services. One customer, for example, explained that it requires a broker *"to provide the same level of service, quality of wording, speed of claims instruction to all our operations worldwide"*.[174] In the Commission's view, such requirements add very significant coordination requirements forbrokerage services to LMCs that do not exist for other customers. Consistent with this view, from the *demand-side*, a clear majority of LMCs responding to the market investigation consider that their choice of suitable brokers for property & casualty risks is more limited than that of other companies because of the geographic footprint of their company.[175] This has to be understood in the context of the very high importance LMCs attribute to the ability of a broker to provide services locally in jurisdictions where property & casualty risks need to be insured. A very clear majority of LMCs responding to the market investigation consider it to be important or very important that a broker for property & casualty insurance has a physical presence / an own office in each country where risks need to be insured. In fact, the global presence of a broker was rated as a very important criterion for

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172 Reply to question 11.4 of questionnaire Q5 to Competitors (Document ID 6697).

173 Reply to question 11.4 of questionnaire Q5 to Competitors (Document ID 5195).

174 Reply to question 5.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty (Document ID 8563).

175 Replies to question 5 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

property & casualty by LMC's responding to the market investigation, and the second-most important criterion overall.[176]

(179) From a *supply-side* perspective, a broker therefore has to be able to provide property & casualty risk brokerage service across multiple jurisdictions in order to service LMCs. Most brokers lack the ability to provide such services at quality levels typically acceptable for customers due to a lack of an appropriate geographic network. In the market investigation, a number of competitors indicated that they are only able to service LMCsas partners in a co-broking arrangement.[177] In this context, competitors pointed *inter alia* at the lack of cross-border capabilities that would limit their offering in this regard. One competitor explained that it was *"focussing primarily on the Dutch market and has only Dutch branches. We do not have worldwide agreements in place with co-brokers needed to serve multinational customers"*.[178] A second competitor stated it would *"not have access to an owned global network so do not perform on the ground service around the world.* [Competitor name] *can provide these working in conjunction with multinational insurers or local brokers or multinational brokers"*.[179] Indeed, smaller brokers often aim at compensating the lack of an owned network by partnering with other brokers. These arrangements, however, are not considered a suitable alternative to an owned network by a majority of customers in the property & casualty risk class, as discussed in further detail in Section 6.3.4.1 of this Decision.

(180) *Secondly*, the Commission understands that, overall, volume and/or the complexity of the property & casualty risk to be insured typically increases with the size of the customer. A broker, however, would need expertise and experience to handle large and/or complex risks. One customer explained that *"some large risks require access to international insurance markets (for example large liability program, or big construction projects); smaller broker do not always have the capacity to access foreign insurance markets."*[180] A second customer provided that *"only very few brokers have the capabilities to develop expertise in parametrics, captive, analytics and digitalized tools for risk quantification that could be in the future essential to address some complex risks that are difficult to transfer to insurance market."*[181] Indeed, the majority of LMCs responding to the market investigation consider that brokerage services for property & casualty risks require a high level of specific expertise, while the proportion of non-LMCs that share this view is significantly smaller, constituting only a minority of replies.[182] Consequently, from the *demand-side*, a majority of LMCs confirmed in the phase 2 market investigation that their choice of suitable brokers for property & casualty risks is more limited than that of other companies because of the size of the risk of their company.[183] Similarly, a

176 Replies to question 10 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.
177 Replies to question 5 of questionnaire 16 to commercial risk broking competitors.
178 Reply to question 5.1 of questionnaire 16 to commercial risk broking Competitors (Document ID 9023).
179 Reply to question 6.1 of questionnaire 16 to commercial risk broking Competitors (Document ID 8961).
180 Reply to question 6.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty (Document ID 8629).
181 Reply to question 7.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty (Document ID 9485).
182 Replies to question 44 of questionnaire Q1 to Customers.
183 Replies to question 6 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

small majority of LMCs consider that they have a limited choice of brokers compared to other companies because of the complexity of their insurance needs.[184]

(181) From the *supply-side*, while there are many brokers active in the market, different brokers have a varying degree of specific property & casualty expertise. As detailed above, smaller brokers explained in the market investigation that they have a rather uniform offering for property & casualty risk brokerage services without being organised in specific sub-teams for all types of risks or industries. Larger brokers, in turn, often have employees specialised in different property & casualty risks or industries and are therefore able to provide more specific services for customers with the need for a high level of expertise. As detailed in Section 6.3.5.1 B1 of this Decision, market shares for the provision of property & casualty risk brokerage services are indeed concentrated on very few market participants, which in turn means that only such brokers possess the necessary experience to handle large and complex risks of such customers.

(182) The Commission notes that both factors, a large footprint of a customer and the need to insure large and/or complex risks, cannot be entirely separated, as customers would require a broker to provide services with a sufficient expertise in a high number of countries. On balance, the Commission therefore considers that customers that require (i) property & casualty risk brokerage services in a number of different jurisdictions and (ii) have large and/or very complex property & casualty risks would have needs distinct from other customers.

(183) In the view of the above and the available evidence, for the purposes of this Decision, the Commission considers that property & casualty risk brokerage constitutes a distinct product market. The Commission further finds that within property & casualty commercial risk insurance brokerage, a separate market for LMCs exists.

6.1.5.2. FinPro

(184) The Financial and Professional Services ("FinPro") risk brokerage includes, amongst others, professional indemnity such as directors' and officers' insurance ("D&O"). It also typically includes other financial exposure risks, for example stemming from M&A transactions, among others.

A. The Notifying Party's view

(185) The Notifying Party argues that no further sub-segmentation of FinPro risk based on risk type or any other delineation would be appropriate in the present case because: (i) clients seek commercial non-life insurance for a broad range of FinPro risks depending on *inter alia* their activities and risk mitigation strategy, and any segmentation into neat product markets is challenging; and (ii) clients think about their FinPro insurance needs or the role of the broker holistic and seek to procure their diverse FinPro interests collectively from the same broker.[185]

(186) Further, the Notifying Party argues that all brokerage firms are active across all risk types and most individual brokers can and broker all types of FinPro risk. Specifically: (i) brokers are generally organised into a FinPro team covering all of the risks; (ii) no brokers are only engaged in individual FinPro risk lines; (iii) there

[184] Replies to question 7 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

[185] Form CO, paragraphs 661 et seq.

are no barriers that prevent individuals from moving between FinPro risk types; (iv) no regulatory or other barriers that apply to specific FinPro risk types; and (v) insurers are active across all FinPro-related risk types.[186]

(187) The Notifying Party considers commercial risk brokerage for cyber risks form part of FinPro risk, and submits that this is how cyber risks are viewed widely by brokers and clients given that it concerns coverage for financial loss that happens as a result of cyber exposure.[187]

(188) However, the Notifying Party acknowledges that insurance brokerage for cyber risk is a relatively new area which is growing significantly and is expected to further evolve in the coming years. The broad and evolving nature of cyber risk and its relative complexity would mean that it is the only FinPro segment that could be regarded as somewhat distinct from the others. Furthermore, an increasing number of clients tender cyber risks on a standalone basis but can also tender cyber risks alongside other lines, which in such circumstances would include at a minimum the FinPro segment. In the view of the Notifying Party, no further segmentation of cyber risk into cyber negligence or any other delineation would be appropriate.[188]

(189) The Notifying Party argues that there is no separate market for large multinational customers in any risk classes, including FinPro.[189]

B. The Commission's assessment

(190) As set out above, in *Marsh & McLennan Companies/Jardine Lloyd Thomson Group*, the Commission ultimately left open whether broker activities in the segment of FinPro, including cyber risk, constitute a separate product market.[190] In that case, the Commission also did not need to consider if it was appropriate to segment the market further by the type or size of customer.

(191) In line with the Notifying Party's view, the results of the market investigation in this case indicate that FinPro is a separate segment within commercial risk brokerage. Customers that responded to the market investigation are overall familiar with the definition of FinPro or financial lines as a typically separate category[191] and as explained further below procure their commercial risk brokerage for FinPro as a distinct product line. A majority of competitors that are active in commercial risk brokerage for FinPro have a dedicated team for the provision of those services.[192]

(192) The Commission notes that the FinPro segment is likely narrower. The market investigation revealed that brokerage services for different risks grouped in the FinPro segment are often purchased under separate contracts by customers and in many cases from different brokers.[193] One customer explained: "*FinPro risks are a broad category. Therefore, they require sourcing per risk type and not as a*

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186 Form CO, paragraph 664.

187 The Notifying Party also provides that cyber would not be an appropriate sub-segment of property & casualty, as (i) from a demand-side perspective, traditional policies like property & casualty coverage are not specifically designed to cover cyber risks, and whilst elements of cyber coverage have existed previously it is more often now being explicitly excluded from these policies altogether; and (ii) from a supply-side perspective, there is no or only very minimal overlap between the activities of property & casualty brokers and those of cyber specialists; Form CO, footnote 298.

188 Form CO, paragraphs 667 et seq.

189 Reply to the 6(1)(c) Decision, annex 1, paragraph 46.

190 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*.

191 Replies to questionnaire Q1 to Customers.

192 Replies to question 9 of questionnaire Q5 to Competitors.

193 Replies to question 147 of questionnaire Q1 to Customers.

whole".[194] As further explained below, the Commission: (i) assessed whether brokerage of cyber risks constitutes a separate market; (ii) notes based on qualitative feedback from a number of respondents that D&O (see recital (184) above) insurance brokerage may be purchased separately from FinPro risk brokerage to a significant extent; and (iii) assessed whether brokerage of FinPro risks provided to LMCs constitute a separate market.

(193) *Firstly*, the Commission assessed whether commercial risk brokerage for cyber constitutes a separate market distinct from FinPro category. From a demand-side perspective, the market investigation indicates that a large majority of customers consider that the provision of commercial risk brokerage for cyber requires a broker to have a high level of cyber risk specific expertise.[195] Further substantiating this point, the market investigation shows that a majority of responding customers purchase brokerage services for cyber risks separately from FinPro.[196]

(194) From the supply-side, around half of competing brokerage companies active in this field have a dedicated team to match the customers' demand for specific cyber risk brokerage services. Especially a number of larger brokers have a dedicated team or sub-team for the commercial brokerage of cyber risk.[197] Competing brokers confirm that they sell commercial risk brokerage services for cyber to a major extent independently from their FinPro risk offer[198] and that cyber risks are placed separately from FinPro risks with insurers.[199]

(195) In line with the Notifying Party's views and Commission's previous decisional practice, the Commission considers for the purposes of the present assessment, that commercial risk brokerage for FinPro risk constitutes a distinct product market. However, commercial risk brokerage for cyber constitutes a separate market distinct from the commercial risk brokerage for FinPro market, which is further discussed in Section 6.1.5.3.

(196) *Secondly,* while some qualitative feedback may suggest that a number of customers source brokerage services for D&O insurances separately, the Commission considers that further segmentation on this basis is not warranted for the purposes of this Decision. The market investigation indicates that the majority of responding customers procure FinPro risk together for all elements, with the exception of cyber risk which many customers increasingly procure as a separate risk often through a separate tender.[200] This conclusion is also supported by feedback from competitors received during the market investigation who indicate that all financial lines with an exception to cyber risk may be purchased as part of commercial risk brokerage for FinPro.[201]

(197) *Thirdly*, with regard to the question as to whether it is appropriate to further segment the market by the type of customer for commercial risk brokerage for FinPro risk, the results of the market investigation indicate that it is appropriate to distinguish a separate market for LMCs for FinPro (for general arguments see Section 6.1.4). The results of the market investigation show that the majority of responding LMCs are

194 Replies to question 147.1 of questionnaire Q1 to Customers.
195 Replies to question 163 of questionnaire Q1 to Customers.
196 Replies to question 148, of questionnaire Q1 to Customers.
197 Replies to question 9 of questionnaire Q5 to Competitors.
198 Replies to question 13 of questionnaire Q5 to Competitors.
199 Replies to question 13.2 of questionnaire Q5 to Competitors.
200 Replies to question 153 of questionnaire Q1 to Customers.
201 Replies to questions 3 and 9 of questionnaire Q5 to Competitors.

restricted in their choice of a broker for FinPro risk specifically because of: (i) the wide geographic footprint of a broker required by customers, (ii) the size and complexity of the risk itself; and (iii) the size of the customer's company, which demand significant scale and capabilities on the broker's side.[202]

(198) From a demand-side, a clear majority of LMCs that responded to the market investigation require brokerage services with expertise for each country in which FinPro risks need to be covered.[203] As one customer explained: "*FinPro is a very technical matter with specificities linked to local regulation. It is thus of utmost importance to benefit from the knowledge from a broker with a good knowledge of these particularities."*[204] The requirement to comply with different national regulation both within and outside the EEA was confirmed by numerous respondents in the market investigation. Further benefits of national expertise of a broker named by customers include the knowledge of the national insurance landscape, as well as the ability of a broker to assist customers and handle claims in case a FinPro risk materialises.[205] While for smaller customers this required national expertise by a broker is limited to one or a few geographic areas of business activities, LMCs demand specific expertise for a significant or very high number of different national or regional legislation in different jurisdictions.[206] For the majority of responding customers, this national expertise has to be provided by one single broker. The overwhelming majority of LMCs that responded to the market investigation state that they would source brokerage services under one contract to manage FinPro risks for their global business activities.[207] Responding customers explain this strategy, *inter alia*, on the need to coordinate their risk coverage across countries. As one customer explained: "*Finpro claims can have a global reach and hit several countries simultaneously, hence the closest coordination is mandatory*."[208] Specific to FinPro risk, the majority of the LMCs responding to the market investigation indicated that global reach and broker network is a very important factor they consider when choosing a broker.[209] A large majority of responding customers said their broker operates through an owned network and that their company's choice of a broker is influenced by the type of the network a broker operates.[210]

(199) The FinPro insurance needs of LMCs are also much more sizeable and complex. As one customer explained: "[l]*arger companies tend to be more complex. Smaller and/or local brokers normally lack the experience for servicing these complex companies. Only the large brokers have the experience and capabilities to effectively deal with these complexities*."[211] Market feedback also indicated that for companies

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202 Replies to questions 4, 5 and 6 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

203 Replies to question 153 of questionnaire Q1 to Customers.

204 Replies to question 153.1 of questionnaire Q1 to Customers.

205 Replies to question 153.1 of questionnaire Q1 to Customers.

206 The Commission further notes indications from the market investigation that large multinational customers source to a higher degree different risks included in the FinPro segment separately from each other from different brokerage companies, compared to smaller customers, suggesting a greater need for specific expertise by large-multinational customers; replies to question 147 of questionnaire Q1 to Customers.

207 Replies to question 152 of questionnaire Q1 to Customers.

208 Replies to question 152.1 of questionnaire Q1 to Customers.

209 Replies to question 9 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

210 Replies to questions 17-24 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

211 Replies to question 6(1) of questionnaire Q9 to commercial risk brokerage Customers for FinPro. (Document ID 8294).

listed on the stock exchange, FinPro insurance needs are more complex.[212] One customer explained this point: "[w]*e are a listed company, with increasing compliance requirements and sustainability public targets. High media exposure, growing online sales and significantly high number of employees worldwide also drive complexity to the company and increases the occurence of risks covered through FinPro insurance*."[213]

(200) Internal documents of the Parties show that when presenting their capabilities for commercial risk brokerage for FinPro to clients, the Parties place significant emphasis on their global capabilities, which appear to be particularly important for this complex risk. For example, one customer tender document of WTW describes its global FinPro capabilities that […]"[214] This indicates that for customers with a global footprint, there would be clear advantages in having their commercial risk brokerage needs for FinPro addressed by a global network; which on the other hand may be less important for customers that operate in one or a small number of countries and would have fewer global requirements for their commercial risk brokerage for FinPro.

(201) In view of the above and the available evidence, for the purposes of this Decision, the Commission considers that FinPro risk brokerage – excluding cyber risk brokerage (as discussed in Section 6.1.5.3) constitutes a separate product market. The Commission further finds that within commercial risk brokerage for FinPro, a separate market for LMCs exists.

6.1.5.3. Cyber

(202) Cyber insurance covers risks of cyber-related disruption to a customer's business, for example stemming from harm or loss resulting from breaches of or attacks on information systems or technology of customers. This insurance typically includes network business interruption, system failure, digital asset restoration, privacy and security liability and media liability. Losses to be covered may comprise both first party loss as well as third party loss, including civil penalties, consequential revenue loss and restoration expenses.

A. The Notifying Party's view

(203) The Notifying Party considers cyber risks to form part of FinPro, and provides that this is how cyber risks are viewed widely by brokers and clients given that it concerns coverage for financial loss that happens as a result of cyber exposure.

(204) However, the Notifying Party acknowledges that coverage for cyber risk is a relatively new area which is growing significantly and is expected to further evolve in the coming years. The broad and evolving nature of cyber risk and its relative complexity would mean that it is the only FinPro risk type that could be regarded as somewhat distinct from the others. Furthermore, an increasing number of clients tender cyber risks on a standalone basis, but can also tender cyber risks alongside other lines, which in such circumstances would include at a minimum the FinPro segment. In the view of the Notifying Party, no further segmentation of cyber risk into cyber negligence or any other delineation would be appropriate.[215]

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[212] Replies to question 6(1) of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

[213] Replies to question 6(1) of questionnaire Q9 to commercial risk brokerage Customers for FinPro. (Document ID 9588).

[214] RFI 52, Annex 4.

[215] Form CO, paragraphs 667 et seq and reply to the 6(1)(c) Decision, paragraphs 522 to 525.

B. The Commission's assessment

(205) As stated above, in *Marsh & McLennan Companies/Jardine Lloyd Thomson Group*, the Commission ultimately left open whether broker activities in the segment of FinPro includes cyber risk and did not conclude if these risks each constitute a separate product markets.[216] The Commission also did not consider if it is appropriate to segment the market further by the type of customer.

(206) The market investigation in this case, however, provided a strong indication that cyber risk is a distinct risk from other commercial insurance brokerage risk types and customers and competitors do not consider cyber risk to be part of FinPro risk. From the demand-side perspective, the market investigation indicates that a large majority of customers consider that the provision of cyber risk brokerage requires a high level of specific expertise by a broker. In line with this, the majority of customers stated that cyber risk brokerage services were provided to them by different broker teams other than the general FinPro risk team.[217] Further substantiating this point, the market investigation shows that a small majority of customers overall purchase brokerage services for cyber risks separately from FinPro.[218] This need for specific expertise is even more pronounced for LMCs.[219] Some customers further explained that they tender for cyber risk separately from other risks, one specifying the reasons said: "*[c]yber is specifically assessed looking at the market complexity and high risk.*"[220] The demand for specific cyber risk brokerage services by a customer may depend to some extent on the business activities of the customer, its cyber risk awareness and the geographic scope of the customer's business activities.

(207) From the supply-side perspective, around half of competing brokerage companies active in this field have a dedicated team to match the customers' demand for specific cyber risk brokerage services.[221] Especially a number of larger brokers have a dedicated team or sub-team for the brokerage of cyber risks.[222] The majority of competing brokers confirm that they sell cyber brokerage services to a large extent independently from FinPro risks and that cyber risks are placed separately from FinPro risks with insurers.[223] One competitor explained that placements of cyber and FinPro risks may differ: "*[w]hilst the same markets are sometimes used this is not always the case as the Cyber appetite and other FinPro lines appetite can be different within any Syndicate/Insurance company.*"[224]

(208) The organisational structure of Aon and WTW also indicates that cyber risk is considered as a separate risk, with dedicated teams and leadership for cyber risk.[225,226] Moreover, internal documents further show that […].[227] From the market

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216 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*.
217 Replies to question 147 of questionnaire Q1 to Customers.
218 Replies to question 147.1 of questionnaire Q1 to Customers.
219 Replies to question 163 of questionnaire Q1 to Customers.
220 Reply to questionnaire Q10.5 to commercial risk brokerage Customers for cyber (Document ID 5499).
221 Replies to question 9 of questionnaire Q5 to Competitors.
222 Replies to question 9 of questionnaire Q5 to Competitors.
223 Replies to questions 13 and 13.2 of questionnaire Q5 to Competitors.
224 Replies to questions 13.3 of questionnaire Q5 to Competitors (Document ID 3653).
225 It is noted that for WTW a separate cyber team resides within Finex (FinPro), but this does not indicate that cyber is not deemed to be a separate risk. In a similar vein, wider aviation business may include separate insurance risks of space and aerospace manufacturing.
226 Reply to RFI 16 (Organisational Charts).
227 Willis Towers Watson […], […] review, May 2020 (Document ID ID008009-000697).

shares provided by the Notifying Party[228] and the market reconstruction (see Section 6.3.5.4. Cyber for LMCs competitive assessment), the Commission considers that the competitive landscape in cyber risk brokerage is indeed different from FinPro brokerage. This is because a number of competitors that appear to be active in the commercial risk brokerage for cyber is generally lower and the market shares for FinPro and cyber risks generally differ in a meaningful way to support a distinction between these two markets. A more limited number of cyber brokers comes through in the market investigation as well, as one customer stated: "*[c]omplexity of our cyber risks limits the number of brokers able to offer meaningful support and expertise*".[229]

(209) In addition, the results of the market investigation indicate that cyber risks of LMCs are significantly more complex than cyber needs of non-LMCs, require a higher degree of expertise and broader geographic coverage. First, regarding complexity, the majority of LMCs considered that a high level of expertise by a broker was needed to provide services concerning cyber risks.[230] Second, the market investigation indicated that large customers view cyber risk as complex and require brokers to have technical expertise in a range of cyber related aspects, as well as strong data analytics capabilities. For example one customer explained: "*[t]he size of this risk is more complex to analyse compared to a Property Damage and Business Interruption. For the Cyber, the risk is around the data and application and IT infrastructure which could be affected by an attack. Therefore the more your business rely on Data, Application, IT Infrastructure, the higher your Cyber capacity should be. In addition, we see that Ransom attacks are more and more important and the ransom value have also increased. The last points are the complexity of such attacks which might require expensive experts and consultants to unlock and remove the effects of the cyber attacks AND the length to recover from such attack which also need additional capacity.*"[231] Third, in relation to the global reach, more than a third of responding LMCs consider that their choice of a broker is limited for cyber risk because of the geographic footprint.[232]

(210) On the supply-side, cyber insurance solutions of Aon and WTW (and to a certain degree those of competitors) appear to be differentiated between small and medium-sized companies on the one hand, and large/complex clients on the other. For example, Aon's recent announcement of cyber insurance solutions tailored for small and middle market companies, offering the ability to purchase full end-to-end cyber insurance cover online.[233] This illustrates that the needs of these companies are different from the much more complex LMCs that require bespoke and tailored solutions for their complex and sizeable cyber risks.

228 Form CO, annex 6A.18.
229 Replies to question 150.1 of questionnaire Q1 to Customers (Document ID 2 200).
230 Reply to question 6 questionnaire 10 to to commercial risk brokerage Customers for cyber.
231 Reply to questionnaire Q10 questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9698).
232 Reply to question 4 questionnaire Q10 to commercial risk brokerage Customers for cyber.
233 https://ir.aon.com/about-aon/investor-relations/investor-news/news-release-details/2020/Aon-Launches-Digital-Cyber-Insurance-for-Small-and-Middle-Market-Businesses/default.aspx; last accessed: 27.05.2021, 09:05.

Figure 7: Public announcement by Aon on the launch of digital cyber insurance products tailored for small and middle market businesses


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Aon Launches Digital Cyber Insurance for Small and Middle Market Businesses

12/02/2020

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CHICAGO, Dec. 2, 2020 /PRNewswire/ -- Aon plc (NYSE: AON), a leading global professional services firm providing a broad range of risk, retirement and health solutions, today announced the launch of a digital insurance solution for small and middle market businesses. With this new offering, businesses across a wide spectrum of industries can go through the full end-to-end process of buying and managing cyber and professional liability insurance online. They also have access to an insurance specialist to walk through the application process and coverage details.

Source: Aon's official website

(211) WTW internal documents show that […].[234]

(212) In the view of the above and the available evidence, for the purposes of this Decision, the Commission considers that commercial risk brokerage for cyber constitutes a separate product market. The Commission further finds that within commercial risk brokerage for cyber, a separate market for LMCs exists.

6.1.5.4. Credit & political risk

(213) Commercial non-life insurance for credit & political risk covers a range of risks including credit risk, political violence, terrorism, kidnap and ransom.

A. The Notifying Party's view

(214) According to the Notifying Party, the credit & political risk segment includes four core elements: (i) trade credit, (ii) structured credit / political risk, (iii) political violence / terrorism, and (iv) kidnap and ransom (in the following the "four credit & political risk segments").[235]

(215) The Notifying Party describes trade credit as comprising protection for receivable portfolios in commercial transactions, both domestic and cross-border in nature, to mitigate against events such as default of contract, paying out in the event invoices are not paid.[236] Structured credit / political risk insurances are described as protecting

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234 Willis Towers Watson […], […] review, May 2020. ID008009-000697, RFI30-000966.

235 Form CO, paragraph 435.

236 Form CO, paragraph 435.

structured credit, ownership or property rights against government or public entity default or non-payment. In contrast to trade credit insurance, which mostly covers all receivables from commercial relations with private obligors, the credit and political risk sub-segment also provides protection for businesses against the actions of governments or government-owned entities, either from defaulting on commercial contracts, or from political acts such as embargoes, confiscation or currency inconvertibility. Also, as opposed to the trade credit sub-segment, the majority of structured credit / political risk insurance placements relate to each debtor risk being insured individually for single transactions.[237] Insurance to protect against political violence or terrorism are described as comprising protection for businesses against various forms of violence, including cover for damage to property and business interruption associated with coup d'états, civil unrest, insurgency, mutiny, riots, terrorism and war.[238] Finally, kidnap and ransom protection are further described as comprising protection against financial losses that arise when a company's employee is threatened with kidnap, extortion or illegal detention.[239]

(216) The Notifying Party considers, however, brokerage services for credit & political risk as one market because: (i) such risks arise from external, often sudden events that can result in swift and significant losses for the policyholder; and (ii) are macro-economic or cross-border in nature.[240]

(217) The Notifying Party further provides that no sub-segmentation for credit & political risk would be appropriate because, having regard to various factors including the broad contours of industry practice, it is difficult to find consistent sub-segmentation within this segment since the four core elements set out previously may be categorised, grouped and/or marketed differently by different brokers.[241]

(218) For the reasons presented under section 6.1.4.1 of this Decision the Notifying Party is also of the opinion that it is not warranted to sub-segment the market according to customer size and define a separate market for large multinational customers for the risk class of credit & political risk.[242]

B. The Commission's assessment

(219) The Commission has not previously assessed or defined a separate market for brokerage services associated with credit & political risk in its decisional practice.

(220) The views of the customers are mixed with regard to a further segmentation of the credit & political risk segment into 1) trade credit risk, 2) structured credit / political risk, 3) terrorism / political violence risk and 4) kidnapping and ransom risk as the phase 1 market investigation revealed. One customer explained that even though the insurance industry typically refers to a credit & political risk line of business, credit risk insurance and political risk insurance are two fundamentally different products and there is no need to buy it together, even if they are typically insured by the same insurance company.[243] According to one insurance company, given the insurance

237 Form CO, paragraph 435.
238 Form CO, paragraph 435.
239 Form CO, paragraph 435.
240 Form CO, paragraph 398.
241 Form CO, paragraphs 435 and 437.
242 Reply to the 6(1)(c) Decision, paragraphs 93 et seq.
243 Non-confidential minutes of conference call with a customer, 24 September 2020, ID 679.

industry practice and the cross-border nature of the type of risks covered, the different types of risk can all be considered as one segment.[244]

(221) These two opposing views are illustrative of the mixed results obtained by way of the phase 1 market investigation from all customers, regardless of their size. The market investigation revealed that the share of customers who consider that some or all of the brokerage services for the four credit & political segments are interchangeable, is relatively similar to the share of customers who consider that none of the brokerage services for the four credit & political segments are interchangeable.[245] Moreover, while the largest share of customers indicated that they source brokerage services for the four credit & political segments, independently from each other, and from different brokers, a sizeable share of the respondents indicated that they source them independently, but from the same broker and, to a lesser extent, together for different types of credit & political risk.[246] Finally, approximately half of the customers who source brokerage services for different credit & political risks together from the same broker indicated that the risks are not all handled by the same teams within that broker.[247]

(222) An assessment of views of competitors results in a similarly mixed picture. Approximately half of them indicated that they usually offer brokerage services for the four credit & political segments, independently from each other.[248] Moreover, half of the responding competitors consider that these risks are typically placed independently from each other.[249] Finally, the results of the phase 1 market investigation are also mixed as to whether competitors have dedicated teams for credit & political risk.[250]

(223) In view of the above considerations, for the purposes of this Decision, it can be left open whether the market for the provision of credit & political risk insurance brokerage services constitutes a single product market or whether it should be further segmented based on risk types, as it would not change the competitive assessment.

(224) Regarding a potential separate market for LMCs, the phase 1 market investigation provided mixed results. Evidence supportive of a separate market for LMCs, was in particular, that a majority of customers requires brokerage services with specific expertise like national regulation for each country in which credit & political risks need to be covered.[251] Benefits of national expertise of a broker named by customers include the knowledge of the national insurance landscape, as well as the ability of a broker to assist customers and handle claims in case a credit & political risk materialises.[252] This demand for specific national expertise could by definition be relevant for a larger number of countries for LMCs compared to smaller clients and therefore could be seen as supporting a separate market for LMCs.

(225) However, there was also evidence speaking against a separate market for LMCs in the phase 1 market investigation. Concerning the argument above of the need for specific expertise, replies of all customers regardless of their size were very similar

244 Non-confidential minutes of conference call with an insurer, 8 October 2020, ID 6376.
245 Replies to question 177 of questionnaire Q1 to Customers.
246 Replies to question 178 of questionnaire Q1 to Customers.
247 Replies to question 179 of questionnaire Q1 to Customers.
248 Replies to question 16 of questionnaire Q5 to Competitors.
249 Replies to question 17 of questionnaire Q5 to Competitors.
250 Replies to question 9 of questionnaire Q5 to Competitors.
251 Replies to question 185 of questionnaire Q1 to Customers.
252 Replies to question 185.1 of questionnaire Q1 to Customers.

to the replies of LMCs, so that the needs of LMCs and non-LMCs do not seem to constitute a differentiating factor for a separate market definition for LMCs. In other words, both LMCs and non-LMCs have similar needs as regards their broker's national expertise in foreign countries where they do business. This is in line with the the Notifying Party's explanation of the very nature of credit & political risks, which have mostly an international or cross border dimension .[253] In the same vein, non-LMCs also explained their need to cover a global risk exposure as reason for their need of country specific expertise. One non-LMC stated in that regard that "*laws and regulations are different depending on the country, so it seems very important to have specific experts for each country.*"[254]

(226) Given these results of the phase 1 market investigation, the Commission further investigated a potential separate market for LMCs in the phase 2 market investigation. This investigation revealed, that a majority of LMCs considers that their company's geographic footprint limits their choice of a suitable broker.[255] However, non-LMCs also stated in the phase 1 market investigation that they source credit & political risk brokerage services globally because of their global footprint.[256] Therefore, this criterion alone does not sufficiently support the notion of a separate market for LMCs.

(227) Further evidence in the phase 2 market investigation does not support the definition of a distinct market. LMCs state in their majority that a broker's physical presence or own offices in each country where risks need to be insured is either not important for them or they take a neutral stance towards the importance of owned offices.[257] In the same vein, LMCs respond in their majority that it would be sufficient if a broker has a physical office only in a number of key locations, and provides its services from there.[258] .

(228) Additionally, a majority of LMCs of credit & political risk does not consider that their choice of suitable brokers is more limited than that of other companies because of the size of their company (i.e. the high worldwide turnover, high number of employees).[259] In the same vein, a majority of LMCs does not consider that their choice of suitable brokers is more limited than that of other companies due to the size of the risks they insure.[260] Furthermore, a majority of LMCs does not consider that their choice of suitable brokers is more limited than that of other companies because of the complexity of the risks they insure.[261]

(229) In particular with respect to these three factors, size of company, size of risk and complexity of risk, the phase 2 market investigation revealed different results for LMCs in the FinPro and the property & casualty markets.

(230) For FinPro and the property & casualty, a majority of LMCs responded in the phase 2 market investigation that their own company's size and their risk complexity limits

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253 Form CO, paragraph 458.
254 Replies to question 185.1 of questionnaire Q1 to Customers.
255 Replies to question 4 of questionnaire Q13 to Customers for credit & political risks.
256 Replies to question 183.1 of questionnaire Q1 to Customers.
257 Replies to question 17 of questionnaire Q13 to Customers for credit & political risks.
258 Replies to question 17.1 of questionnaire Q13 to Customers for credit & political risks.
259 Replies to question 4.2 of questionnaire Q13 to Customers for credit & political risks.
260 Replies to question 5 of questionnaire Q13 to Customers for credit & political risks.
261 Replies to question 6 of questionnaire Q13 to Customers for credit & political risks.

their choice of brokers.[262] Furthermore, a majority of LMCs in the property & casualty risk brokerage market and almost half of LMCs in the FinPro market also declared that the size of their risk will limit their choice.[263]

(231) These responses are in clear contrast to the views taken by the majority of LMCs in the credit & political risk market, where size of company, size of risk and complexity of risk are not regarded as limiting the choice of a broker. Therefore, different outcomes are warranted when defining relevant product markets for LMCs in the risk categories property and casualty and FinPro on the one hand and credit & political risk on the other.

(232) Moreover, views on the impact of the Transaction on brokerage services for credit & political risk do not materially differ between LMCs and non-LMCs, see Section 6.3.5.7 of this Decision. In particular, this holds true with respect to customers' expectations concerning the availability of a sufficient number of alternative brokers post-Transaction.[264]

(233) As a result, the Commission considers for the purposes of this Decision that it is not warranted to define a separate market for credit & political risk brokerage services with respect to LMCs. However, in its competitive assessment, the Commission will include findings for brokerage services to LMCs for credit & political risk to further motivate the conclusion of its assessment.

(234) Furthermore, the Commission analysed the role alternative capital instruments play with regard to brokerage services for credit & political risk, which are different from other markets discussed in this Decision. The phase 1 market investigation revealed in that respect that, contrary to the arguments of the Notifying Party, special alternative capital instruments (public-private schemes) do not play a significant role. The majority of customers indicated that they do not make use of public-private schemes of the insurance industry, like but not limited to GAREAT in France, Extremus in Germany, Consorcio de Compensación de Seguros in Spain and Poolre in the UK, to insure against credit & political risks.[265] Moreover, the overwhelming majority of customers who make use of these schemes indicated to do so to insure only 0 to 25% of their risks and the large majority of them indicated to use brokers to receive insurance this way.[266] The majority of the customers that were able to provide an answer also indicated that they would not be able to place risks with these public-private schemes without brokers, because, as one customer noted, the risks require a high level of specialization from the brokers.[267] Finally, the majority of customers who were able to provide an answer also revealed that they would not consider increasing their direct use of public-private schemes, without using the services of brokers, even if broker fees or commissions were to increase permanently by 5 to 10% (while insurance premium remains stable).[268] The Commission therefore considers that for the purposes of this Decision, alternative capital instruments are not part of the of credit & political risk insurance brokerage services market, but

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262 Replies to questions 5.2 and 7 of questionnaire Q7 to Customers of P&C risks and questions 4.2 and 6 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

263 Replies to questions 6 of questionnaire Q7 commercial risk brokerage Customers for property & casualty and question 5 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

264 Replies to question 190 of questionnaire Q1 to Customers.

265 Replies to question 189 of questionnaire Q1 to Customers.

266 Replies to question 189.2 of questionnaire Q1 to Customers.

267 Reply to question 189.3.1.1 of questionnaire Q1 to Customers.

268 Replies to question 189.4 of questionnaire Q1 to Customers.

considers that the intermediation services to access those alternative capital instruments would be part of the services that brokers offer to their customers for the category of credit & political risk.

(235) In view of the above and the available evidence, the Commission considers that, for the purposes of this Decision, it can be left open whether the provision of credit & political risk insurance brokerage services constitutes a single product market or whether it should be further segmented based on the four credit & political risk segments. The Commission further notes that the market for the provision of credit & political insurance brokerage services to LMCs is not distinct from credit & political insurance brokerage services to all customers excluding LMCs.

6.1.5.5. Sureties

(236) Sureties, known as "surety bonds", are a form of credit insurance. But unlike such insurance, sureties are contracts which involve three parties. They involve (a) the principal, a party responsible for carrying out an obligation, (b) an obligee, the recipient, or party to whom an obligation is owed, and (c) the surety, a guarantor who assures the obligee that the principal is capable of carrying out the relevant obligation.[269] In the event of non-performance by the principal, the surety will be responsible for compensating the obligee; the principal who has defaulted will then be required under the contract to reimburse the surety. Thus, in contrast to credit insurance, sureties function more as financial guarantors, by assuming a contractual obligation that is owed to the obligee, a third party. Both Aon and WTW are active in this market.

A. The Notifying Party's view

(237) The Notifying Party submits, that it is not aware of any further plausible sub-segments. Given existing market definition which segments the distribution of commercial (non-life) insurance by risk type, the Notifying Party considers that "surety" should – on balance - be treated as a standalone segment.[270]

B. The Commission's assessment

(238) In its past decisional practice, the Commission has not considered a separate segment for surety in the distribution of commercial non-life insurance. Accordingly, there is no directly applicable prior decisional practice available for product market definition.

(239) In the present case, the results of the phase 1 market investigation show that brokerage services for sureties are a distinct market, different from brokerage services for other types of risk.

(240) From a demand-side point of view, approximately a third of customers state that they source brokerage services for sureties separately from other types of risks, but from the same broker and another third source brokerage services for sureties separately from other types of risks, and from different brokers. Only a minority source brokerage services for sureties together with other types of risks.[271]

(241) On the supply side, almost half of competitors that provided an opinion indicated that they have a dedicated team in their organisation for the brokerage of sureties.[272]

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269 Form CO, paragraph 849.
270 Form CO, paragraph 854.
271 Replies to question 196 of questionnaire Q1 to Customers.
272 Replies to question 14 of questionnaire Q5 to Competitors.

Moreover, a clear majority of competitors states that the brokerage of sureties requires expertise significantly different from other brokerage services.[273] When explicitly asked, whether competitors consider surety brokerage to be a standalone product, or part of any other product or segment within commercial risk brokerage, a clear majority of respondents replied that it is a stand-alone product. As reason for this, competitors stated *inter alia*, that "*distinct knowledge required*", that "*this type of product requires economic analysis of the risk, as well as the legal implications of the contracts*", that "*Insurers have special departments for sureties. They need to make an in-depth analysis of the clients' financial situation to see whether they can issues sureties. Also the broker needs more financial knowledge*", that "*it is a product required for a specific purpose. It is in that regard standalone", and that sureties differ from other products (…) in their structure and complexity as well as in their provisions.*"[274]

(242) With regard to the question as to whether it is appropriate to distinguish a separate market for LMCs for brokerage services for sureties, the phase 1 market investigation suggests that this question is not relevant. LMCs of brokerage services for sureties on the one hand and other customers of brokerage services for sureties on the other hand did not significantly differ in their replies to the market investigation. This holds true for the product market questions referenced above in recital (240),[275] for Customers replies concerning the geographic scope referenced below in recital (338) in Section 6.2.7,[276] and for the competitive assessment questions referenced further down below in recital (898) and (902) in Section 6.3.5.8.[277] Therefore, the difference in requirements of LMCs and other customers for brokerage services for sureties appears not to be as significant as for other risk types and a further segmentation is not warranted.

(243) In view of the above and the available evidence, the Commission considers for the purposes of this Decision that it is appropriate to distinguish a separate product market for brokerage services for sureties without any further sub-segmentation.

6.1.5.6. Energy

(244) Commercial risk brokerage for energy risks concern the brokerage of commercial risk insurance for risks related to the energy industry. Both Aon and WTW are active in this market.

A. The Notifying Party's view

(245) The Notifying Party follows the Commission's previous decisions in the definition of the product market for commercial risk brokerage for energy risks.

(246) The Notifying Party additionally submits that a separate market for risks broadly associated with power (e.g. nuclear plants, solar installations, hydraulic energy, etc.) would not be appropriate. The Notifying Party indicated that no legal precedents in this direction exist, no data would be available to analyse such as separate market,

273 Replies to question 14.2 of questionnaire Q5 to Competitors.
274 Replies to question 14.3 and 14.3.1 of questionnaire Q5 to Competitors.
275 Replies to question 196 of questionnaire Q1 to Customers.
276 Replies to question 197 of questionnaire Q1 to Customers.
277 Replies to question 199 and 200 of questionnaire Q1 to Customers.

there are no specialist brokerage firms exclusively focusing on such risks and it is very challenging to delineate such risks.[278]

B. The Commission's assessment

(247) In its past practice, the Commission has previously defined a market for brokerage activities in the specialty sector of energy, which included "*the distribution of commercial insurance to cover the risks associated with the complex operations of the production chain for fossil fuels such as coal, oil and natural gas*".[279]

(248) The Commission's market investigation did not give sufficient grounds to deviate from the Commission's prior decisional practice in so far as it relates to defining a separate product market for commercial risk brokerage for fossil fuel energy related risk.

(249) The market investigation was inconclusive on whether the market for commercial risk brokerage for energy related risks should include power risk (which would otherwise be part of property & casualty). The number of respondents that indicate that they source commercial risk brokerage for all such risks together was similar to the number of respondents that indicate they source them separately.[280] Similarly, while for smaller brokerage companies the same staff may handle both types of risks, larger brokers typically have separate teams for both types of risks.[281]

(250) In view of the inconclusive feedback, power risks have therefore been included in the market for property & casualty in line with past decisional practice, and are covered by the remedies in that market.

(251) The market investigation did not give sufficient evidence to define a separate market for LMCs for commercial risk brokerage for energy risks. As for most other specialty risk types, risk expertise is of key importance to a broker's competitiveness. Furthermore, many of the clients that purchase brokerage services for this risk type would be likely to be LMCs (*e.g.* energy companies) and a distinction by customer type would therefore be less relevant.

6.1.5.7. Marine

(252) Commercial risk insurance in the marine sector refers to a range of risk types associated with ship owners on the one hand, notably protection for hull & machinery insurance and protection & indemnity ("P&I") insurance, and cargo & international trade on the other hand, such as global trade, imports, exports and logistics providers, as well as specialist products such as superyachts, ports, terminals, etc.

A. The Notifying Party's view

(253) The Notifying Party submits that it is appropriate to envisage a potential segmentation including all marine-related risks. The Notifying Party however argues that it is not necessary to define any further sub-segmentations within the marine-related risk types, considering that, in any event, the Transaction would not give rise to competition concerns on any plausible market definition.[282]

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278 Form CO, paragraphs 583 and 584. The Notifying Party has included power risks in the property & casualty market.

279 M.9196 – Marsh & McLennan Companies / Jardine Lloyd Thompson Group, paragraph 52.

280 Replies to question 127 of questionnaire Q1 to Customers.

281 Replies to question 10 of questionnaire Q5 to Competitors.

282 Form CO, paragraphs 752-763.

(254) In the Reply to the 6(1)c Decision, the Notifying Party reiterated that it is not appropriate to distinguish a separate market for LMCs within each and every risk type, but did not put forward any further arguments specific to Commercial risk insurance in the marine sector.[283]

B. **The Commission's assessment**

(255) In its past decisional practice, the Commission considered that it could be appropriate to distinguish a separate market for the supply of broker services for marine, while ultimately leaving the exact product market definition open.[284] In *Marsh & McLennan Companies/Jardine Lloyd Thomson Group* however, the Commission considered a potential segmentation of commercial risk brokerage services based on risk types, without specifically discussing the opportunity to distinguish a separate market with respect to marine-related types of risks.[285]

(256) *Firstly*, in the present case, the results of the market investigation confirmed – in line with its previous decisional practice[286] – that it is appropriate to distinguish a separate market with respect to marine-related risks.[287]

(257) As to the question whether it is appropriate or not to further distinguish, within the marine market between the different types of marine-related risks, in the present case, the results of the market investigation show that it could be relevant.

(258) From a *demand-side* point of view, the results of the market investigation show that LMCs tend to distinguish between different types of marine-related risk, according to the nature of the risk which is being insured, notably hull and machinery,[288] protection and indemnity ("P&I")[289] and risks associated with cargo trade,[290] as characteristics such as (i) the nature of the risk, (ii) its size and (iii) complexity, are different.[291]

(259) On the *supply side* however, a majority of competitors indicated that they generally have a dedicated marine team in their organisation,[292] dealing with all marine-related risks.[293]

(260) Ultimately, the question as to whether marine risks could be sub-segmented according to each and every type of marine-related risks can nevertheless be left open, as the market share levels overall and in all of the potentially relevant segments identified, are not at a level which could give rise to competition concerns.[294]

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283 Reply to the Article 6(1)(c) Decision, paragraph 92 and seq.

284 M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 18.

285 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 22.

286 M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 18.

287 Replies to question 112 of questionnaire Q1 to Customers.

288 Hull and machinery risks cover all risks related to a ship, e.g. the malfunctioning of machinery.

289 P&I insurance typically covers crew and passenger well-being. P&I also includes a whole range of risks such as pollution, piracy, war *etc*.

290 As mentioned above, risks associated with cargo trade cover global trade, imports, exports and logistics providers.

291 Replies to question 112 of questionnaire Q1 to Customers; Replies to questions 9 and 18 of questionnaire Q5 to Competitors.

292 Replies to question 9 of questionnaire Q5 to Competitors.

293 Replies to question 18 of questionnaire Q5 to Competitors.

294 On the basis of the information provided by the Notifying Party, the Parties' combined market shares on the overall market for the supply of commercial risk brokerage services for marine, and any of narrower plausible segmentation, do not give rise to any affected markets. Therefore for the purpose of this Decision the question as to whether further sub-segments should be defined within marine-related risks

(261) *Secondly*, with respect to a potential distinction of a separate market for LMCs for commercial risk brokerage of marine risks, the results of the in-depth market investigation showed that this distinction according to the type of customers is not warranted.

(262) As for most other specialty risk types, risk expertise is of key importance to a broker's competitiveness. In this regard, the investigation revealed, that a majority of marine customers rely to a lesser extent on the global network of a broker and that a broker's physical presence or own offices in countries is considered as being important by only a minority of respondents.[295] The majority of marine customers consider it sufficient if a broker is present only in a number of key locations.[296]

(263) Furthermore, the majority of marine customers do not regard the geographic outreach of their business, their company's size, the size of their risk or the complexity of their risk as limiting their choice of brokers.[297]

(264) In light of these elements, the Commission considers that it is appropriate to consider a market encompassing all customers, i.e. without distinguishing between LMCs and non-LMCs. As to the precise delineation of the market for the supply of brokerage services for marine-related risks, and in particular the question as to whether it is appropriate to further distinguish between the different types of marine-related risks, the Commission considers that this question can be left open.

6.1.5.8. Aircraft operators

(265) Commercial risk brokerage for aircraft operator risk concerns the brokerage of commercial risk insurance for risks related to the operation of aircrafts. Commercial non-life insurance for aircraft operators covers a broad range of risks, including: (i) coverage against damage to aircraft (typically referred to as "hull coverage"); (ii) general liability to passengers and / or third parties for aircraft accidents (including in respect of passenger baggage or cargo); (iii) the replacement and / or repair of spare parts; (iv) coverage against damage or liability arising out of malicious acts; and (v) war hull insurance and war liability exposure.

A. The Notifying Party's view

(266) In line with the Commission's previous decision,[298] the Notifying Party provides its assessment and market shares for the product market for commercial risk brokerage for aircraft operator risk. However, the Notifying Party submits that in its view the Transaction does not give rise to competitive concerns for any plausible market definition.

B. The Commission's assessment

(267) In *Marsh & McLennan Companies/Jardine Lloyd Thomson Group*, the Commission defined a separate market for commercial risk brokerage for aircraft operator risk. The Commission did not consider any further segmentations of this product market.

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can be left open, as it is not likely that the Transaction will significantly impede competition, irrespective of the exact market definition.

295 Replies to question 4 of questionnaire Q14 to commercial risk brokerage Customers for marine.

296 Replies to question 4 of questionnaire Q14 to commercial risk brokerage Customers for marine.

297 Replies to questions 4 to 7 of questionnaire Q14 to commercial risk brokerage Customers for marine.

298 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 29.

(268) The Commission's market investigation did not provide any grounds to deviate from the Commission's prior decisional practice with respect to product market definition for the market for commercial risk brokerage for aircraft operator risk.

(269) The market investigation did not give sufficient evidence to define a separate market for LMCs for commercial risk brokerage for aircraft operator risks. As for most other specialty risk types, and notably for the closely related risk type of aerospace manufacturing (discussed in the next Section), risk expertise is of key importance to a broker competitiveness. Furthermore, aircraft operation risks are very international by their very nature, and not only for LMCs. Finally, many of the clients that purchase brokerage services for this risk type would likely be LMCs (e.g. commercial airlines) and a distinction by customer type would therefore be less relevant.

(270) Based on the above, for the purpose of this assessment, the Commission considers that commercial risk brokerage for aircraft operator risk constitutes a separate product market and that no further subdivisions are appropriate.

6.1.5.9. Aerospace manufacturing

(271) Commercial risk insurance for the aerospace manufacturing sector refers to risks associated with the manufacturing of aerospace products, including insurance for airframe, engine parts and component manufacturers, as well as repair and service operators, service providers, airports, refiners and re-fuelers, and air traffic control operators.[299] In particular, manufacturers of aerospace products purchase insurance to cover for damage caused by, or liability arising out of, defects in their products. The risk types encompassed within this specialty include: (i) manufacturers' hull liability; and (ii) aircraft product liability.

A. The Notifying Party's view

(272) In line with the Commission's previous decision, the Notifying Party submits that a separate product market for commercial risk brokerage for aerospace manufacturing risk can be envisaged.[300]

B. The Commission's assessment

(273) In *Marsh & McLennan Companies/Jardine Lloyd Thomson Group*, the Commission defined a separate market for commercial risk brokerage for aerospace manufacturing risk. The Commission did not consider any further segmentations of this product market.[301]

(274) In line with Commission's previous decisional practice and the Notifying Party's views, the Commission considers for the purposes of the present assessment, commercial risk brokerage for aerospace manufacturing risk constitutes a separate product market and that no further sub-segmentation is needed. The market investigation did not provide any indication suggesting that departing from the Commission's previous decisional practice and the Notifying Party's views would be appropriate.

(275) With regard to the question as to whether it is appropriate to distinguish a separate market for LMCs for commercial risk brokerage for aerospace manufacturing risk,

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299 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 38.

300 Form CO, paragraphs 418 and 420.

301 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 38.

the results of the market investigation suggest that this is not appropriate for this risk type.

(276) The majority of customers (regardless of their size and/or global reach) that replied to the market investigation indicated that while they consider geographic presence of the broker important, they consider it sufficient if their broker has an office in few key locations.[302] Additionally, customers that replied to the market investigation rated risk-specific expertise as far more important than global presence when selecting their broker.[303]

(277) Additionally, customers for commercial risk brokerage for aerospace manufacturing risk typically have very large exposures and complex risks to be insured and in fact are often LMCs. Therefore, they require a high level of risk-specific expertise, as well as strong professional capabilities and need for the full range of insurance services (i.e. administration, advisory, placing, claims management, etc.). Therefore, the difference in requirements of LMCs and other customers in this risk type is less significant.

(278) In view of the above, the Commission considers for the purposes of this assessment that it is appropriate to distinguish a separate product market for commercial risk brokerage for aerospace manufacturing risk and that a further segmentation based on the type of customer is not appropriate. Therefore, the product market is defined as commercial risk brokerage services for aerospace manufacturing risks to all customers.

6.1.5.10. Space

(279) Commercial risk insurance in the sector of space refers to risks associated with loss from damage to or failure of satellite launches and / or satellites in orbit. This risk includes coverage for launch vehicles and satellite assets prior to launch (pre-launch), as well as third party liability at all stages of a launch. The space industry is characterised by high financial exposures, due to the potential for very high losses should an insured event occur.

A. The Notifying Party's view

(280) The Notifying Party submits that in line with the Commission's previous decisional practice, commercial non-life insurance for space constitutes a separate product market and that no further sub-segmentation is needed.[304]

B. The Commission's assessment

(281) In *Marsh & McLennan Companies/Jardine Lloyd Thomson Group*, based on the results of the market investigation, the Commission concluded, that the relevant product market is brokerage in the specialty sector of space.[305]

(282) In accordance with the Commission previous decisional practice and in line with the Notifying Party's view, based on the evidence received in the present market investigation, the product market is defined as commercial insurance brokerage services for space risks.

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302 Replies to question 19 of questionnaire Q15 to aerospace manufacturing and space Customers.

303 Replies to question 12 of questionnaire Q15 to aerospace manufacturing and space Customers.

304 Form CO, paragraphs 268.

305 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 43.

(283) With regard to the question as to whether it is appropriate to distinguish a separate market for LMCs for commercial risk brokerage for space risks, the results of the market investigation indicate that this is not appropriate for this risk type. This is primarily because space risks entail large, complex and global insurance brokerage needs for all customers, irrespective of their size or international presence.

(284) The majority of customers (regardless of their size and / or global reach) that replied to the market investigation indicated that while they consider geographic presence of the broker important, they consider it sufficient if their broker has an office in few key locations globally.[306] Additionally, customers that replied to the market investigation rated risk-specific expertise as far more important than global presence when selecting their broker.[307]

(285) Additionally, customers for commercial risk brokerage for space risks typically have very large exposures and complex risks to be insured and often meet the criteria for LMCs. All customers irrespective of size or global footprint require a high level of risk-specific expertise, strong professional capabilities and need for the full range of insurance services (i.e. administration, advisory, placing, claims management, etc.) and global reach of a broker. Therefore, the difference in requirements of LMCs and other customers in this risk type is less significant.

(286) In view of the above, the Commission considers for the purposes of this Decision that it is appropriate to distinguish a separate product market for commercial risk brokerage for space and that a further segmentation based on the type of customer is not appropriate. The product market is defined as commercial insurance brokerage services for space risks to all customers.

6.1.6. Potential market for captive-related services

(287) As mentioned above in Section 6.2.3, brokers provide a range of services which go beyond the actual placement of insurance cover, and may include an array of services which can be tailored to meet the client's needs, such as identification and assessment of risk, independent risk management advice, insurance market intelligence, actuarial services, claims support *etc*.

(288) In the course of their activities, the Parties provide an entire range of captive-related services, including: (i) pre-captive evaluation and assessment; (ii) feasibility testing and consulting; (iii) ongoing captive management and administration services; and (iv) ongoing strategic review of the captive structures in place.

6.1.6.1. The Notifying Party's view

(289) Initially, the Notifying Party submitted that it is not aware of captive management services having been analysed as a separate market in the Commission's past decisional practice, without clearly concluding on the existence of a separate market.[308]

(290) In parallel, the Notifying Party argued that it is not appropriate or possible to segment the provision of captive advice and management services to commercial risk clients by risk class because (i) on the demand-side, it is not the practice of customers to require separate captive-related services by risk category; (ii) on the supply-side, captive-related services are provided across risk types, the Parties'

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306 Replies to question 33 of questionnaire Q15 to aerospace manufacturing and space Customers.

307 Replies to question 36 of questionnaire Q15 to aerospace manufacturing and space Customers.

308 Form CO, paragraphs 872 to 873.

dedicated teams are not organised by specialty and the Notifying Party is not aware of competitors which are organised or provide specialised captive-related services; (iii) there are no known market size estimates by risk type available from third party reports or sources that would allow the Parties to calculate market shares on a segmented basis by risk class; and (iv) there are no legal precedent in which the Commission (or any other regulatory authority) has considered the provision of advice and management services to captives by risk class.[309]

(291) Nevertheless, in its Reply to the Article 6(1)(c) Decision, the Parties revised their reasoning and argued that captive management services are separate from brokerage services.[310]

6.1.6.2. The Commission's assessment

(292) In its past decisional practice, while the Commission noted that clients typically only retain small portions of their risk portfolio and place the majority of their risk in the market,[311] the Commission has not defined nor assessed a separate market for the supply of captive management services.

(293) In this respect, if on the one hand, the Notifying Party submits that captive-related services are offered on a standalone basis, priced separately and customers have the option to purchase these services either from insurance brokers (like the Parties) or other providers,[312] the results of the market investigation, on the other hand, indicated that captive-related services are often sought alongside other risk advisory and broking services, as clients seek a solution for their overall risk management strategy, the use of captive entities being typically only one way in which clients manage their risk.[313] Nevertheless, some other respondents also highlighted the possibility for the existence of a market for the supply of captive related services, distinct from commercial risk brokerage services.[314]

(294) The results of the market investigation are therefore inconclusive when it comes to determining whether it is appropriate to distinguish a separate market for captive-related services, nor whether such services should be further segmented by risk type.

(295) Against this background, and in view of the fact that the Transaction is not likely to give rise to any competition concerns with respect to captive-related services (as explained in Section 6.3.6), under any plausible segmentation or sub-segmentation, the Commission leaves the question of the precise product market definition for captive-related services open for the purposes of this Decision.

6.2. Relevant geographic markets

(296) In view of the product market definitions in Section 6.1.4.2 above, the relevant geographic scope for each market will be assessed according to the different risk types. However, the Commission first sets out some factors related to the geographic scope of the market that apply to all risks where a distinct market for LMCs is justified.

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309 Form CO, paragraphs 872 to 873.

310 Reply to the Article 6(1)(c) Decision, paragraph 356 et seq.

311 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 15.

312 Reply to RFI 41, question 1e.

313 Form CO, paragraph 867; Replies to questions 12 to 14 of questionnaire Q1 to Customers.

314 Email dated 29 January 2021 (Document ID 7006); Non-confidential replies to Captive Insurance RFI to Customers, questions 1 to 3.

6.2.1. *Large Multinational Customers*

(297) The Notifying Party disputes the segmentation of the product market for large multinational customers, but in any event, argues that for commercial risk brokerage the market is at least EEA-wide in scope, for the following reasons: (i) brokers are active across the EEA, and their pitch to clients emphasise their ability to service wherever clients they are located and irrespective of physical presence; (ii) brokers place risks outside the country in which the client is located; (iii) insurance carriers are active across the EEA (for example, a third of property & casualty risks are placed directly with insurers, many of whom are multinational companies active across the EEA); (iv) costs and regulatory barriers in the EEA are low (the distribution of insurance is a service industry that entails negligible transport or delivery costs); and lastly (v) sub-brokerage agreements are common between firms from non-European countries partnering to serve a client's needs.[315] These arguments apply amongst potentially others, to property & casualty, FinPro and cyber risks where the product market based on risk type was further segmented for LMCs on the one hand, and non-LMCs on the other.[316]

(298) In the phase 2 market investigation the Commission found that the risk type markets that were further segmented between LMCs and non-LMCs (namely, property & casualty, FinPro and cyber) comprise companies that require risk management advice and brokerage services within the EEA with an EEA licenced broker for their international activities (see Section 6.1.4.2 above). For such a product market, the evidence from the market investigation indicates that a worldwide geographic market definition would be appropriate as the majority of customers and competitors consider that competition takes place at a global level.[317] This is because the market investigation revealed that there are two main drivers at play, in particular from the demand-side. On the one hand, the EEA-based/headquartered customers or customers that have insurance needs in the EEA typically approach a broker in their head/lead location for their global insurance programmes (master framework agreements), which indicates that to some degree proximity to a relationship managing broker is important. On the other hand, such customers also require their broker to provide global services with respect to their overseas operations (often requiring their broker to match their own company's geographic footprint), which adds a global dimension to the market and hence the responding customers indicate that competition takes place at a global level as they require a global broker. This can be reflected in framework/global master service contracts concluded in the EEA, which are then supplemented by local contracts with other legal entities in the Parties' organisations if services are required in other jurisdictions.[318] The market investigation clearly indicates that global presence of a broker either by owned or partner network is very important for LMCs overall, and the need may be even more pertinent for specific risks (for example property & casualty or FinPro, see Section 6.2.2 and 6.2.3 respectively).

(299) From the supply-side, a majority of competitors responding to the market investigation indicated that competition for commercial risk brokerage services for

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315 Form CO, paragraphs 671 et seq.

316 LMCs are defined in contrast to medium- and small-sized customers (non-LMCs), i.e. those companies which do not meet the following criteria (i) a global turnover equal to or higher than EUR 1 billion and (ii) requiring insurance needs in more than five countries.

317 Replies to questionnaire Q1 to Customers and questionnaire Q5 to Competitors.

318 Reply to RFI 35.

LMCs takes place at a global level (discussed in more detail per risk type in the following Sections).[319] It appears that the global element is based on a number of factors, including customers' requirements for global coverage (broker network), as well as brokers' ability to place risks with carriers worldwide. One competitor explained the rationale behind the global market with some requirement for local expertise which are addressed by the global presence (network) of a broker: "*[t]o purchase at EEA or global levels, clients need access to risk advisory and broking capabilities that line up with their own risk-footprint, as well as broking capabilities in key insurance hubs. This is because brokers must secure capacity on a global basis to place client risks on the best terms possible. Not all insurers are willing or able to underwrite specialist risks, so specialist market knowledge is required in these local offices and global hubs to adequately service clients. The design and delivery of these global programmes must be compliant with local market requirements. Access to local expertise is necessary to meet such requirements, and this expertise may be scarce in certain markets. Without local expertise, it is difficult to guarantee that the complex needs of a large international client will be fully addressed consistently across their operations and that their policies will be legally enforceable. Local knowledge is best provided through an owned network, as such a network improves consistency and quality of service. Absent that, brokers/clients will use network arrangements with local brokers to plug gaps, though there is a risk that local brokers may not have significant expertise in the relevant risk area (particularly if it is a specialty risk)*."[320]

(300) Internal documents of the Parties appear to indicate that […][321] (Own emphasis added). This also indicates that the assessment may be different for different risks, which is also why the Commission investigated this question separately for each product market.

(301) The Commission also investigated whether any conditions from the supply-side exist that would support a narrower market than global. For example, the conditions for broker activities across the EEA are facilitated by the unified cross-EEA regulatory ('passporting') regime, which allows brokers registered in one Member State to provide services cross-border within the EEA.[322] Whilst this regulatory regime may suggest that conditions in the EEA would be homogenous, no other factors indicated that an EEA-wide geographic scope would be appropriate. The market investigation shows that this factor, while it facilitates EEA cross-border services, alone does not allow to determine that the market is EEA-wide; as majority of respondents to the market investigation for the risks where an LMC was found indicated a global market. Moreover, while the results of the Commission's market investigation indicate that the main international brokers organise their teams according to geography (per country), such teams can also be supplemented by specialist teams for respective risk-classes or tasks and/or have dedicated global coordination teams (see also Section 6.2.4.2).

[319] Replies to question 34 of questionnaire Q5 to Competitors.

[320] Reply to question 35 of questionnaire Q5 to Competitors (Document ID 5195).

[321] Reply to RFI 52, Annex 5.

[322] An EU domiciled authorised insurance broker can perform insurance distribution activities across the EEA under the EU's financial services passporting regime. Passporting is the provision of cross-border services on a freedom to provide services or a freedom of establishment basis. The broker must follow the notification procedure in the relevant member state. The broker's main regulator will remain his/her home state regulator, but the broker will be subject to local laws and regulations.

(302) The above factors, which indicate the global nature of LMCs' commercial risk brokerage needs form the backdrop against which the assessment of each of the relevant risk types must be assessed – i.e. property & casualty (Section 6.3.5.1); FinPro (6.3.5.2) and Cyber (6.3.5.3).

6.2.2. Property & Casualty

6.2.2.1. The Notifying Party's view

(303) The Notifying Party considers that the geographic scope for the distribution of property & casualty insurance, or any plausible sub-segmentation thereof, is at least EEA-wide in scope, because (i) brokers are active across the EEA. Their pitch to clients emphasizes their ability to service wherever clients are located and irrespective of physical footprint; (ii) brokers place risks outside the country in which the client is located; (iii) insurance carriers are active across the EEA. A third of property & casualty risks would be placed directly with insurers, many of whom are multinational companies active across the EEA; (iv) costs and regulatory barriers in the EEA are low. The distribution of insurance is a service industry that entails negligible transport or delivery costs.[323]

(304) In response to the Commission's 6(1)(c) Decision, and in the context of the national property & casualty risk insurance brokerage market for non-LMCs in the Netherlands, for which the Commission has raised concerns, the Notifying Party provides that (i) the 6(1)(c) Decision does not specify the proportion of small and mid-sized customers whose view in the market investigation was that competition would take place nationally; (ii) the Decision contains no reference to the views of small and mid-sized customers and competitors based in the Netherlands on the geographic market definition; (iii) brokers can and do place risks across the EEA and globally for customers, both via their own offices and through broker networks.[324]

6.2.2.2. The Commission's assessment

(305) In its past decisional practice, the Commission has not assessed the geographic scope of a potential market for brokerage services for property & casualty risks.

(306) Contrary to the Notifying Party, the Commission considers that a separate market for the provision of property & casualty risk brokerage services to LMCs distinct from other customers, exists for the reasons set out in explained Section 6.1.5.1.

(307) The ability of a broker to provide services across multiple jurisdictions is a key requirement for LMCs. In the phase 1 market investigation, a large majority of LMCs indicated that they typically source property & casualty risk brokerage services under one contract for all global business activities.[325] Consequently, a majority of LMCs consider that competition for property & casualty risk brokerage services takes place on a global level, and a further smaller share considers that competition is EEA-wide.[326] The phase 2 market investigation further confirmed and explained these findings. While LMCs often have more than one broker, they split services typically between risk types, or between different risks within one risk type. On the other hand, LMCs responding to the market investigation indicated that they do not tend to split their brokerage needs according to geographic areas, and do not follow a country-by-country approach when sourcing their property & casualty

323 Form CO, paragraphs 268 et seq.

324 Reply to the 6(1)(c) Decision, paragraphs 568 et seq.

325 Replies to question 54 of questionnaire Q1 to Customers.

326 Replies to question 53 of questionnaire Q1 to Customers.

needs.[327] In line with this, the large majority of property & casualty LMCs considers that it is important or very important that a broker has a physical presence / own office in each country where risks need to be insured.[328] In order to fulfil those requirements by LMCs, a broker would therefore need to be able to provide services on a worldwide level. The Commission concludes therefore that for LMCs the market for property & casualty brokerage services is global in geographic scope.

(308) At the same time, as detailed in Section 6.1.4, LMCs still source their brokerage services, including for their international programs, with brokers in relative proximity to their headquarters. In this context, customers note the benefits of having a broker with knowledge of the insurance market and applicable legislation in the customer's home market. Customers also value the broker's ability to provide services in the local language, join meetings physically or operate in the same time zone.[329] Consequently, while brokerage services are provided on a worldwide level, they also include also a local element important for defining the place of competition between brokers. This element is reflected in the product market definition, which limits the scope of the product market to LMCs that source brokerage services to a significant extent within the EEA.

(309) In contrast, the market for the provision of property & casualty brokerage services is narrower in geographic scope for non-LMCs, which are, by definition, typically active in a smaller set of countries. This assessment is clearly supported by the market investigation. Firstly, of all customers that did not fulfil the criteria of LMCs as defined for the purpose of this Decision, the majority of respondents consider that competition takes place on national level.[330] This is in stark contrast to LMCs, the majority of whom considers property & casualty brokerage competition to be global. Secondly, a majority of competitors confirm that competition in property & casualty brokerage services generally takes place at a national level,[331] except for LMCs, a majority of whom of competitors consider that competition is global.[332] One competitor explained in this context: *"Casualty and Property are core insurance for companies of all sizes. Customers will tend to engage locally or nationally where possible"*.[333] In the Commission's view, the fact that local brokers may, through their partner office, be able to place services also in jurisdictions outside of the country of the customer does not change the fact that competition for non-LMCs takes place on a national level. Business activities of non-LMCs are typically limited to one or a small number of jurisdictions.[334] Even where non-LMCs require cross-border capabilities of a broker, this need is significantly less important in the broker selection regardless of risk type compared to LMCs.[335] The Commission therefore considers that non-LMCs typically place a higher weight on the services that a broker can provide on national level.

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[327] Replies to questions 2.1, 12 and 17 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

[328] Replies to question 18 of questionnaire Q7 commercial risk brokerage Customers for property & casualty.

[329] Replies to question 53.1 of questionnaire Q1 to Customers.

[330] Replies to question 53 of questionnaire Q1 to Customers.

[331] Replies to question 33 of questionnaire Q5 to Competitors.

[332] Replies to question 34 of questionnaire Q5 to Competitors.

[333] Reply to question 33.1 of questionnaire Q5 to Competitors (Document ID 4838).

[334] Reply to question 1.2 and 21 of questionnaire Q1 to Customers.

[335] Reply to question 20 of questionnaire Q1 to Customers.

(310) Specifically with respect to the Netherlands, to address the arguments brought forward by the Notifying Party in the Replyto the 6(1)(c) Decision, the Commission notes that non-LMCs based in the Netherlands responding to the market investigation, in line with feedback from all other non-LMCs, consider that competition for property & casualty brokerage services takes place at a national level rather than at a EEA or a global level.[336] One non-LMC provided: *"We like to deal with local parties. They understand local culture."*[337] Similarly, one competitor based in the Netherlands explained that the property & casualty market overall would be national in scope, provided: *"We mainly service Dutch companies who are located in the Netherlands"*.[338] The Commission therefore considers that the geographic definition for non-LMCs is also applicable for the Netherlands.

(311) In light of these findings, the Commission therefore concludes that the geographic market for property & casualty risk for LMCs is global in scope. The Commission considers that the geographic market for property & casualty brokerage services for all customers except for LMCs is national in scope.

6.2.3. FinPro

6.2.3.1. The Notifying Party's view

(312) The Parties consider that the geographic market for the distribution of FinPro insurance or any plausible sub-segmentation thereof, is at least EEA-wide in scope, because (i) brokers are active across the EEA and place risk across the EEA and more widely, and their pitch to clients emphasises their ability to service clients cross-border in nature; (ii) brokers place risk outside the country in which the client is located, as many jurisdictions do not have sufficient insurance capital capacity to cover clients' risks; (iii) FinPro insurance brokerage services are purchased by clients active in multiple jurisdictions; (iv) insurance carriers are active across the EEA; (v) there are low costs and low regulatory barriers in the EEA and negligible transport or delivery costs; (vi) sub-brokerage agreements are also common in form of sub-brokerage agreements between firms from non-European countries partnering to serve a client's needs.[339]

6.2.3.2. The Commission's assessment

(313) In *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, the Commission left the geographic market for FinPro risk brokerage services open. However, the Commission noted that the market investigation revealed that most customers purchase FinPro risk brokerage at a national level, and that customers have a preference for brokers with a local presence. The Commission further considered that these findings would favour an interpretation of the geographic market being national in scope.[340]

(314) As described in Section 6.1.5.2 of this Decision, the Commission considers that it is appropriate to consider a separate market for LMCs distinct from overall FinPro risk brokerage. The Commission therefore assessed the geographic market definition for (i) commercial risk brokerage for FinPro for LMCs; and (ii) commercial risk brokerage for FinPro for all customers excluding LMCs.

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336 Replies to question 54 of questionnaire Q1 to Customers.

337 Reply to question 53.1 of questionnaire Q1 to Customers (Document ID 4947).

338 Replies to questions 33 and 33.1 of questionnaire Q5 to Competitors (Document ID 2514).

339 Form CO, paragraphs 671 et seq.

340 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 65.

(315) The market investigation shows that with respect to commercial risk brokerage for FinPro, LMCs value the ability of a broker to provide services cross-border and to match their geographic footprint.[341] LMCs rated global presence of a broker, defined as a network of offices in different regions of the world, as an important criterion for the selection of a broker for FinPro risk.[342] The market investigation further indicated that customers purchase brokerage services of one single broker to manage their FinPro risks globally via a master framework agreement.[343] Consequently, a majority of LMCs consider that competition for FinPro brokerage services takes place at a global level.[344] This view is supported by market perception of competing brokers. A majority of brokers consider that competition for LMCs takes place on a global level.[345]

(316) The Commission notes that local expertise of a FinPro broker is also of significant importance for LMCs. As explained in more detail in Section 5.3.5.2, LMCs expect their FinPro brokers to have specific expertise for each country in which risks have to be covered.[346] The Commission considers this not to be an indication that competition for LMCs would take place at national level, but rather as a requirement that brokers have sufficient geographic presence to serve these clients' needs across multiple jurisdictions through a broker network.

(317) For all customers excluding LMCs (non-LMCs as defined in Section 6.1.5.3 above), the Commission considers the market definition to be narrower in geographic scope. The market investigation indicates that a global presence is significantly less important for smaller clients compared to LMCs.[347] However, these customers are by definition active in a smaller set of countries, and potentially only in one domestic market. Consequently, a significantly higher share of smaller customers, compared to LMCs, consider that competition between FinPro brokers takes place at a national level.[348] Qualitative feedback from smaller customers indicated that they consider proximity to the broker and local language requirements as important.[349] One competitor explained that geographic needs are different depending on customer size and complexity: "*[i]n FinPro and Cyber, policies for large multinational clients are global in nature and therefore typically cover a client's global exposure. As such, competition for such clients will be regional or global, depending on the client's footprint (it can also be national for smaller clients)*."[350] This is supported by the fact that the competitive landscape as well as the market position of the Parties differ significantly between different countries, as the market share estimates provided by

341 Replies to questions 4 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
342 Replies to questions 9 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
343 Replies to question 152 of questionnaire Q1 to Customers.
344 Replies to question 151 of questionnaire Q1 to Customers.
345 Replies to question 34 of questionnaire Q5 to Competitors.
346 Replies to question 153 of questionnaire Q1 to Customers.
347 Replies to question 153 of questionnaire Q1 to Customers.
348 Replies to question 151 of questionnaire Q1 to Customers; the Commission notes, however, that still a significant share of smaller customers consider competition between FinPro brokers to be global.
349 For example, replies to questionnaire 11 to commercial risk brokerage commercial risk brokerage services for Finpro and Cyber risks in Spain. Commission notes that a number of smaller customers responding to the questionnaires responded in their own language, noting that they do not have English language capabilities.
350 Replies to question 34 of questionnaire Q5 to Competitors (Document ID 5195).

the Notifying Party shows.[351] This is further supported by the internal organisational structures and indicated by internal documents of the Parties.[352]

(318) In light of these findings, the Commission therefore concludes that the geographic market for commercial risk brokerage for FinPro to LMCs is global in scope. The Commission considers that the geographic market for commercial risk brokerage for FinPro to non-LMCs is national in scope.

6.2.4. Cyber

6.2.4.1. The Notifying Party's view

(319) The Notifying Party considers the geographic market for brokerage services of cyber risks to be at least EEA-wide in scope, given that cyber risk and policies are, by their nature, inherently cross-border as cyber security breaches are global in nature. Because cyber risk can materialise in any part of a client's operations, clients typically seek coverage for cyber risk for all countries where they have operations and tend to buy a single policy with cross-border coverage.[353]

(320) The Notifying Party considers cyber risk brokerage to form part of the FinPro segment, which it considers to be at least EEA-wide in geographic scope, because (i) brokers are active across the EEA; (ii) brokers place risk outside the Member State in which the client is located; (iii) FinPro insurance brokerage services are purchased by clients active in multiple jurisdictions; (iv) insurance carriers are active across the EEA; (v) there are low costs and low regulatory barriers in the EEA; (iv) sub-brokerage agreements are also common in form of sub-brokerage agreements.[354]

6.2.4.2. The Commission's assessment

(321) In previous decisions, the Commission has considered cyber risk potentially as part of FinPro risk and the Commission left the geographic market for FinPro risk brokerage services open.[355]

(322) As described in Section 6.1.5.3 of this Decision, the Commission considers that it is appropriate to consider a separate market for LMCs distinct from overall cyber risk brokerage. The Commission therefore assessed the geographic market definition for (i) commercial risk brokerage for cyber for LMCs; and (ii) commercial risk brokerage for cyber for all customers excluding LMCs.

(323) The majority of LMCs that responded to the market investigation consider that competition for cyber brokerage services takes place on a global level.[356] One customer explained, "*[t]he risk exposure and cyber/ data regulation are evolving in most of the countries. The use of a fully own integrated broker's network is a "must have" in order to have access to the same quality of expertise in all the countries within or outside of European Union*."[357] This view is supported competitors' responses to the market investigation, a majority of whom consider that competition for LMCs for cyber risk takes place on a global level.[358]

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351 Form CO, annex 6A.18.
352 Reply to RFI 16 (Organisation charts).
353 Form CO, paragraph 673.
354 Form CO, paragraphs 671 et seq.
355 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 65.
356 Replies to question 166 of questionnaire Q1 to Customers.
357 Replies to question 166 of questionnaire Q1 to Customers (Document ID 2808).
358 Replies to question 34 of questionnaire Q5 to Competitors.

(324) For non-LMCs, the Commission considers that the market definition is narrower in geographic scope. The market investigation indicates that a global presence is significantly less important for smaller clients compared to LMCs. However, these customers are by definition active in a smaller set of countries, and potentially only in one domestic market. Consequently, a significantly higher share of smaller customers, compared to LMCs, consider that competition between cyber brokers takes place at a national level.[359] Qualitative feedback from smaller customers indicated that they consider proximity to the broker and local language requirements as important.[360] This is supported by the fact that the competitive landscape as well as the market position of the Parties differ significantly between different countries, as the market share estimates provided by the Notifying Party shows.[361] This is further supported by the internal organisational structures and indicated by internal documents of the Parties.[362]

(325) In light of these findings, the Commission therefore concludes that the geographic market for commercial risk brokerage for cyber to LMCs is global in scope. The Commission considers that the geographic market for commercial risk brokerage for cyber to non-LMCs national in scope.

6.2.5. Overall markets

(326) The Commission assesses below the geographic scope of those markets for which no distinct product market for LMCs was defined.

6.2.6. Credit & political risk

6.2.6.1. The Notifying Party's view

(327) The Notifying Party considers that the geographic market for the distribution of credit & political risk insurance, or any plausible sub-segmentation thereof, is at least EEA-wide in scope, for the following reasons.[363]

(328) Firstly, according to the Notifying Party, brokers are active across the EEA. The Parties' main competitors in this segment, as listed in the Form CO,[364] place risk across the EEA and more widely, both via their own offices in different countries and through their membership of international broker networks.[365]

(329) Secondly, the Notifying Party further explains, that brokers can place risk outside the Member State in which the client is located. Customers are not restricted to placing risk through brokers active in the same country in which they are domiciled. Customers place risk outside of the Member State in which they are located for reasons of lower price, increased choice and capacity available by doing so.[366]

(330) Thirdly, the Notifying Party is of the opinion that insurance carriers are active across the EEA. A significant portion of risk in this segment (estimated by the Parties to be

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359 Replies to question 166 of questionnaire Q1 to Customers; the Commission notes, however, that still a significant share of smaller customers consider competition between FinPro brokers to be global.

360 For example, replies to questionnaire 11 to commercial risk brokerage commercial risk brokerage services for Finpro and Cyber risks in Spain. Commission notes that a number of smaller customers responding to the questionnaires responded in their own language, noting that they do not have English language capabilities.

361 Form CO, annex 6A.18.

362 Reply to RFI 16, (Organisation charts).

363 Form CO, paragraph 499.

364 Form CO, paragraph 470 et seq.

365 Form CO, paragraph 499.

366 Form CO, paragraph 499.

around [a significant percentage]) is placed directly with insurers, many of whom are multinational companies active across the EEA with offices located in multiple Member States.[367] In this context the Notifying Party also explains, that the digitalisation of the insurance sector – which means that risk can increasingly be evaluated and placed remotely e.g. on digital platforms – only serves to underscore the cross-border nature of the provision of insurance coverage by insurance carriers.

(331) Finally, the Notifying Party argues that there are low costs and low regulatory barriers in the EEA. The distribution of insurance is, by its very nature, a service industry which entails negligible transport or delivery costs. There are also no material variations in the applicable regulatory regimes for the brokerage or provision of cover for credit & political risk across EEA countries, or any other regulatory barriers to the cross-border provision of brokerage services.[368]

6.2.6.2. The Commission's assessment

(332) The Commission has not previously considered the existence or the geographic scope of a market for broker services associated with credit & political risk.

(333) Concerning the demand side, the results of the phase 1 market investigation revealed that the majority of customers purchase credit & political risk brokerage services at a global level.[369] The same holds true for the four credit & political risk segments.[370] Customers state that they source brokerage services according to their global needs that stem from their business operations. One customer replied that they have "a global presence, as such the risks must be covered globally" and another customer stated that they "*supply globally to customers and require global insurance, of trade credit risks.*"[371]

(334) On the supply side, competitors' replies in the phase 1 market investigation revealed a mixed picture, with half of respondents considering that competition takes place at a global or EEA-wide level and half at a national level.[372] However, the market investigation's qualitative replies further support a global or EEA-wide market.[373] One competitor replied that "*clients usually require international presence to handle their request in different countries, but not necessarily worldwide*"[374] and another one states that "*political risk is a niche specialty product. Insurers and available capacity are concentrated in key specialty markets. Brokerage professionals are concentrated near insurers. Clients therefore tend to engage with brokerage hubs on a global exposure basis*."[375] A third one replied that "*in credit and political risk [...], competition takes place across all three levels, aligned to the needs of national, regional, and global clients*."[376] Additionally, the majority of the respondents took the view, that it would make no difference, if a market for credit & political risk brokerage would be sub-segmented into trade credit, structured credit / political risk, political violence / terrorism and, kidnap and ransom.[377] When explicitly asked for

367 Form CO, paragraph 499.
368 Form CO, paragraph 499.
369 Replies to question 183 of questionnaire Q1 to Customers.
370 Replies to question 183 of questionnaire Q1 to Customers.
371 Replies to question 183.1 of questionnaire Q1 to Customers.
372 Replies to question 33 of questionnaire Q5 to Competitors.
373 Replies to question 33.1 of questionnaire Q5 to Competitors.
374 Replies to question 33.1 of questionnaire Q5 to Competitors.
375 Replies to question 33.1 of questionnaire Q5 to Competitors.
376 Replies to question 33.1 of questionnaire Q5 to Competitors.
377 Replies to question 33.2 of questionnaire Q5 to Competitors.

geographic barriers, some competitors pointed out, that with in the EEA there are no barriers to provide services. One explained that "*within the EEU, and under FoS*[378] *there shouldn't be barriers. (...) Carriers outside the EEA would have to consider German supervisory law and insurance tax regulations*", and another one stated that "*regulatory requirements prevent clients from buying solutions from outside EU*".[379] This is in line with the Notifying Party's view that there are low regulatory barriers in the EEA.

(335) In view of the above and the available evidence, the Commission considers that, for the purposes of this Decision, the relevant geographic market for the provision of credit & political risk insurance brokerage services is at least EEA-wide in scope.

6.2.7. Sureties

6.2.7.1. The Notifying Party's view

(336) The Notifying Party considers that the relevant geographic market definition is at least EEA-wide in scope and is of the opinion, that the Transaction does not give rise to any unilateral effects even if, on a hypothetical basis, the Commission were to consider the geographic market to be national in scope. .[380]

6.2.7.2. The Commission's assessment

(337) The Commission has not previously considered a separate segment for sureties in the distribution of commercial non-life insurance. Accordingly, there is no directly applicable prior decisional practice available.

(338) The results of the phase 1 market investigation provided strong indications that the appropriate geographic scope for the market for sureties is national. The overwhelming majority of competitors indicated that the geographic level at which competition takes place for broker services for sureties is national,[381] (i.e. that customers prefer to contract with brokers that have an office in the same country and only for this country). Among other reasons, competitors explained that customers with operations limited to a certain jurisdiction will only require respective brokerage services and prefer local solutions. Similarly, a clear majority of customers also states that the geographic scope of this market is national.[382] Customers cite specific local knowledge and national regulatory and legal requirements as reasons for the market scope being national.[383] One customer explained that "*this has to do with communication, short lines, local legal rules and laws*."[384] This is in line with market share levels on a national level, that differ significantly across the EEA.[385] However, a siginifcant minority of customers stated that the geographic scope of this market is global. This in particular holds true for responding Spanish customers in the phase 1 market investigation, among which almost half supported this view.

(339) In view of the above, the Commission considers that, for the purposes of this Decision, there is strong evidence that the relevant geographic market for the provision brokerage services for sureties is national in scope but leaves the

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378 Freedom of Services.

379 Replies to question 37 of questionnaire Q5 to Competitors.

380 Form CO, paragraph 855.

381 Replies to question 14.4 of questionnaire Q5 to Competitors.

382 Replies to question 197 of questionnaire Q1 to Customers.

383 Replies to question 197.1 of questionnaire Q1 to Customers.

384 Replies to question 14.4.1 of questionnaire Q5 to Competitors.

385 Form CO, paragraph 850.

geographic market definition open, as no competitive concerns exist under any plausible geographic market definition.

6.2.8. Energy

6.2.8.1. The Notifying Party's view

(340) The Notifying Party does not provide a view on whether the appropriate geographic market definition is EEA-wide or global, but provides an assessment for both geographic market definitions. Furthermore, the Notifying Party submits that in its view, the Transaction does not give rise to competitive concerns under any plausible market definition.[386]

6.2.8.2. The Commission's assessment

(341) In a recent decision, the Commission considered that the market for commercial risk brokerage for energy risk is at least EEA-wide in scope.[387]

(342) The Commission's market investigation gave indications that the appropriate geographic market definition for commercial risk brokerage for energy risks is likely global in scope. The majority of customers that responded to the Commission's market investigation indicated that competition takes place on a global level. Competitors that responded to the Commission's market investigation also most commonly considered that competition takes place at global level, followed by it taking place on EEA level.[388]

(343) However, ultimately it can be left open whether the appropriate geographic market definition is global or EEA-wide for the purpose of this assessment, as no competitive concerns exist for either geographic market definition; therefore the Commission considers the appropriate geographic market definition is at least EEA-wide.

6.2.9. Marine

6.2.9.1. The Notifying Party's view

(344) The Notifying Party does not put forward any views as to the geographic scope of the market for the provision of marine risk brokerage services, considering that, in any event, the Transaction would not give rise to competition concerns on any plausible market definition.[389]

6.2.9.2. The Commission's assessment

(345) The Commission has not previously assessed the geographic scope of a potential market for the provision of marine risk insurance brokerage services for LMCs.

(346) The results of the market investigation provided clear indications that the appropriate geographic scope for the market for LMCs is at least EEA-wide. The vast majority of LMCs indicated that they purchase brokerage services to cover their operations at a

386 Form CO, paragraph 589.

387 M.9196 – Marsh & McLennan Companies / Jardine Lloyd Thompson Group, paragraph 59.

388 Replies to question 129 of questionnaire Q1 Customers and question 33 of questionnaire Q5 to Competitors.

389 Form CO, paragraphs 761 to 763. The Commission notes that the Notifying Party did not discuss this point either in the reply to the Article 6(1)(c) Decision.

global level.[390] Similarly, the majority of competitors stated that they provided their services at an EEA, or global level.[391]

(347) In view of the available evidence, and the lack of competition concern under any plausible geographic scope, the Commission considers that the relevant geographic market for the provision marine risk insurance brokerage services to LMCs is at least EEA wide.[392]

6.2.10. Aircraft operators

6.2.10.1. The Notifying Party's view

(348) The Notifying Party does not provide a view on whether the appropriate geographic market definition is EEA-wide or global, but provides an assessment for both geographic market definitions. Furthermore, the Notifying Party submits that in its view, the Transaction does not give rise to competitive concerns for any plausible market definition.[393]

6.2.10.2. The Commission's assessment

(349) In a recent decision, the Commission considered that the market for commercial risk brokerage for aircraft operator risk is at least EEA-wide in scope.[394]

(350) The Commission's market investigation gave indications that the appropriate geographic market definition for commercial risk brokerage for aircraft operator risks is likely global in scope. The large majority of customers that responded to the Commission's market investigation indicated that competition takes place on a global level.[395]

(351) However, ultimately it can be left open whether the appropriate geographic market definition is global or EEA-wide for the purpose of this assessment, as no competitive concerns exist for either geographic market definition; therefore the Commission considers the appropriate geographic market definition is at least EEA-wide.

6.2.11. Aerospace manufacturing

6.2.11.1. The Notifying Party's view

(352) Initially, the Notifying Party submitted that the exact geographic market definition can be left open between EEA-wide and global, as the Transaction does not raise concerns under either geographic market definition.[396]

(353) In its Reply to the 6(1)(c) Decision, the Notifying Party submits that, on balance, the market should be assessed at global level. The Notifying Party submits that the evidence from the Commission's phase 1 market investigation gives sufficient indication to conclude that the appropriate geographic market definition is global.[397]

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390 Replies to question 115 of questionnaire Q1 to Customers.

391 Replies to questions 34 and 35 of questionnaire Q5 to Competitors.

392 As mentioned above, the combined market shares for the supply of commercial risk brokerage services for marine, and any of narrower plausible segmentation, do not give rise to any affected markets, irrespective of whether the geographic scope is EEA or worldwide. The market for the commercial broking of marine-related risks will therefore not be further discussed in this Decision.

393 Form CO, paragraph 354.

394 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 32.

395 Replies to question 78 of questionnaire Q1 to Customers.

396 Form CO, paragraph 422.

397 Reply to the 6(1)(c) Decision, paragraphs 622-633.

6.2.11.2. The Commission's assessment

(354) In a recent decision, the Commission considered that the market for commercial risk brokerage for aerospace manufacturing risk is at least EEA-wide in scope.[398]

(355) The Commission's market investigation indicated that the appropriate geographic market definition for commercial risk brokerage for aerospace manufacturing is most likely global in scope.

(356) The majority of customers that responded to the market investigation, indicated that they consider the market to be global. Customers highlighted the large placements that characterise aerospace manufacturing risk, and the need for brokers to be able to address global insurance capacity.[399] In its phase 2 market investigation the Commission tested a number of characteristics that were raised in the responses to the phase 1 market investigation that may indicate a market narrower than global; for example, a local language requirement for a broker and local regulatory knowledge (specifically European Union Aviation Security Agency (EASA) in the EEA). Only a small minority of customers indicated that such factors played a role in their selection of a broker.[400] The vast majority of competitors indicate that competition for aerospace manufacturing commercial risk brokerage services is at a global level.[401]

(357) In light of these findings, for the purposes of this Decision, the Commission considers that the geographic market definition for commercial risk brokerage services for aerospace manufacturing risks is global.

6.2.12. Space

6.2.12.1. The Notifying Party's view

(358) The Notifying Party submits that the market for commercial risk brokerage for space risk should be assessed as global.[402] The Notifying Party submits that on balance, the evidence from the response to the Commission's phase 1 market investigation implies a global segment. Notifying Party notes that [a significant percentage] of the customers purchase broker services to cover their operations at a global level regardless of where the risks should be insured. Competitors also consider that competition takes place at a global level.

6.2.12.2. The Commission's assessment

(359) In a recent decision, the Commission considered that the market for commercial risk brokerage for space risk is at least EEA-wide in scope.[403]

(360) The Commission's market investigation, which was extensive on this specific point in the phase 2, indicates that the appropriate geographic market definition for commercial risk brokerage for space is most likely global in scope.

(361) The majority of customers that responded to the market investigation, indicated that they consider the market to be global. It is, however, noted that majority of responding customers did not use a broker located outside of the EEA.[404] In phase 2

398 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 42.
399 Replies to question 6 of questionnaire Q15 to aerospace manufacturing and space Customers.
400 Replies to question 6.2 of questionnaire Q15 to aerospace manufacturing and space Customers.
401 Replies to question 48 of questionnaire Q16 to Competitors.
402 Reply to the 6(1)(c) Decision, paragraphs 670-671.
403 M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraph 51.
404 Replies to question 34 of questionnaire Q15 to aerospace manufacturing and space Customers.

market investigation the Commission tested a number of characteristics that were raised in the responses to the phase 1 questionnaires that would speak in favour of a narrower market; for example, a local language requirement for a broker and local regulatory knowledge (specifically the knowledge of the European Union Aviation Security Agency (EASA) and applicable regulatory regime in the EEA).[405] Only a small minority of customers indicated that such factors played a role in their selection of a broker. The majority of customers noted that space risks are global in nature because risks associated with space insurance are not restricted by geography. Specifically with respect to satellite launches, the majority of customers indicated that launches can take place globally. The same applies for in-orbit damage risks (including third-party damage), which are also not restricted by geography.[406] Moreover, customers also indicate that space risks require access to global insurance and capital markets because of the size and complexity of the risks involved.[407] For example, one customer stated: *"[l]arge placements require to secure capacity from insurers across the globe; space is an international market by essence."*[408] The vast majority of competitors say that competition for space commercial risk brokerage services takes place at a global level.[409]

(362) In light of these findings and in accordance with the Parties' view, for the purposes of this Decision, the Commission considers that the geographic market definition for commercial risk brokerage for space to all customers is global.

6.2.13. Potential market for captive-related services

6.2.13.1. The Notifying Party's view

(363) The Notifying Party considers the potential market for captive-related services to be global in scope given that captives can be set up anywhere in the world by companies domiciled globally.[410]

(364) According to the Notifying Party, customers can and do take the decision on where to domicile a captive largely based on regulatory conditions, in addition to other considerations such as tax benefits, and can change domicile to any country which offers a more advantageous environment.[411]

6.2.13.2. The Commission's assessment

(365) As stated above in Section 6.1.6.2, the Commission has not defined nor assessed the geographic scope for a potential market for the supply of captive management services.

(366) In the course of the market investigation respondents indicated that these services are sought alongside other risk advisory and brokerage services, so that they would typically be sourced in a similar fashion as commercial risk insurance brokerage services.[412] It follows from this that the geographic scope for this possible market may be considered as, at least EEA or global. However, ultimately it can be left open

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405 Replies to questions 34(2) and (3) of questionnaire Q15 to aerospace manufacturing and space Customers.
406 Replies to question 34 of questionnaire Q15 to aerospace manufacturing and space Customers.
407 Replies to questionnaire Q15 to aerospace manufacturing and space Customers.
408 Reply to questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 8150).
409 Replies to question 52 of questionnaire Q16 to Competitors.
410 Form CO, paragraph 875.
411 Form CO, paragraph 875.
412 Replies to questions 12 to 14 of questionnaire Q1 to Customers.

whether the appropriate geographic market definition is global or at least EEA-wide for the purpose of this assessment, as the Transaction is not likely to give rise to any competitive concerns under any geographic market definition.

6.3. Competitive assessment: non-coordinated effects

(367) On the basis of the product and geographic markets defined above in Sections 6.1 and 6.2, as well as the information provided by the Notifying Party, the Commission notes that the Transaction results in a number of horizontally affected markets.[413] A detailed list of affected markets is set out below.[414]

Table 1: Overview of the affected markets for commercial risk brokerage, per risk type

Risk type	Product market	Geographic scope
Property & Casualty	*LMCs*	Global[415]
	Non-LMCs	Denmark
	Non-LMCs	Netherlands
	Non-LMCs	Norway
	Non-LMCs	Poland
	Non-LMCs	Spain
FinPro	*LMCs*	Global
	Non-LMCs	Denmark
	Non-LMCs	Italy
	Non-LMCs	The Netherlands
	Non-LMCs	Spain
	Non-LMCs	Sweden
Cyber	*LMCs*	Global
	Non-LMCs	Denmark
	Non-LMCs	Germany
	Non-LMCs	Ireland
	Non-LMCs	Italy
	Non-LMCs	Luxembourg
	Non-LMCs	The Netherlands
	Non-LMCs	Spain
	Non-LMCs	Sweden

413 The Commission further notes that the Transaction also gives rise to a number of overlaps in several markets for the supply of commercial risk broking services, without giving rise to affected markets. As such, in line with the Commission's decisional practice, these markets will not be further discussed in this Decision.

414 Affected markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic markets, on the basis of which in the EEA territory (a) two or more of the parties to the concentration are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20 % or more. These are horizontal relationships; (b) one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares at either level is 30 % or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration. These are vertical relationships. Commission Regulation (EC) No 802/2004 of 21. April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, Section 6.3.

415 For completeness, the Commission considers that putting a focus on companies headquartered in the EEA and/or primarily sourcing in this geography, rather than customers of other jurisdiction sourcing in the EEA in an ancillary manner, is the appropriate scope for the purposes of the assessment of the competitive landscape. As detailed below in Section 6.3.1, the Commission considers a global scope for the sourcing of brokerage services by LMCs.

Risk type	Product market	Geographic scope
	Non-LMCs	UK
Credit & Political	*All customers*	At least EEA/Spain/Sweden
Sureties	*All customers*	At least EEA
Energy	*All customers*	At least EEA
Aircraft operators	*All customers*	At least EEA
Aerospace manufacturing	*All customers*	Global
Space	*All customers*	Global
Potential market for captive-related services	*All customers*	Global

Source: Form CO, paragraph 171.

(368) The Commission has therefore considered whether the Transaction would significantly impede effective competition due to non-coordinated effects on each of the affected markets.

(369) In view of the results of the market investigation, as regards any potential coordinated effects, the Commission considers that the market structure (i.e. multiple and diverse types of competitors), largely non-homogenous products and intransparent pricing (complex structure of brokers fees and commission) does not speak in favour of an increased probability of anti-competitive coordination post-Transaction. As such, the Commission does not consider it necessary to elaborate further on coordinated effects for the purposes of this Decision present assessment.

6.3.1. Introduction to the commercial risk insurance brokerage industry and trends

(370) The commercial risk insurance industry and the provision of commercial risk brokerage services are characterised by a series of noteworthy trends, notably (i) an increase in risks (in volume and in value) to be insured in general and in specific areas, for example in connection with climate change (e.g. catastrophe risks) and/or instability in some regions of the world; (ii) a 'hardening' of the insurance market, i.e. a lack of insurance capacity in certain specific risk areas leading to insurers being more reluctant to accept risks, and insurance coverage to be more expensive; and (iii) a continuous consolidation of the brokerage market. Furthermore, data and analytics capabilities are becoming increasingly important (as explained in Section 6.3.4.2).

(371) In this context, it should be noted that in the EEA the competitive landscape is diverse, with a great number of disparities between the different players. Taking just one example, as at 31 December 2020, there were 350 brokers at the Lloyd's of London market alone.[416] In recent decades, through waves of market concentration, very large global players have emerged. Aon and WTW are two of the three largest insurance brokers worldwide. Together with Marsh & McLennan Companies ("Marsh"), they are often referred to as the Big Three in the insurance sector broadly, and specifically with respect to commercial risk and reinsurance brokerage.

[416] Lloyd's of London is a specialised insurance market which bring together brokers and insurance companies. The business written at Lloyd's is brought to specialist syndicates, who price and underwrite risk, via brokers and cover holders. Much of the capital available at Lloyd's is provided on a subscription basis – where Lloyd's underwriters join together as syndicates and where syndicates join together to underwrite risks and programmes. See : https://www.lloyds.com/about-lloyds/what-is-lloyds/lloyds-market

(372) Other insurance brokers that are smaller than the Big Three, such as Gallagher, Lockton, and Howden, are often referred to in the industry as Tier two brokers. In addition, there is a range of regional and specialised brokers, such as BGC, Funk, Siaci or the recent specialist entrants such as McGill & Partners ("McGill") or Piiq.[417]

(373) By way of introduction of its competitive assessment, the Commission provides below a brief description of the different types of brokers and players active in commercial insurance brokerage.[418]

6.3.1.1. The Big Three

(374) Aon is one of the Big Three brokerage service providers with an extensive owned network, and significant market shares across the different risk types. Aon has high global commercial risk revenues and in particular is a strong provider of commercial risk services for the LMCs. Aon has approximately […] brokers advising clients in commercial risk insurance. Aon has a strong presence in the EEA, generating [a significant percentage] of its revenues in the EMEA.[419] With respect to Aon's geographic reach, it has one of the widest international networks of owned offices and partner offices (see Section 6.3.4.1 and Table 6).

(375) Marsh is a global professional services firm offering clients advice and solutions in the areas of risk, strategy and people. Marsh is headquartered in New York, USA and is listed on the New York, Chicago and London Stock Exchanges. Marsh has approximately 40,000 employees advising (commercial and individual) clients in more than 130 countries.[420] In terms of geographic reach, Marsh has one of the biggest networks of owned offices, only comparable to the Parties. This is further accompanied by a large partner network (see Section 6.3.4.1 and Table 6).

(376) WTW, the smallest among the Big Three, was created through the combination of the Willis Group Holdings plc and Towers Watson in 2016 aimed at enabling the newly created entity to compete with Aon and Marsh. WTW has approximately […] brokers. At the time, Willis' CFO repeatedly made public statements indicating that the merger between Willis Group and Towers Watson had created a newly-formed "third option" for large corporate risk brokerage while Willis alone was not able to compete against Aon and Marsh.[421] WTW thus became one of the Big Three brokerage service providers. WTW has high global commercial risk brokerage revenues and has developed a strong business strategy to service LMCs.

(377) The Big Three brokers are able to service customers, including LMCs, across all risk types, as well as providing services that are ancillary to insurance brokerage, relating to risk management as a whole.

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417 Piiq Risk Partners is a start-up aerospace and space broker launched January 2020.

418 For the purposes of the following descriptions, the Commission used information from various sources, including from the Notifying Party, publicly available information, as well as feedback received from market participants in the course of the market investigation.

419 Aon internal documents (Document ID 10260-54050).

420 Additional information about MMC is available on its website at www.mmc.com.

421 The Capital Forum, vol8 No.372, 26 October 2020 (Document ID 6637).

6.3.1.2. Tier two brokers

(378) The Notifying Party further provides examples of brokers which it considers are able to compete with the Parties in addition to Marsh. In this respect, the Notifying Party names Gallagher, Lockton and Howden as global brokers.[422]

(379) Among the globally active Tier two brokers, Gallagher appears as the largest global insurance broker taking into account a number of measures. Gallagher is headquartered in the USA and is publicly listed in the New York Stock Exchange. It has 30,000 employees and brokerage offices in multiple countries, with additional reach of Gallagher Global Network (GGN), comprised of owned offices and partner brokers (described in more detail in Section 6.3.4 and Table 6).[423] Gallagher positions itself as the fourth largest global insurance broker and states in its public accounts: "*[s]ince our founding in 1927, we have grown from a one-person insurance agency to the world's fourth largest insurance broker/risk manager based on revenues,*[424] *and one of the world's largest property/casualty third party claims administrators*[425]*.*"[426]

(380) Lockton is a global insurance brokerage firm with over 8,000 associates and international presence. [427] In addition to a network of owned offices, Lockton maintains the Lockton Global network, comprised of owned offices and partner brokers across the globe (described in more detail in Section 6.3.4 and Table 6).[428] In response to the market investigation, Lockton describes itself as a general non-life insurance brokerage company providing services to corporate clients in various territories around the world, including Europe, the Americas, Middle East and North Africa, Asia and the Pacific.[429]

(381) Howden specialises in retail, wholesale and specialty insurance and reinsurance brokerage and is located in the UK, Latin America, Europe, the Middle East, Asia, the Asia Pacific and the US.[430] The Notifying Party points out that this broker has over 5,000 employees across multiple countries, including over 10 in the EEA countries and the UK. Moreover, Howden maintains the Howden One network, comprised of owned offices and partner brokers (described in more detail in Section 6.3.4 and Table 6).[431]

6.3.1.3. Regional brokers

(382) In addition to these brokers, the Notifying Party provides examples of strong regional brokers who partner with other international firms. In this respect, the Notifying Party names, as examples, Diot, Funk, Siaci and Söderberg & Partners.[432]

(383) Diot is a French regional broker with under 1,500 employees and international presence. It is described by the Notifying Party as being active in 135 countries

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422 Reply to the 6(1)(c) Decision, paragraph 224 et seq.
423 Reply to the 6(1)(c) Decision, paragraph 224-226.
424 According to Business Insurance magazine's July 2019 edition referenced in Arthur J. Gallagher & Co. Form 10(K) SEC Filing.
425 According to Business Insurance magazine's May 2019 edition referenced in Arthur J. Gallagher & Co. Form 10(K) SEC Filing.
426 Arthur J. Gallagher & Co. Form 10(K) SEC Filing.
427 Lockton's website: https://global.lockton.com/our-story. Last accessed on 12.06.021, 18:06.
428 Reply to the 6(1)(c) Decision, paragraph 227-228.
429 Reply to question 1 of questionnaire Q5 to competitors.
430 Reply to question 1 of questionnaire Q5 to competitors.
431 Reply to the 6(1)(c) Decision, paragraph 229-232.
432 Reply to the 6(1)(c) Decision, paragraph 233 et seq.

worldwide, including multiple EEA countries, as a partner of the Lockton Global network and a founding member of the EOS RISQ network.

(384) Funk (Funk Group) is established in Hamburg, Germany and describes itself as the biggest independent risk consultant and insurance broker in the entire German-speaking region. Internationally it operates via the Funk Alliance, the company's own international network. The Notifying Party describes Funk as an insurance broker active in 35 countries, including multiple Member States, and its own Funk Alliance partner network, which covers 100 countries. Moreover, Funk is a member of the Lockton Global Network.

(385) Siaci (the Siaci Saint Honoré group) is headquartered in France and describes itself as one of the leading players in protection against industrial risks, international mobility, employee benefits, HR strategy and total rewards. It now has more than 3,000 employees worldwide. Globally it operates via Siaci Global Partners.[433] The Notifying Party submits that Siaci broker established in 42 countries worldwide via its own subsidiaries, and represented in 170 via its correspondent network. Furthermore, Siaci is a partner of Gallagher's GGN network, which allows it to access Gallagher owned offices and other partner brokers across 150 countries.

(386) Söderberg & Partners is headquartered in Sweden and is described as a broker active in seven countries, including Member States, with ambitions to expand internationally. Furthermore, Söderberg & Partners is part of the Lockton Global Network, as well as a member of two of the world's largest networks of insurance brokers – Assurex Global and ICBA, which makes the firm part of a network of 500 offices across 80 countries worldwide.

6.3.1.4. Specialised brokers

(387) As a third group of competitors, the Notifying Party refers to specialised brokers and names McGill and BGC in that context.[434]

(388) In its response to the market investigation McGill explained that it is positioning itself as a specialist boutique insurance placement broker. McGill's strategy is to build a company that is practitioner led with a core focus on specific specialties where it has deep technical knowledge and expertise. McGill states that it is active in (i) aviation and aerospace; (ii) energy and power; (iii) complex property and casualty (including construction); (iv) financial and special risks; (v) marine and cargo and (vi) structured solutions, as well as (vii) reinsurance.[435] McGill explains that it has global aspirations, but the main territories for its client portfolio are the UK, mainland Europe and North America. The Notifying Party describes McGill as a private equity backed fast-growing global insurance brokerage firm with ambitious expansion plans and recent growth history.

(389) BGC is characterised as the parent entity of a significant number of global insurance brokerage firms that is active in many jurisdictions and expanded rapidly in recent years. The acquisition of teams of brokers from competitors active in aviation and aerospace resulted in the subsequent re-branding of its global aircraft operators and aerospace manufacturing practice as BGC Piiq in January 2020.

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433 Siaci website: https://www.s2hgroup.com/en/about-us/our-profile. Last accessed on 12.06.021, 18:06.

434 Reply to the 6(1)(c) Decision, paragraph 244 et seq.

435 Reply to question 1 of questionnaire Q5 to Competitors.

(390) As explained further in the competitive assessment (Section 6.3.5), all these brokers provide different degree of competitive pressure, if any, to the Parties, depending on specific affected markets.

6.3.2. Market structure for commercial risk brokerage services to large multinational customers

(391) This Section will discuss the market structure for commercial risk brokerage services to LMCs for those risk types where the Commission found that such a product market is appropriate, namely property & casualty, FinPro and cyber.

(392) During pre-notification and phase 1 of the procedure, the Notifying Party was not able to provide market share estimates for these markets. Therefore, the Commission undertook a market reconstruction in phase 1, which was further refined in phase 2. This Section will present the Commission's market reconstruction. It will also discuss the Notifying Party's critiques of the Commission's market reconstruction, and demonstrate why the Commission's market reconstruction is a reliable representation of the market structure.

(393) In phase 1, in lieu of market shares, the Notifying Party submitted a wallet analysis of large EEA companies, which in its view demonstrates that the Parties' market shares for commercial risk brokerage for LMCs are modest. This Section will demonstrate that in fact the analysis is in line with the Commission's market reconstruction, and confirms that the Parties' market shares for commercial risk brokerage for LMCs are high.

(394) Despite its earlier position, in its Reply to the 6(1)(c) Decision, the Notifying Party did provide market share estimates for commercial risk brokerage for LMCs, which are considerably lower than those resulting from the Commission's market reconstruction. This Section will present these estimates, and explain why the Commission considers that they cannot be relied upon for the assessment of the Transaction.

6.3.2.1. The Commission's market reconstruction

(395) During pre-notification and phase 1, the Notifying Party was not able to provide market shares for large customers in commercial risk brokerage. To assess the competitive landscape for LMCs in the EEA (defined as EEA companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries, see Sections 6.1.4 and 6.2.1), the Commission therefore carried out a market reconstruction. The Commission collected data on revenues and GWP for large customers (i.e. companies with a turnover exceeding EUR 1 billion) from the Parties and from the main third-party brokers listed in the Form CO. As explained in Section 6.1.4 above, the Commission considers that market shares for companies with a turnover exceeding EUR 1 billion is a suitable proxy for market shares for LMCs. In fact, most companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated to have insurance needs in more than 5 countries. Conversely, the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less.[436]

(396) This Section provides a summary of the Commission's market reconstruction and its results. The full methodology is provided in Annex A to this Decision.

[436] Replies to question 1.2 and question 21 of questionnaire Q1 to Customers.

(397) For its market reconstruction, the Commission requested from the Parties and the main third-party brokers ("Third-party Brokers") listed as competitors by the Notifying Party in the Form CO the following information on each customer (consolidated at the parent company level) for which the broker generated in excess of EUR 500,000 in revenues for commercial risk overall, in either 2017, 2018, or 2019:[437]

(a) Customer name, region and country;

(b) Turnover of the customer for 2017, 2018 and 2019, if known;

(c) Revenue from customer for commercial risk overall and per risk type for 2017, 2018 and 2019 per customer in EUR

(d) GWP for commercial risk overall and per risk type for 2017, 2018 and 2019 per customer in EUR.

(e) The risk types covered included: (i) commercial risk overall, (ii) aircraft operators, (iii) aerospace manufacturers, (iv) property & casualty (excluding construction), (v) energy, (vi) marine, (vii) FinPro (excluding cyber), (viii) credit & political, (ix) construction, (x) cyber, (xi) space.

(398) In terms of methodology, in order to collect customer data in a consistent way across the Parties and Third-party Brokers, the Commission used a criterion common to all brokers. The Commission therefore considered a revenue-threshold of EUR 500,000 for commercial risk overall. As discussed in detail in Annex A, the Commission considers that the revenue-threshold of EUR 500,000 in commercial risk generates a reliable picture of the market structure for LMCs.

(399) As described in Section 6.1, a separate market for LMCs is defined for each of commercial brokerage for property & casualty, FinPro, and cyber risks. As explained in Section 6.2, the Commission considers that these markets are global.

(400) As regards the scope of the Commission's market reconstruction, the total global GWP in commercial risk for large customers collected from the above-mentioned brokers was compared to the corresponding figure collected from all other brokers approached during the course of the Commission's market investigation. Since the respondents in the market investigation did not make a distinction between large customers headquartered in the EEA and in other geographies, the comparison is made by considering all large customers in the Commission's market reconstruction (i.e., independently of their location). The results indicate that these additional brokers play a minor role and almost do not serve LMCs. In particular, only a small number of LMCs were served by such brokers, and adding these other brokers would therefore increase the market size of commercial risk between 0.81% and 1.44%, depending on the year considered (1.24% across all years).[438] On this basis, the Commission concludes that the market reconstruction is comprehensive and does not suffer from potential biases due to omitted data.

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437 In total, together with the Parties, the Commission's market reconstruction includes customers' data from 10 brokers.

438 One broker only provided revenues for its large customers, but not the corresponding GWP. The Commission considered this broker by supplementing the figures. In particular, the revenues in every year were divided by a factor of […] – which corresponds to the yield for very large customers submitted in Fig. 24 of the Parties' memorandum on large customers.

(401) Table 2 below reports the market shares in 2019 in GWP for the markets for the provision of risk insurance brokerage services to LMCs in property & casualty, FinPro, and Cyber.[439]

Table 2: Commercial risk brokerage market shares for LMCs based on their global placements of GWP, for risk types property & casualty, FinPro and cyber resulting from the Commission's market reconstruction (2019, GWP)

Risk type	Aon	WTW	*Combined*	3rd broker	4th broker	Other brokers combined
Property & casualty	[50-60]%	[10-20]%	***[70-80]%***	[20-30]%	[0-5]%	[0-5]%
FinPro	[50-60]%	[5-10]%	***[50-60]%***	[30-40]%	[0-5]%	[0-5]%
Cyber	[60-70]%	[5-10]%	***[70-80]%***	[20-30]%	[0-5]%	[0-5]%

Source: Commission's market reconstruction

(402) The Notifying Party considers that the Commission's market reconstruction does not provide an accurate representation of the market structure for commercial risk brokerage to LMCs. However, the Commission finds that its methodology used or the market reconstruction addresses all the Notifying Party's arguments, as set out below (see Annex A for further details).

(403) First, the Notifying Party argues that, given the lack of time and incentive of Third-party Brokers that supplied data for the Commission's market reconstruction, the data they have provided is likely inaccurate. However, the Commission engaged with all of the Third-party Brokers with several exchanges to verify the accuracy of the data provided and did not identify any material issue with the data from Third-party Brokers used in the market reconstruction. The Commission considers the data provided as being reliable.

(404) Second, the Notifying Party argues that the revenue-based threshold used for the market reconstruction does not match the market definition for LMCs. The Commission notes that using a revenue-threshold approach was appropriate to collect data which are consistent across the Parties and the Third Party Brokers, on the basis of an objective criterion. The Commission considers that using a EUR 500,000 revenue threshold in commercial risk brokerage provides a reliable picture of the market structure for large customers since it allows a high proportion of the GWP placed by large customers to be captured ([a high percentage] for Aon and almost [a high percentage] for WTW).

(405) Third, the Notifying Party submits that the revenue threshold of EUR 500,000 used by the Commission omits LMCs that split their commercial risk brokerage sourcing over multiple brokers. However, the Commission performed robustness analyses (as described in Annex A), and using a lower revenue threshold of EUR 300,000 leads to similar market shares (see Table 3). The Commission therefore considers that its

439 The Commission does not present HHI calculations for LMC markets based on its own market reconstruction, as it considers that such information would result in the disclosure of confidential information: the level of HHI and Delta HHI would provide additional information enabling the recovery or extrapolation of the market shares of the Parties, third-party brokers, and the market size. The Commission notes that, from the market shares attributed to the Parties and the third competitor, it is already evident that the Transaction would lead to very high concentration on those markets.

market reconstruction is robust to the critique of the Notifying Party that large customers splitting their risk between brokers would overestimate the Parties' position. Moreover, the Commission notes that the Notifying Party did not explain why large customers splitting their brokerage requirements would be more likely for small brokers than for large brokers.

Table 3: Comparison of market shares for large multinational customers in the EEA, EUR 300K and EUR 500K revenue-threshold in commercial risk brokerage (EEA, 2019, global placements in GWP)

Risks	CRB revenue threshold	Aon	WTW	*Combined*	3rd broker	4th broker	Other brokers combine d
Property & casualty	EUR 300K	[40-50]%	[10-20]%	***[60-70]%***	[20-30]%	[5-10]%	[0-5]%
	EUR 500K	[50-60]%	[10-20]%	***[70-80]%***	[20-30]%	[0-5]%	[0-5]%
FinPro	EUR 300K	[40-50]%	[5-10]%	***[40-50]%***	[20-30]%	[10-20]%	[5-10]%
	EUR 500K	[50-60]%	[5-10]%	***[50-60]%***	[30-40]%	[0-5]%	[0-5]%
Cyber	EUR 300K	[60-70]%	[5-10]%	***[70-80]%***	[20-30]%	[0-5]%	[0-5]%
	EUR 500K	[60-70]%	[5-10]%	***[70-80]%***	[20-30]%	[0-5]%	[0-5]%

Source: Commission's analysis of RFI 33 and third-party data.

(406) Furthermore, as described in more detail in Annex A, the Commission's robustness analyses confirmed that the Commission's market reconstruction is robust to any potential bias arising from: (i) the (limited) amount of GWP of large customers not captured (i.e. corresponding to LMCs generating less than EUR 500,000 of revenue in commercial risk brokerage), and (ii) the (limited) amount of GWP of non-LMCs captured when considering customers generating more than EUR 500,000 revenue in commercial risk brokerage. Given that information on the headquarter of customers was partial in WTW data provided in the Reply to RFI 33, the Commission was able to carry out this additional sensitivity analysis for market shares covering all large customers, i.e. independently of their locations. The robustness analysis that takes into account these two potential biases leads to market shares which are similar to the Commission's market reconstruction based on a EUR 500,000 revenue threshold (see Table 4, where the Commission's robustness analysis is called "bias adjustment").

Table 4: Overview of market shares (all large customers, independently of their location), global placements in GWP, 2019

Risks	Analysis	Aon	WTW	*Combined*	3rd broker	4th broker	Other brokers combined
Property & casualty	EUR 300K	[30-40]%	[10-20]%	***[40-50]%***	[30-40]%	[5-10]%	[5-10]%
	EUR 500K	[30-40]%	[10-20]%	***[40-50]%***	[40-50]%	[0-5]%	[0-5]%
	Bias adjustment	[30-40]%	[10-20]%	***[40-50]%***	[40-50]%	[0-5]%	[0-5]%
FinPro	EUR 300K	[40-50]%	[10-20]%	***[50-60]%***	[30-40]%	[0-5]%	[0-5]%
	EUR 500K	[40-50]%	[5-10]%	***[50-60]%***	[30-40]%	[0-5]%	[0-5]%
	Bias adjustment	[50-60]%	[5-10]%	***[50-60]%***	[40-50]%	[0-5]%	[0-5]%
Cyber	EUR 300K	[60-70]%	[20-30]%	***[80-90]%***	[10-20]%	[0-5]%	[0-5]%
	EUR 500K	[60-70]%	[20-30]%	***[80-90]%***	[10-20]%	[0-5]%	[0-5]%
	Bias adjustment	[70-80]%	[10-20]%	***[80-90]%***	[10-20]%	[0-5]%	[0-5]%

Source: Commission's analysis of RFI 33 and third-party data.

(407) Finally, additional data provided in the context of the remedy proposal shows that the Commission's market reconstruction, if anything, is likely to underestimate the strength of WTW for LMCs in the EEA.[440] In particular, the Commission notes that the level of GWP placed by WTW for its large customers in the EEA is significantly higher than in the dataset provided in the Reply to RFI 33;[441]

(a) In property & casualty, the GWP placed by WTW for its large customers in the EEA was almost twice as large, increasing from […] in the Reply to RFI 33 to […] in the Reply to RFI 69;[442]

(b) In FinPro, the GWP placed by WTW for its large customers in the EEA increases by more than three times, from […] in the Reply to RFI 33 to […] in the Reply to RFI 69;[443]

(c) In Cyber, the GWP placed by WTW for its large customers in the EEA increases by more than four times, from […] in the Reply to RFI 33 to […] in the Reply to RFI 69.[444]

440 The Commission understands that improvements have been made to WTW customer data when aggregating subsidiaries at the level of parent-company (Reply to RFI 52, Question 8d).

441 The Commission notes that this would not affect the Commission' findings of the markets where a significant impediment to effective competition is raised, and the assessment of the Final Commitments in the main body of the Decision is based on the updated WTW customer data (see Section 12.3.5 of the Decision). In particular, the updated data is used to assess the elimination of the increment for each of the markets where competition concerns have been identified within commercial risk brokerage.

442 In the Reply to RFI 69, the amount submitted is USD […]. The Commission converted in EUR using the conversation rate proposed by the Notifying Party in its submission on markets shares for large customers (see Annex A for further details).

443 In the Reply to RFI 69, the amount submitted is USD […]. The Commission converted in EUR using the conversation rate proposed by the Notifying Party in its submission on markets shares for large customers (see Annex A for further details).

(408) Based on the above, the Commission considers that its market reconstruction provides an accurate representation of the market structure for the markets for commercial risk brokerage to LMCs.

6.3.2.2. The Notifying Party's wallet analysis

(409) During pre-notification and phase 1 of the investigation, the Notifying Party was not able to provide market share estimates for LMCs for the relevant commercial risk brokerage markets. As an alternative, on 29 October, 2020, the Notifying Party submitted an analysis (called 'Wallet Analysis') by providing for each company listed in the Fortune Global 500 list and headquartered in the EEA in 2019 an estimate of the proportion of GWP each broker accounted for. This represents 119 companies in the EEA (hereinafter called "FG500").[445]

(410) On the basis of the Wallet Analysis, the Notifying Party argued that:[446]

(a) A wide range of brokers can service clients of varying sizes.

(b) No particular size of client has a more limited choice in their selection of a broker and larger, regional, local and specialised brokers all compete for, and provide services to, clients of all sizes. The Parties are significantly constrained by the presence of smaller (and in-house) brokers across the entire spectrum of clients that they serve.

(c) Large clients use a wide range of brokers (including in-house brokers) to place their risks and that smaller brokers specifically can win and service major clients on a regular basis from larger brokers.

(411) The below figure was submitted by the Notifying Party to describe the findings of the Wallet Analysis. According to the Notifying Party, the largest companies in the world frequently rely not on one single broker, but a mix of brokers. According to the Parties, only a minority of firms – [a small percentage] – rely on a single broker for their needs. In addition, [a significant percentage], rely on three or more brokers and 16 firms use five or more brokers.

Figure 8: […]

[…]

Source: Notifying Party's submission "Competition for large customers in the commercial risk industry", dated 29 October 2020.

(412) In addition, the Notifying Party argues that "where smaller brokers serve large clients, they are by no means relegated to serving selected risk lines while a large broker claims the lion's share of the business" (see below figure submitted by the Notifying Party). According to the Notifying Party, this is the case since:

(a) [a small percentage of the] FG500 firms analysed rely entirely on in-house brokers or on brokers other than Aon, WTW or Marsh.

444 In the Reply to RFI 69, the amount submitted is USD […]. The Commission converted in EUR using the conversation rate proposed by the Notifying Party in its submission on markets shares for large customers (see Annex A for further details).

445 The market reconstruction for large customers was submitted as part of the Large Customers White Paper, "Competition for 'large' clients in the commercial risk industry", dated 29 October 2020. The underlying data was submitted in Annex 2 to the Large Customers White Paper.

446 Large Customers White Paper.

(b) [a significant percentage of the] FG500 companies use, to varying degrees, at least one broker that is not Aon, WTW or Marsh (either in-house or external).

(c) [a significant percentage of the] FG500 companies use Aon, WTW or Marsh only, with varying shares of wallet for the three large brokers.

Figure 9: […]

[…]

Source: Notifying Party's submission "Competition for large customers in the commercial risk industry", dated 29 October 2020.

(413) Contrary to the Notifying Party's position, the Commission considers that the Wallet Analysis supports the conclusion that the Parties have high market shares with LMCs in the relevant commercial risk brokerage markets.

(414) The Commission also notes that the Wallet Analysis submitted by the Notifying Party does not allow for an assessment of the market structure separately for each risk type, but for commercial risk brokerage overall. In contrast, the Commission's market reconstruction (see Section 6.3.2.1) is more comprehensive and allows for an assessment to be carried out at the level of risk type.

(415) Nevertheless, the Wallet Analysis is consistent with the findings that (i) Aon, WTW, and Marsh are the most credible alternative brokers for LMCs, and (ii) other Tier two brokers are less credible alternatives. This is based on the following:

(a) The Big Three brokers serve almost all large customers ([a very high percentage] of them used at least one of the Big Three brokers) and account for the majority of the large customer's wallet: Aon serves [a significant percentage] of large customers ([…] customers), WTW serves [a high percentage] ([…] customers), and Marsh serves [a high percentage] ([…] customers). In contrast, among the Tier two brokers, the largest broker, Siaci Saint Honoré, serves only […] large customers ([a small percentage]) – almost […] that Aon. For other Tier two brokers, such as Lockton, Gallagher, these rates are even lower.

(b) Considering an overall market for commercial risk brokerage services, the Parties' combined share of GWP is [a significant percentage] (Aon: [a significant percentage], WTW: [a small percentage]), and only Marsh appears as a significant competitor ([30-40]%). In contrast, each of the other brokers serves a significantly smaller share of the large customers' wallet and no large customers were served exclusively by the other brokers. The largest of the other brokers, Siaci Saint Honoré, serves only [a small percentage] of the large customers' wallet.

(416) The Commission notes that the Notifying Party did not comment on the Commission's findings in the Reply to the 6(1)(c) Decision. Rather, the Notifying Party appeared to cast doubt on the representativeness of the customer sample and on the data underlying the Wallet Analysis.[447,448]

[447] For example, in paragraph (168) of the Reply to the 6(1)(c) Decision, the Notifying Party mentions that Fortune Global 500 represent just a small minority of all large MNCs [multinational customers], and that these are the subset of large MNCs that face the most restricted choice set of brokers. In contrast, in paragraph 3.2 of the Large Customers White Paper, the Notifying Party mentions that Fortune 500 presents an objective list of the largest companies in the world.

(417) Overall, the Commission considers that the share of wallet provides another piece of evidence, which is consistent with the findings from its market reconstruction. In particular, the Wallet Analysis confirms that:

(a) The markets for commercial risk brokerage for LMCs are concentrated among the Big Three brokers. In other words, Aon, WTW and Marsh are the most credible alternative brokers for LMCs.

(b) Other Tier two brokers are distant competitors and serve LMCs only to a limited extent.

(418) Moreover, the Wallet Analysis constitutes another piece of evidence indicating that the low market shares for LMCs provided by the Notifying Party in its market reconstruction are implausible (see Section 6.3.2.3).

6.3.2.3. The Notifying Party' market reconstruction

(419) Following the Commission's market reconstruction in the 6(1)(c) Decision, the Notifying Party submitted its own market reconstruction. The Notifying Party uses several sources of data:

(a) For the numerator, the Notifying Party uses Aon's and WTW's policy datasets as inputs for the quantification of the GWP of large customers that Aon and WTW serve in the EEA;

(b) For the denominator, the Notifying Party use data from Finaccord to estimate the overall size of the market for large customers in the EEA.[449]

(420) This Section provides a summary of the Notifying Party's market reconstruction and its results, as well as the Commission's assessment of the Notifying Party's market reconstruction. More detail is provided in Annex A to this Decision.

(421) To estimate the Parties' GWP corresponding to large customers in the EEA (the numerator in the market share), Aon's and WTW's policy datasets were matched to an external database called Dun & Bradstreet ('D&B') data. Based on D&B data, the Notifying Party identified all global companies with revenues of over EUR 1 billion, their subsidiaries, and the location of those subsidiaries.[450] The matching was carried out by using a combination of: (i) an exact matching based on existing common identifiers for customers between the Parties' policy datasets and the D&B dataset, and (ii) and application of a name-matching algorithm based on customer names for

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448 In paragraph (168) of the Reply to the 6(1)(c) Decision, the Notifying Party claims that these shares will necessarily be overstated because of the Parties' limited visibility of third-party brokers. However, in Annex 2 to the Large Customers White Paper, the Notifying Party explains that Aon and its advisers contacted Aon account executives to collect information about brokers used by each company, and that this process was iterative, with multiple rounds of clarification required to ensure that responses were as complete and consistent as possible. Similarly, WTW and its advisers also gathered information from WTW account executives on the accounts with which they did the most business, and as a cross check on Aon's estimates of brokers used. Where feedback from Aon and WTW differed, the feedback regarding the firm's own involvement with the client took precedence. In cases where feedback differed with respect to other brokers, the party with the largest share of wallet was assumed to have better knowledge of the client's insurance programme.

449 Finaccord is a market research company and a subsidiary of Aon.

450 Reply to the 6(1)(c), Annex 2 ("Commercial risk: market reconstruction for large customers"), paragraph 21: "*The Parties' policy datasets, [...], contain client-level information on GWP placed by risk class. Neither Party's dataset contains a customer size indicator. We therefore had to rely on a third-party source to identify 'large' customers in the Parties' data*."

customers that did not have a common identifier.[451] Next, the Notifying Party calculated the GWP placed by Aon and WTW for large customers in the EEA by risk line and for commercial risk overall with a bottom-up approach, that is by summing the 2019 GWP placed on behalf of their customers for which the D&B dataset indicated that they are large customers.

(422) To estimate the market size for large customers in the EEA (the denominator in the market share), the Parties used Finaccord's data from the Market3 model.[452] According to the Notifying Party, the necessary Finaccord Market3 data for the market reconstruction became available only at the end of 2020.[453] Finaccord collects country-level regulatory data on insurance (measured by the GWP) placed in that country. Finaccord then segments each country's total commercial GWP by each of the following three dimensions: (i) risk class, (ii) customer size, and (iii) customer industry. According to the Notifying Party, Finaccord essentially uses a top-down approach to segment the total amount of insurance placed in each country and makes further adjustment based on its market intelligence.[454]

(423) Table 5 below summarises the different market shares submitted by the Notifying Party in phase 2. The first set of market shares was submitted with the Reply to 6(1)(c) Decision. These market shares were updated for the first time in a submission "Large client numerators and updated market share estimates", dated of 8 February 2021, and for the second time in a submission "Follow-up submission on the Parties' large client market share estimates", dated 19 February 2021.[455]

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451 Reply to the 6(1)(c) Decision, Annex 2 ("Commercial risk: market reconstruction for large customers"). The Notifying Party's submission "Large client numerators and updated market share estimates", dated 8 February 2021, provides also an explanation of the fuzzy string matching algorithm, as well as another additional name-matching algorithm ("Jaro-Winkler matching with Sorted Neighbourhood Indexing").

452 Finaccord is selling this model to clients as bespoke market sizing analysis. Finaccord is refining the model and it customises it depending on the particular needs of its clients (Reply to the 6(1)(c) Decision, Annex 2, paragraph 2.2).

453 The Commission understands that the Finaccord data already included a segmentation of commercial risk broking between various customer sizes, including the customers with turnover above EUR 1bn, before the beginning of the merger investigation (Form CO, Annex 6A.24). Similarly, the segmentation by risk type existed before the beginning of the merger investigation. However, the Commission understands that Notifying Party was not able to provide market share for large customers by risk line in pre-notification and phase 1 since the joint segmentation by company size and risk line became available only in the late 2020 (Reply to the 6(1)(c) Decision, Annex 2, footnote 5).

454 Reply to the 6(1)(c) Decision, Annex 1, paragraphs 2.6-2.8. See also the Notifying Party's submission "Commercial Risks solutions: submission on Finaccord data", dated 28 January 2021, paragraph 2, paragraphs 5-12.

455 These additional submissions included further adjustments, for example: the inclusion of direct billings for Aon (i.e., billing placed by Aon, but which is "direct-billed" to the client by the insurer), the adjustment for some missing client names in WTW data and some further name cleaning for Denmark and Germany, some adjustments in the name-matching algorithms.

Table 5: […]

Risk type	Reply to the 6(1)(c) – Combined (12 January 2021)	Reply to the 6(1)(c) - Combined maximum with adjustment for WTW shares (due to data quality issue of WTW)	Submission of 8 February-Combined	Submission of 19 February-Combined
Property & casualty	[…]	[…]	[…]	[…]
FinPro	[…]	[…]	[…]	[…]
Cyber	[…]	[…]	[…]	[…]

Source: Notifying Party's market reconstruction

(424) The Commission considers that the Notifying Party's market reconstruction suffers from significant uncertainty and cannot be relied upon to assess the Transaction for the reasons set out below (see Annex A for further details).

(425) First, the Notifying Party's market reconstruction does not capture the proper geographic scope for LMCs in the EEA, since it considers only the GWP placed in the EEA by large customers in the EEA. In contrast, for property & casualty, FinPro and cyber risks, the Commission defines the relevant market as the LMCs that source their worldwide services from within the EEA. The Commission's market reconstruction captures the correct geographic scope, since it includes the global placements for each of the LMCs in the EEA.

(426) Second, the Notifying Party has more limited information available compared to the Commission, since it does not have access to customer data of Third-party Brokers and therefore only the Commission can use a full bottom-up approach to calculate market shares (i.e. by considering the most disaggregated data possible and aggregating the GWP for each of the different brokers). Due to this limitation in the information available, the Notifying Party needed to use two different sources of information for the numerator (i.e., the Parties' GWP for large customers, based on the Parties' policy datasets) and the denominator (i.e., the market size for large customers, based on Finaccord data), which made the alignment of the data difficult and its market shares subject to significant uncertainty. In contrast, the Commission's market reconstruction relies on the same bottom-up approach to measure both the numerator and the denominator, based on customer data provided by the Parties and the main third party brokers.

(427) Third, the market share levels as provided by the Notifying Party, which go as far as suggesting for example that commercial risk brokerage for LMCs for property & casualty risk is not an affected market, are not supported by the market feedback. Aon, WTW and Marsh are clearly identified as the Big Three brokers throughout the entire investigation, also in the qualitative feedback, for the three risk types where concerns are identified for LMCs. The investigation also clearly identified a gap to Tier two brokers. That is not reflected in the Notifying Party's market share estimates, which raises considerable doubts as to their plausibility.

(428) The Notifying Party's market reconstruction also suffers from a significant uncertainty in the numerator, which is likely to result in a significant underestimation of the Parties' position for LMCs:

(a) (Non-large) EEA-subsidiaries of large EEA-clients have been excluded. This represent a large amount of GWP for Aon (GWP of EUR[…]), in particular given the size of the numerator for Aon (EUR[…]).

(b) For both Aon and WTW, the Commission identified a large category (in terms of GWP) corresponding to customers located in the EEA, but without names for parent-level companies (GWP of EUR[…] for Aon and EUR[…] for WTW, which is comparable to the numerator of EUR[…] for Aon and EUR[…] for WTW). While it is not possible to determine if these EEA clients are large or not, the Commission considers that the size of this category is such that it creates significant uncertainty in the numerator.

(c) Some clients listed as large clients in the EEA at the level of the parent-level company, have not been included (EUR[…] for Aon, and EUR[…] for WTW). This category represents a significant amount of GWP, in particular for Aon.

(d) Even though the Parties have made some ad-hoc adjustments to their numerators (increasing the numerator by [a small percentage] for Aon and [a small percentage] for WTW), the Commission considers that these adjustments are not sufficient to take into account the issues identified above.

(e) The treatment of negative values (which can refer to cancellations or modifications of previous insurance policies) in the policy datasets of the Parties leads to an additional uncertainty on the market shares provided, in particular for Aon. Across risk types, the negative values amount to between [a small percentage] and [a significant percentage] of the positive values for Aon, and almost cancel all positive values for Cyber. Since the market reconstruction is carried out for one specific year (2019), the Commission considers that the ideal approach would have been to consider only the cancellation of policies (or data errors) referring to 2019 policies, and not to previous years. However the Notifying Party took into account the cancellations of policies from previous years as well, which is likely to decrease too much Aon's GWP for 2019 and understate its market share. Moreover, the Notifying Party did not explain whether/how the denominator was adjusted for cancellations of policies, which is necessary to ensure internal consistency.

(429) The Notifying Party's market reconstruction suffers from significant uncertainty in the denominator as well. Due to limitations in the available Finaccord data, the Notifying Party needed to rely on several assumptions to measure the market size for the different commercial risk brokerage markets for LMCs:

(a) The allocation per customer size used by Finaccord has changed significantly in a period of a few months between pre-notification and phase 2, leading to an increase in the market size of large customers by [a high percentage], and therefore does not appear sufficiently stable to be relied upon.

(b) The two ratios used by the Notifying Party to estimate the size of the commercial risk brokerage markets for LMCs (namely the ratio capturing the share of large customers and the ratio capturing the share of the brokered channel) are sensitive to the relative importance given to each of the lines composing each risk type. For example, for credit & political risk, the different sub-lines are trade credit, structured credit/political risk, kidnap & ransom, terrorism and political violence. Depending on the relative weights used by the Notifying Party, the market size can increase by [a significant percentage]. While a market for LMCs is not defined for the credit & political risk (see Section 6.1.5.4 of the Decision), the Commission still considers that this specific risk illustrates the significant uncertainty underlying the market size estimates for large customers used in the Notifying Party's market reconstruction. The Commission cannot exclude that such consideration applies as well to other risk types, such as FinPro and Property & Casualty, which are also composed of several risk types. For example, the FinPro risk, for which a market for LMCs is defined, is composed of several risk lines as well, such as: D&O, medical malpractice, professional indemnity and legal protection.[456] For Property & Casualty risk, for which a market for LMCs is also defined, Finaccord's Market data indicates as well several risk lines such as: commercial motor, commercial property, environmental liability, workers compensation and other liability.[457]

(c) The assumption used by the Notifying Party to allocate the overall GWP to large customers in proportion to their operating revenues is not verified by Aon's customer data and was not substantiated by the Notifying Party.

(430) Based on the above, the Commission considers that the Notifying Party's market reconstruction suffers from significant uncertainties and cannot be relied upon to assess the Transaction, and that the Commission's own market reconstruction provides more robust results.

6.3.3. Commission's assessment of the third party survey presented by the Notifying Party

(431) The Notifying Party submitted a third-party survey carried out by MKM Partners ("MKM Partners Survey").[458] [459] The Parties argue that the MKM Partners Survey was carried out independently and confirmed that brokers other than Aon, WTW and Marsh can also compete with their global networks with respect to the largest customers (Fortune 500 and Fortune Global 500 firms).[460]

(432) The Commission received confirmation from MKM Partners that the survey was conducted independently and no instruction was received from Aon, WTW or any other entity.[461] MKM Partners further confirmed that the survey was conducted anonymously and no contact information including corporation name or any other personally identifiable information was collected from the respondents.[462]

(433) The Commission assessed if the third-party survey results could be taken into account as part of its assessment and raised the following concerns with respect to the design and scope of the survey. *Firstly*, the third-party survey as submitted by the Notifying Party was not designed or carried out in line with the Commission's practice concerning the use of the third-party surveys that were deemed acceptable in

456 Notifying Party's submission "Large clients numerators and updated market share estimates", dated 08 February 2021, paragraph 4.8. Reply to the 6(1)(c) Decision, Annex 2, footnote 15.
457 Reply to the 6(1)(c) Decision, Annex 2, footnote 15.
458 White Paper on Summary of MKM survey, submitted on 2 December 2020.
459 The MKM Partners Survey surveyed 175 commercial risk managers at Fortune 500 and Fortune Global 500 firms and was published in November 2020.
460 White Paper on Global Reach, submitted on 19 February 2021.
461 Non-confidential reply to RFI 1 to MKM Partners, question 1.b.
462 Non-confidential reply to RFI 1 to MKM Partners, question 2.

past cases[463] Moreover, the Commission was not able to verify the results of the survey with the respondents of the MKM Partners Survey, in accordance with Commission's practice in past cases, because the survey was carried out anonymously,[464] making it impossible to verify individual responses. Secondly, the scope of the MKM Partners Survey was limited to Fortune 500 and Fortune Global 500 firms and also referenced only global or the US-based brokers. The Commission's market investigation, however, investigated the importance of the global network of a broker for companies that meet the LMCs definition and also included EEA-based brokers. Thirdly, the Commission's market investigation was carried out as a formal request for information under Article 11(2) of the Merger Regulation and therefore respondents had the obligation to provide accurate and non-misleading information. Competitors were also reassured for the confidentiality granted by a public authority. Moreover, the Commission's market investigation was complemented with calls and meetings to discuss in detail the main issues arising from the case. Lastly, the MKM Partners Survey was carried out[465] during the period when the Parties had carried out customer outreach,[466] which may have influenced customer responses.

(434) Due to the scope of the survey, the lack of ability to verify the responses and the fact that the Commission carried out targeted market investigation which also covered the points raised by the Parties, the Commission was not able to rely on or draw any conclusions from the MKM Partners Survey as submitted by the Parties. The Commission therefore will not further discuss the results of the MKM Partners Survey submitted by the Parties in this Decision.

6.3.4. Relevant capabilities for servicing LMCs across risk types

(435) The market investigation revealed that when choosing their broker, LMCs, amongst other factors, value broker's expertise in the underlying risk, ability to deal with large and complex risks, track record servicing large and complex customers, as well as international capabilities (global presence).[467] While these aspects are discussed in detail in the assessment by risk type in Section 6.3.5., this present Section analyses necessary capabilities for servicing LMCs that are relevant regardless of risk-type, namely the brokers' network capabilities and data analytics capabilities of a broker (discussed further in Sections 6.3.4.1 and 6.3.4.2). Where applicable, risk-type specific considerations concerning brokers' networks and data analytics capabilities are further discussed in the competitive assessments concerning the respective risk types.

6.3.4.1. Global reach and network comparison

(436) A very important requirement for a broker to service LMCs is the global presence to provide local services in a multitude of jurisdictions where the customer has business activities and risks to insure.[468] While the Commission defines LMCs as companies with a turnover of more than EUR 1 billion and insurance needs in more than five countries, most such customers have business activities in a significantly larger set of

463 For example, M.8394 – *Essilor/Luxottica*, footnote 256.

464 For example M.7555 – *Staples/Office Depot*, paragraph 118, where the Commission was able to reach a number of respondents to verify their responses.

465 21 October 2020 – 9 November 2020.

466 M.9829 – Aon/WTW Article 6(1)(c) Decision, paragraphs 19 et seq.

467 Replies to question 9 of questionnaires Q7, Q9 and Q10 to commercial risk brokerage Customers for property & casualty, FinPro and cyber.

468 Replies to question 22 of questionnaire Q1 to Customers.

jurisdictions, in most cases in at least more than 10 countries and to a significant proportion in more than 50 countries.[469] Moreover, the geographic footprint of many customers is not limited to one geographic area, such as for instance the EEA, but often covers several and in instances all continents.

(437) The network of a broker is of particular importance for customers that do not wish to split global programs between different geographic areas, but prefer to have services in relation to the same risk type or risk provided by one single broker. A number of customers point at the advantages of a one-stop-shop approach such as facility to handle brokers and to benefit from economies of scale. Working with one broker would further enables clients to pursue a consistent risk management strategy and establish standardised processes across jurisdictions. [470] One customer explained: *"A network broker can either pick up the question locally when it is an actual local issue, but can also redirect the question to central* […] *if it deals with centrally procured insurances policies. This will also avoid having double insurance (central and local), as the network broker knows what is arranged centrally and what is arranged locally"*.[471] The Commission acknowledges, though, that customers make use of brokers in different ways, depending *inter alia* on the type of business, its internal group structure and its in-house risk management capabilities, and that some customers may indeed split brokerage needs by geography amongst two or more brokers.

(438) There are different ways in which a broker can achieve global reach in order to fulfil customers' requirements. *Firstly,* a broker can operate through a network of owned offices in different jurisdictions. Brokers that service customers globally mainly through a proprietary network are Aon, WTW and Marsh. The Big Three brokers provide services through a large network of owned offices across a high number of jurisdictions, which are complemented by collaborations with other brokers often in less crucial countries. Large brokers typically have centralised units that support the different local entities and facilitate coordination and support the country organisations with analytical, transactional or organisational tasks.[472]

(439) *Secondly*, brokers can cooperate with other brokers in different jurisdictions in form of an established broker partner network. Tier two brokers such as Gallagher, Howden and Lockton operate a self-managed network with independent partner brokers in the framework of an organised cooperation, complemented by a more limited number of owned offices in some jurisdictions. Partner networks align services between the different independent brokers by means such as qualitative criteria for membership, common services standards and shared IT-tools. Strong regional brokers are typically part of one or more partner networks. Examples for such partner networks are the Gallagher Global Network, Lockton Global and Howden One network. Apart from being member of a partner network, regional players may also manage their own partner networks in parallel, such as Funk Alliance by the German broker Funk, or Siaci Global Partners by the French competitor Siaci. Some competitors operating through a partner network explain that a potential benefit of such arrangement would be the ability to freely choose the

469 Replies to question 21 of questionnaire Q1 to Customers.

470 Replies to question 54.1 of questionnaire Q1 to Customers.

471 Reply to question 22.1 of questionnaire Q1 to Customers (Document ID 1838).

472 Reply to RFI 16, submissions by Aon and by WTW, questions 1 et seq.

network partner in each country. Members would have an incentive to provide adequate services in order to remain part of the network in the long-term.[473]

(440) The Commission notes that all brokers with global activity operate through some mix of owned and partner offices, but that the shares of owned and partner offices are differently weighted. Table 6 shows the number countries that the main brokers cover by either owned or partner offices. The Commission stresses that it has received the information included from different sources, namely the Notifying Party and third parties, which explains differences between the information set out in Table 6 and analysis that were solely based on the Notifying Party's information, notably the analysis on GAMS data below in this Section. The Commission also notes that the comparison by numbers of countries and offices alone has some limitations, as (i) offices of different brokers may differ very significantly in size and capabilities, and (ii) countries may differ very significantly in importance for customers, and owned offices may in fact, *inter alia*, be located in microstates of lesser importance.

Table 6: Global reach in commercial risk brokerage of the Parties and its main competitors

Broker	Countries covered (as publicly stated)	Countries with owned offices (all)	Countries with owned offices (EEA)[474]	Countries with partner offices
Aon	120+	[...]	[...]	[…]
Willis	140+	[...]	[...]	[…]
Marsh	130+	[...]	[...]	[...]
Gallagher	150+	[...]	[...]	[...]
Howden	90+	[...]	[...]	[...][475]
Lockton	100+	[...]	[...]	[...]

Source: Reply to RFI 47, annex 3; amended by information provided by third parties where appropriate and possible on a non-confidential basis.[476]

(441) Even taken into account some limitations of comparison as stated above, the information in Table 6 stills shows clearly significant differences between the Big Three brokers and Tier two brokers. While all brokers may theoretically be able to provide services in a very high number of countries, the owned network of Aon, WTW and Marsh is much broader compared to Gallagher, Howden and Lockton.[477] The Commission further notes that Aon, WTW and Marsh have a significantly stronger presence with owned offices in the EEA compared to the listed Tier two brokers.

(442) *Thirdly*, brokers can also use a third-party network of brokers to achieve global reach. Similarly to partner networks, third-party networks connect a number of independent brokers in different jurisdictions. Contrary to partner networks though,

473 Reply to question 16.1.1 of questionnaire Q16 to Competitors (Document ID 8694).

474 For the purpose of this investigation, EEA includes the UK.

475 Including overlaps with countries with owned offices: […].

476 The Notifying Party's submission on "Competition for `large clients`in the commercial risk industry" of 29 October 2020, page 17; Replies to question 31 of questionnaire Q5 to Competitors; Replies to question 11.1 of questionnaire Q16 to Competitors; Reply to an RFI to a Competitor on 28 May 2021; Reply to an RFI to a Competitor on 5 Marsh 2021 (Document ID 10670).

477 The Commission considers these brokers to be the Parties main competitors across CRB markets. Some regional brokers, such as Siaci and Funk, also have considerable network capabilities, but comparable to Tier two brokers and not comparable to the Big Three in terms of owned offices.

third-party networks are not led by one single broker firm, which in turn can impact the level of coordination and ultimately service levels provided to a customer.

(443) *Fourthly*, a broker can enlarge its geographic footprint by wholesale or sub-broking arrangements, by which it delegates certain services to another broker, while it keeps the direct customer relationship. Contrary to partner and third party networks, such arrangement would not take place in the context of a structured and managed collaboration.

(444) *Fifthly*, a broker can make use of the network of the insurance company, for example with respect to services such as issuing of local policies in the local language. Thereby, the insurance company provides services similar to those that the broker would provide to a customer in other instances.

(445) *Sixthly*, a broker can provide services from one country to different neighbouring countries.

(446) The pure size of the network needs to be assessed in combination with qualitative features, meaning its capability to service customers at a suitable service level. In this context, the type of network as described above, and particularly differences between owned office networks and all other forms of networks, is of crucial significance. The market investigation shows that a significant proportion of responding customers have a preference for owned offices, as they consider that a network of independent brokers would not be able to provide the same service level across a high number of different jurisdictions. This is discussed in more detail in the competitive assessment of specific risk types.

(447) Customers generally explain that partner networks would be weaker in terms of coordination and communication, and therefore does not provide the same consistent service levels across jurisdictions as an owned office network. Different brokers being members of a partner network may pursue different interests or lack the ability to spot insurance gaps or overlaps which may lead to higher costs, lower service levels and reduced reliability for the client. Customers also provide that partner networks may be slower to respond to customer requests, and may generally lack transparency for a client.[478] One customer explained: *"The engagement of a network office is much lower comparing with the engagement of an owned network of offices. This implies very negatively with the quality of service the broker can provide. If your needs are spread for several geographies and the broker as not own offices in those geographies, our experience is that broker will have important difficulties providing the same level of service around the world"*.[479]

(448) Consequently, LMCs refer generally to Aon, WTW and Marsh as the brokers with a suitable global network for their requirements.[480] The Aon, WTW and Marsh networks are consistently rated as having a higher competitive strengths compared to Tier two brokers and regional competitors across the different risk types, as explained in the respective competitive assessments below. In line with this view, competitors also clearly indicated that Aon, WTW and Marsh stand out from competition with a gap to brokers such as Gallagher and Howden. The Commission notes that from all competitors other than the Big Three, Gallagher's network capabilities are considered to be the strongest by LMCs responding to the market

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478 Replies to questions 23.1 and 24 of questionnaire Q1 to Customers.

479 Reply to question 23.1 of questionnaire Q1 to Customers (Document ID 4011).

480 Reply to question 24.1 of questionnaire Q1 to Customers.

investigation, despite the fact that Gallagher's network is smaller of in terms of number of owned offices compared to other Tier two brokers.[481]

(449) Finally, the Commission notes that customers point to similar weaknesses regarding all forms of non-owned networks, either partner networks, third-party networks or sub-broking and wholesale arrangements, the more pronounced the lesser the level of integration of the network is. With respect to the use of an insurer's network, the Commission considers that insurance companies and customers generally pursue different and, with respect to the purchase of insurance or handling of claims, potentially conflicting interests. Indeed, such an arrangement is rejected as a suitable alternative by a majority of customers expressing an opinion on this issue in the market investigation.[482] Providing services from some key countries may be suitable in certain instances, but is generally considered as a less-preferable option, as explained in the assessment of markets for different risk types below.

(450) The analysis above is supported by the Parties' internal documents. The Commission notes that both Aon and WTW distinguish between owned and partner offices in their internal assessment of their network capabilities. The Commission further notes that both Parties clearly consider an owned network superior to a partner or third party network. Aon, in a response to a request for proposal in February 2020, advertised its global reach by pointing at its proprietary network. The document states that […].

Figure 10: [Internal document]

[Internal document]

Source: Aon internal document, Document ID 10264-49446.

(451) Similarly, internal documents show that WTW stressed the benefits of an owned network. In a PowerPoint-deck titled "[…]", presumably with the purpose to use such slides when creating presentations, WTW listed the benefits of an internal network as *"[business secrets in internal documents regarding commercial strategy]"*. The slide further shows benefits such as *"[business secrets in internal documents regarding commercial strategy]"*.

Figure 11: [Internal document]

[Internal document]

Source: WTW internal document dated June 2018 Document ID 10692-25460.

(452) An additional example […].[483] […]. The Notifying Party' submission on the network comparison across brokers does not undermine the Commission's finding above that the Big Three brokers are significantly ahead compared to other brokers in term of owned network.

(453) In a submission dated 28 February 2021, the Notifying Party mentions in particular that:

(a) Aon's large clients typically use Aon's network in a small number of countries.[484] The Notifying Party presented an analysis based on data for its clients requiring coordination of services across a large geographical network:

481 Replies to question 49.2 of questionnaire Q5 to Competitors.
482 Replies to question 25 of questionnaire Q1 to Customers.
483 WTW internal document on long-term strategy dated 15 February 2018, (Document ID 10682-78194).
484 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 13.

these clients are part of the Aon's Global Account Management System (GAMS). According to the Notifying Party, there are […] large clients in the GAMS system.

– Based on this GAMS data, the Notifying Party argues that the majority of these clients rely on Aon' services in a small number of countries: [a significant percentage] of Aon's large GAMS clients have insurance policies with Aon in […] or fewer countries, and [a high percentage] of them have policies in […] or fewer countries.

– Aon's large GAMS clients have presence across […] countries on average (with a median at […] countries), and these large GAMS clients have insurance policies with Aon in […] countries on average (with a median at […] countries).

(b) Large clients do not require a more complete geographic coverage from Aon than other clients.[485] According to the Notifying Party, there is no clear link between the number of countries in which a large client has subsidiaries, and the number of countries in which it uses Aon's brokerage services, since when clients have a wider geographical presence the proportion of countries where they have insurance policies is decreasing.

(c) Other brokers have large global networks.[486] According to the Notifying party, Gallagher, Lockton, and Howden have access to global network that are comparable to those of Aon, WTW, and Marsh.

(d) Other brokers have large global networks that would enable them to serve Aon's large GAMS clients.[487]

– According to the Notifying Party, Gallagher, Lockton and Howden have network offices in countries that account for at least [a very high percentage] of Aon's total GWP from large GAMS clients, and all three achieve the majority of this coverage through owned rather than affiliated offices.

– For the majority of Aon's large GAMS clients, their policies with Aon falls entirely with countries where Gallagher, Lockton or Howden have offices.

(e) Large clients multisource. Based on the data provided in the context of its wallet analysis (see Section 6.3.2.2 of this Decision), the Notifying Party provided some examples of large clients that multisource.[488]

(454) However, the Commission disagrees with the Notifying Party for the following reasons.

(455) In term of methodology, the Commission assessed the Notifying Party' submission by taking into account three points:

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485 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 14.

486 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 15.

487 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 16.

488 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 6, slide 8, slide 17.

(a) The Notifying Party considers the overall network for each broker, that is: owned offices, affiliated offices, and coordinated offices. Instead, in line with recitals (438), (441), (447), (448) above, the Commission considers the owned network of each broker.

(b) The Notifying Party considers results in term of counts of large GAMS customers. Instead, the Commission considers results in term of GWP. This approach is in line with market shares, which are calculated in term of GWP (see Section 6.3.2 of this Decision).

(c) The Notifying Party does not consider WTW in its assessment, while Marsh, Gallagher, Lockton, Howden are considered. Instead, the Commission also added WTW in the network comparison, allowing for a comparison of the networks of all Tier 1 brokers (Aon, WTW, and Marsh) and Tier two brokers (Gallagher, Lockton, Howden).

(456) First, Figure 12 shows that, among the large clients included in the Aon's GAMS database, clients active in less than […] countries represent only [a small percentage] of Aon's GWP (in contrast to [a significant percentage] in term of count in the Notifying Party's analysis in recital (453)(a)), and focusing on […] countries or more captures [a high percentage] of Aon's large GAMS clients. In other words, more than [a very high percentage] of the GWP of the Aon's large clients listed in the GAMS database is generated by clients having insurance policies in more than […] countries.

(457) Moreover, the Notifying Party also recognises that […] of Aon's large clients included in the GAMS database have insurance needs in more than […] countries (see recital (453)(a)).

Figure 12: […]

[…]

Source: Commission's analysis of the Notifying Party provided in the Reply to RFI 47

(458) Second, the decrease in the proportion of countries where Aon's large GAMS clients have insurance policies for clients that have a wider geographical presence results from the fact that the number of countries where these clients have insurance policies increase less proportionately than the number of countries where these clients are active. This does not allow the conclusion to be drawn that there is no clear link between the number of countries in which a large client has subsidiaries, and the number of countries in which it uses Aon's brokerage services (see recital (453)(b)).

(459) As Figure 13 shows, an analysis of Aon GAMS data actually indicates a clear positive correlation between the number of operative countries (i.e., the number of countries where a large client listed in GAMS is active) and the number of countries where these clients have insurance policies with Aon.

Figure 13: […]

[…]

Source: Commission's analysis of the Notifying Party provided in the Reply to RFI47

(460) Third, in contrast to the Notifying Party which considers all types of networks (owned network, affiliated network, coordinated network, see recital (453)(c)), the analysis of the data provided by the Notifying Party in the reply to RFI47 shows that

the Big Three brokers have a strong international network in term of countries with owned offices ([…]). In contrast, Tier-2 brokers are significant behind with […].[489] As explained above in recitals (438), (441), (447), (448), (i) a significant share of LMCs has a preference for owned networks and generally explain that partner networks would be weaker in terms of coordination and communication, and therefore does not provide the same consistent service levels across jurisdictions as an owned office network, (ii) the owned network of Aon, WTW and Marsh is much broader compared to Gallagher, Howden and Lockton, and (iii) Aon, WTW and Marsh stand out with a significant gap to brokers such as Gallagher and Howden.

(461) Moreover, the Commission notes that, in its analysis, the Notifying Party did not consider the coverage of each broker within each country. For example, while the Notifying Party considers that Howden can cover the whole US, Howden has only one owned office in Florida.[490] In contrast, Aon, WTW and Marsh have a much stronger presence in the US with a significant number of offices. The number of offices owned by the brokers within each country has not been considered in the Notifying Party's analysis (see recital (453)(c)). The Commission considers that it is implausible that Howden could cover the needs of LMCs in the US from only one owned office as LMCs generally have requirements in different locations in the US and there are some barriers or preference for a local broker in each state where they have commercial risk brokerage needs.[491]

(462) Fourth, when considering owned offices, WTW and Marsh have a geographical coverage which is similar to Aon, while Tier-2 brokers are significantly behind:

(a) The countries where Marsh has owned offices cover [a very high percentage] of the GWP corresponding to Aon large GAMS clients;

(b) The countries where WTW has owned offices cover [a very high percentage] of the GWP corresponding to Aon large GAMS clients;

(c) The countries where Gallagher has owned offices cover [a significant percentage] of the GWP corresponding to Aon large GAMS clients;

(d) The countries where Lockton has owned offices cover [a significant percentage] of the GWP corresponding to Aon large GAMS clients;

(e) The countries where Howden has owned offices cover [a high percentage] of the GWP corresponding to Aon large GAMS clients.

(463) The Commission also notes that, for Howden in particular, the Notifying Party assumed that Howden can cover the whole customer base of Aon's large clients in the US from only one owned office in Florida. The Commission considers that this assumption is unlikely to hold.[492]

(464) These findings contradict the Notifying Party's argument in recital (453)(d) that Tier-2 brokers have networks that are comparable to the Big Three brokers.

(465) Moreover, Figure 14 shows that, when considering countries where brokers have owned offices, only Marsh and WTW have a wide geographical coverage allowing

489 Commission's analysis of the data provided in the Reply to RFI47.

490 Non-confidential reply to an RFI to third party question 2.

491 See for example reply to RFI 56, question 1.

492 Reply to RFI 56, question 1, which indicates that LMCs with needs in the United States generally are served by multiple offices in the US, depending on their needs.

them to cover the entire needs of a significant proportion of Aon's large GAMS clients, while Tier-2 brokers are significantly behind:

(a) The countries where Marsh has owned offices allow to cover entirely [a high percentage] of Aon large GAMS clients.[493] In term of GWP, Marsh's owned network could cover entirely [a significant percentage] of the GWP of Aon large GAMS clients.

(b) The countries where WTW has owned offices allow to cover entirely [a high percentage] of Aon large GAMS clients. In term of GWP, WTW's owned network could cover entirely [a significant percentage] of the GWP of Aon large GAMS clients.

(c) In contrast, Gallagher's owned network can cover entirely only [a small percentage] of Aon large GAMS clients ([a very small percentage] in GWP), Lockton only [a small percentage] of Aon large GAMS clients ([a very small percentage] in GWP), and Howden only [a significant percentage] of Aon large GAMS clients ([a very small percentage] in GWP).

(466) This evidence contradicts the Notifying Party's argument that other brokers have network that would enable them to serve Aon's large clients (see recital (453)(d)). In contrast, this evidence shows that Aon and WTW are the closest to Aon in term of owned network, while Tier two brokers are significantly behind.

Figure 14: […]

[…]

Source: Commission's analysis of the Notifying Party provided in the Reply to RFI47

(467) Fifth, as regards the Notifying Party's argument that large clients multi-source (see recital (453)(e)), while some large clients can multi-source their needs among several brokers, the analysis of the underlying data provided by the Notifying Party shows that the Big Three brokers are the main brokers used by large clients:

(a) While the Notifying Party mentions 4 clients that multi-source (namely, […]),[494] the same data shows that […] Large clients use the Big Three brokers for [a very high percentage] of their needs.[495]

(b) Moreover, the Notifying Party argues that among Aon's […] Fortune 500 companies headquartered in the EEA, only […] ([a small percentage]) use Aon to place at least [a very high percentage] of their commercial risk needs.[496] However, the Commission notes that, among Aon's […] large clients, the Big Three brokers represent [a high percentage] of the GWP (with [a significant percentage] for the merged entity).

(c) An analysis of the data for the Fortune 500 companies headquartered in the EEA shows that these large clients rely essentially on the Big Three brokers: (i)

493 In line with the Notifying Party's submission (see paragraph (453)(d)), a large client from Aon is covered entirely if the other broker has owned offices in all countries where this specific client of Aon has insurance policies with Aon.

494 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 6, slide 17.

495 These clients include for example: […]. Source: Commission's analysis of the underlying data of the Notifying Submission's "Competition for large customers in the commercial risk industry", dated 29 October 2020.

496 Notifying Party' submission "Commercial Risk – Large Clients, Competitive assessment of the Aon/WTW transaction", dated 28 February 2021, slide 8.

the Big Three brokers are used by almost all these large customers, and the merged entity is used by […] companies over a sample of 108 companies, (ii) the Big Three represent [a high percentage] of the GWP for these large clients (and the merged entity [a significant percentage]), while the next broker, Siaci, represents only [a small percentage] of the GWP of these large clients.[497]

(468) To conclude, based on the above, the Commission considers that the Notifying Party' submission on the network comparison across brokers does not undermine the Commission's finding that the Big Three brokers are significantly ahead compared to other brokers in term of owned international networks. Moreover, the Commission's analysis of the underlying data submitted in the Reply to RFI 47 confirms this finding. As explained above (for example, recitals (438), (441), (447), (448)), (i) a significant share of LMCs has a preference for owned networks and generally explain that partner networks would be weaker in terms of coordination and communication, and therefore does not provide the same consistent service levels across jurisdictions as an owned office network, (ii) the owned network of Aon, WTW and Marsh is much broader compared to Gallagher, Howden and Lockton, and (iii) Aon, WTW and Marsh stand out with a significant gap to brokers such as Gallagher and Howden.

6.3.4.2. Data analytics capabilities

(469) In general terms, data and analytics capabilities are used in the insurance sector as part of predictive risk modelling, enabling pricing that is better suited to expected risk or even adjusted to policyholder behaviour.

(470) The Notifying Party submits that brokers of varying sizes have all of the capabilities that are necessary to service large clients, including access to data and analytics necessary to support large clients and the most complex risks. This view of the Parties is not supported by the customer and competitor responses to the market investigation.

(471) The overwhelming majority of competitors consider that large brokers possess proprietary data (largely acquired from a large customer base, including specific data for large and complex customers) that put them at an advantage versus smaller brokers in order to compete for very large customers or large global risks.[498] The most important data to compete with respect to commercial risk brokerage are data needed for benchmarking based on activity of clients, claims analysis, premiums levels, risk weighted data, average rates for certain risks and importantly historical data of all of these kinds of data. Other important parameters are types of claims, frequency of claims, cost of claims, breadth of insurance needs for the customer type, cost of insurance for a specific customer type, broker resourcing required to support this customer type, number of typical contacts per week/per month from this customer type and other data gathered as part of servicing such customers.

(472) The market investigation confirmed that data analytics and related capabilities are deemed important by LMCs,[499] in particular for property & casualty, FinPro and

497 Source: Commission's analysis of Parties' data submitted with the white paper "Competition for large customers in the commercial risk industry", dated 29 October 2020, and reply to RFI 23. See Annex A for further details.

498 Replies to question 44 of questionnaire Q5 to Competitors and questions 32-41 of questionnaire 16 to Competitors.

499 Replies to question 44 of questionnaire Q5 to Competitors and questions 32-41 of questionnaire 16 to Competitors.

cyber risks. The majority of LMCs for commercial risk brokerage for these risks indicated that they take into account data analytics and reporting capabilities of a broker when selecting their broker. A number of customers in qualitative feedback also indicated that data analytics focus is increasing and one explicitly noted that it will be a differentiating factor between the brokers in the next tender.[500] LMCs that have in-house teams or captive solutions also indicate that they rely heavily on external brokers for data analytics and benchmarking as this is not something that can be developed in-house.[501]

(473) The majority of responding customers consider that post-Transaction Aon/WTW combined datasets would give the Merged Entity a significant competitive advantage matched only by Marsh.[502] This is also confirmed by comparing datasets of the Parties with other competitors, which show that in terms of the customer data (number of customers for which data is held), globally only Marsh will have capabilities matching the dataset of the Merged Entity. All other responding competitors have indicated negligible data specific to LMCs compared to the level reported by the Parties and Marsh.

(474) The data specific to LMCs is used for risk assessment, industry benchmarking and is an important parameter on which brokers compete. A review of the Parties' internal documents and customer tender proposals shows that risk analytics features prominently as part of risk assessment. Tender documents also indicate that both customer and industry-wide loss experience data is used for modelling.[503]

(475) In this vein, a significant competitor considers that "*the Big Three hold voluminous data on large clients with specialty risks, and such clients want insights from similarly situated clients' placements. Therefore, the data pool each of the Big Three has from their large client base perpetuates success among such clients, and makes it difficult for smaller brokers to compete effectively for that business. In other words, client data constitutes a barrier to entry […] proprietary data (and capabilities in data analytics) will inevitably become an even more important competitive parameter, particularly for larger clients*."[504]

(476) Moreover, the large majority of competitors considers that access to such proprietary data forms a barrier to entry or expansion in the commercial risk brokerage market because this data is not available from third parties and the little information available is prohibitively expensive. For example, a competitor explains "*that data is collated by insurance intermediaries from their own records and data. This information and data is not held by third parties outside of the insurance distribution chain and thus cannot be purchased.*"[505]

(477) Another competitor submits that "*data offerings require significant investment on data sourcing, data cleansing, analytics and technology. Large brokers can spread investment over a larger client base, can develop tools from having a larger client data-pool and can produce more cost-efficient tools as many costs do not scale*

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500 Replies to questionnaires Q7, Q9 and Q10 to commercial risk brokerage Customers for property & casualty, FinPro and cyber.

501 Replies to questionnaires Q7, Q9 and Q10 to commercial risk brokerage Customers for property & casualty, FinPro and cyber.

502 Replies to questionnaires Q7, Q9 and Q10 to commercial risk brokerage Customers for property & casualty, FinPro and cyber.

503 For example, Reply to RFI 48, Annex 5, page 28.

504 Replies to question 44 of questionnaire Q5 to Competitors (Document ID 5195).

505 Replies to question 44 of questionnaire Q5 to Competitors (Document ID 6697).

proportionately with portfolio. Large international clients expect broker advice to be informed by data. Data-rich brokers bundle data solutions and insurance placement. Data-poor brokers can analyse a client's specific data but recommendations open to challenge from brokers with more data […] Key data components to build tools (e.g. client level program structure, premium and claims across wide client portfolio) are not available from third party data providers […] Investments required are such that a broking house requires a meaningful client portfolio for them to make sense."[506]

(478) A further significant competitor considers that "*typically, data cannot be purchased from third parties, particularly in Europe. This is because insurers, who hold the broadest data on pricing and claims, consider such data to be a key part of their future pricing strategies and do not permit its licensing or sale. Because data and data analytics represents an increasingly important competitive parameter, this barrier to entry will likely increase. Furthermore, global data is a fundamental requirement for effective and reliable analytics, and there are no non-proprietary sources of reliable data at a global level*".[507]

(479) The difference between smaller brokers and the Parties is also evidenced by the yearly amount spent on data and data analytic tools used in commercial risk brokerage. In 2019, Aon spent EUR […] on data and data analytics and WTW spent EUR […].[508] Except for Marsh, all other responding competitors have indicated that they spent a very small fraction of this amount in the last three years and that they will spend a very small fraction of this budget in the next three years.[509] Therefore the difference in terms of budget for data and analytics between the Parties and their competitors is very significant. Smaller and Tier two brokers would need to multiply their budget multiple times to match the Merged Entity's budget. As one competitor stated: "*Aon publicly state on their website that they have invested in excess of $1bn in data and analytics. This level of investment is at a scale where it cannot be replicated by any broking houses other than Marsh.*"[510]

(480) As such, the market investigation indicates that data and analytics is an important parameter on which customers choose their broker and brokers compete intensely. The market investigation also confirmed that the Parties have comparable data analytics advantages and that the Merged Entity will have a significant competitive advantage as a result of the combined dataset of proprietary data, which would be matched only by Marsh. The market respondents indicate that this would act as a barrier to allow smaller brokers to expand in particular in the markets for LMCs, which require data specific services.

6.3.5. Competitive assessment per risk type

(481) This Section provides a competitive assessment per reportable market within commercial risk brokerage. The Section is organised per risk type, further sub-divided by (i) LMC and non-LMC markets and (ii) per national market where relevant.

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506 Replies to question 44 of questionnaire Q5 to Competitors and questions 32-41 of questionnaire 16 to Competitors. (Document ID 4838).

507 Replies to question 44 of questionnaire Q5 to Competitors (Document ID 5195).

508 Reply to question 10 of RFI 15.

509 Replies to question 44 of questionnaire Q5 to Competitors and questions 32-41 of questionnaire 16 to Competitors.

510 Replies to question 44 of questionnaire Q5 to Competitors (Document ID 4838).

6.3.5.1. Property & casualty for LMCs

A. The Notifying Party's view

(482) The Notifying Party disputes that there is a credible basis in which the Transaction could raise a significant impediment to effective competition in commercial risk brokerage for property & casualty for LMCs.[511]

(483) *Firstly*, the Notifying Party claims that combined market shares are below the level that could give rise to any concern.

(484) *Secondly*, the market for property & casualty brokerage, including for LMCs, will remain highly competitive post-Transaction and there will be ample competitive pressure on the Merged Entity, because of the reasons stated below.

(a) The Parties are not particularly close competitors, and Marsh is the closest competitor of both Aon and WTW.

(b) The Merged Entity will continue to face significant competitive constraint from Marsh and other brokers including Gallagher, Howden and Lockton. Specifically Marsh will continue to have the same incentives to compete aggressively with the Merged Entity.[512] The Merged Entity will further continue to face a clear competitive constraint from other brokers individually and on the aggregate, and there is very strong competition including at the margins. There are numerous examples of switching by large multinational customers, and large multinational customers can use multiple brokers across their risk portfolio.[513]

(c) The Merged Entity will continue to face a clear competitive constraint from direct distribution and the use of captives in relation to large multinational customers. Additionally, captive insurance can act as an out of the market constraint, at least at the margins.[514]

(485) The multiplicity of constraints, especially when taken in the aggregate, would be sufficient to compensate for any possible loss of constraint from WTW resulting from the Transaction.[515]

(486) *Thirdly*, there are strong examples of entry and expansion in the property & casualty brokerage market. Specifically, the Notifying Party points at the disruptive and aggressive market entry by McGill to which Aon and WTW have already lost property & casualty business. Difficulties and costs for replicating a global network are not a significant barrier to entry or expansion. All brokers can make use of a mixed network of owned and partner offices. Finally, there would be little difficulties or costs for customers to switch.[516] The Notifying Party has further detailed these

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511 The Notifying Party considers that such a market definition is incorrect and that no separate market for LMCs exist in any risk class, including property & casualty. This aspect is discussed in Section 6.2.2 of this Decision.

512 Reply to the 6(1)(c) Decision, paragraphs 192 et seq.

513 Reply to the 6(1)(c) Decision, paragraphs 220 et seq.

514 Reply to the 6(1)(c) Decision, paragraphs 344 et seq.

515 The Notifying Party has further argued that a number of brokers can service LMCs in a submission on Competition for 'large clients" in the commercial risk industry on 29 October 2020. The arguments made are taken into account in the assessment on the property & casualty risk class, as well as in all following risk classes assessed in this Decision.

516 Reply to the 6(1)(c) Decision, paragraphs 403 et seq.

arguments in a separate submission on entry and expansion in commercial risk brokerage overall.[517]

(487) *Fourthly*, the Commission's 6(1)(c) Decision underestimates the strong buyer power of customers in property & casualty brokerage. The Notifying Party further argues that buyer power in one risk class cannot necessarily be seen in isolation to other markets, as large multinational customers have the possibility to tender different risk classes together. The Notifying Party further points at examples of alternative suppliers winning business of LMCs from the Parties. The Notifying Party provides that switching costs are generally low.[518]

(488) *Fifthly,* the Notifying Party argues that the results of the market investigation are inconclusive as regards the negative impact of the Transaction in the property & casualty brokerage market.[519]

B. The Commission's assessment

B.1 Market structure

(489) As discussed in Section 6.3.2, the Commission considers the market shares stemming from its own market reconstruction to be a credible basis to assess the market position of the Parties in the property & casualty risk insurance brokerage market to LMCs. The Commission further notes that market shares calculated in the course of its own market reconstruction match the feedback given by customers and competitors regarding the structure of the market, as explained in more detail in this Section of this Decision.[520]

Table 7: Commercial risk brokerage market shares for EEA LMCs based on their global placements of GWP, for property & casualty risk resulting from the Commission's market reconstruction (2019, GWP)

Company	Share of supply
Aon	[50-60]%
WTW	[10-20]%
Combined	***[70-80]%***
3rd broker	[20-30]%
4th broker	[0-5]%
Other remaining brokers	[0-5]%

Source: Commission's market reconstruction

(490) The market shares presented clearly indicate that Aon is a strong market leader in the provision of commercial risk brokerage services for property & casualty to LMCs at

517 Memorandum on entry and expansion in the commercial risk broking industry, submitted by Aon on 28 October 2020; the Commission notes that entry and expansion are discussed in the competitive assessments of respective risk classes. This submission is also taken into account in the assessment of all following commercial risk brokerage classes in this Decision.

518 Reply to the 6(1)(c) Decision, paragraphs 370 et seq.

519 Reply to the 6(1)(c) Decision, annex 1, paragraphs 1 et seq.

520 For completeness, the Commission notes that the Parties' combined market share levels, based on the Notifying Party's estimates, would be [20-30]% in a potential Power segment of property & casualty risk brokerage services to all customers in an EEA-wide market. The Commission did not find separate markets for Power risk brokerage services, which refers to construction and property risks associated with energy businesses. In any event, Power is included in the property & casualty risk class overall, for which the Commission raised concerns for LMCs, and therefore any customer concerns of regarding services specifically to energy construction and infrastructure of a significant size and cross-border requirements are covered by this assessment as well as the respective remedies.

the global level. Aon already has a market share of at least 50%, which according to the Commission gudielines and the Union Courts' case law creates a presumption of the existence of a dominant market position.[521] The Transaction would clearly fortify Aon's leading position. The market investigation show that WTW is a very strong and close competitor to Aon in this market (as set out in detail in Section 6.3.5.1. B2). By merging the first and third leading suppliers on that market, the Transaction would reinforce Aon's leading position whereby the Merged Entity will have combined market shares of [70-80]%, with only one other sizeable competitor remaining in the market with lower market shares of [20-30]% compared to the Merged Entity. The next largest competitor has a market share not exceeding 5%, with all remaining competitors accounting for less than 5% of the market indicating that they are very small indeed.

(491) The responses to the market investigation support the level of market shares based on the market reconstruction exercise. In particular, the phase 2 market investigation confirmed that the market is largely dominated by the three players with other brokers considered as close or suitable competitors to the Parties only by a minority of responding LMCs. LMCs rated Marsh, Aon and WTW as particularly strong competitors, with other brokers rated at a significant gap (further discussed in Section 6.3.5.1 B.2).[522] These findings are further supported by the tender data analysis, and by qualitative feedback on potential negative impacts of the Transaction on the property & casualty risk brokerage market for LMCs, provided by a significant number of such customers and competitors.

(492) In line with the Horizontal Merger Guidelines and established case law,[523] the Commission finds that the market shares of the Merged Entity, combined with the factors set out in the following Sections below, indicate that the Transaction will likely result in the creation of a dominant position for the Merged Entity on the

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521 Horizontal Merger Guidelines, paragraph 17. In the interests of clarity, the Commission notes that, notwithstanding the presumption in the Commission's guidelines and the Union Courts' case law, in the specific circumstances of the present case – in particular, the results of the maket investigation, during which respondents consistently identified the Parties and Marsh as the principal competitors on the market, who competed particularly closely with one another and who did not identify Aon as holding a dominant position in the market as compared to WTW and Marsh – the Commission does not find that Aon enjoyed a dominant position on the market for the provision of commercial risk brokerage services for property & casualty to LMCs at the global level pre-Transaction. Rather, and for the resons set out in this Section 6.3.5.1., the Commission considers that the removal of the competitive constraints exercised by WTW on Aon pre-Transaction resulting in a reduction from three competitors to two competitors (i.e. the merged entity and Marsh) capable of adequately serving LMCs' requirements, taken together with the other factors examined in sections 6.3.5.1 B.3-B.7, will result in the creation of a dominant position for the Merged Entity.

522 Replies to question 26 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

523 Paragraph 17 of the Horizontal Merger Guidelines: *"According to well-established case law, very large market shares - 50 % or more - may in themselves be evidence of the existence of a dominant market position […] A merger involving a firm whose market share will remain below 50 % after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes. The Commission has thus in several cases considered mergers resulting in firms holding market shares between 40 % and 50 %, and in some cases below 40 %, to lead to the creation or the strengthening of a dominant position."* See also Case T-221/95, Endemol v Commission, [1999] ECR II-1299, paragraph 134, and Case T-102/96, Gencor v Commission, [1999] ECR II-753, paragraph 205; M.1221 - Rewe/Meinl, paragraphs 98-114 and M.2337 - Nestlé/Ralston Purina, paragraphs 44-50.

market for commercial risk brokerage for property & casualty to LMCs at the global level, and thus significantly impede effective competition.

B.2 Closeness of competition

(493) Aon and WTW compete closely with each other, as well as with Marsh, and Marsh competes closely with Aon and WTW.[524] Other smaller brokers, notably Gallagher, Lockton and Howden, as well as strong regional brokers, are only distant competitors to the Parties and Marsh. These findings are evidenced by feedback from LMCs and competitors and the tender analysis. All elements indicate that the Big Three brokers – the Parties and Marsh – are particularly close competitors, while smaller brokers and local players do not compete closely with the Parties and Marsh.

(494) *Firstly*, responses from LMCs and competitors in both market investigations clearly indicate that Aon and WTW, together with Marsh, are particularly close competitors. LMCs identified most often Marsh and WTW as the closest competitors to Aon, while other competitors were very rarely considered as Aon's close rivals by LMCs. Even when looking at the top three competitors to Aon, Marsh and WTW are clearly mentioned most, with a considerable gap to the Tier two brokers Gallagher, Lockton and Howden. Regional players such as Siaci, Diot and Funk, are mentioned to an even lesser extent as one of the three closest competitors to Aon.[525] These findings are in line with the view of competitors, who consider Marsh and WTW to be the closest competitors to Aon, and with hardly any other broker mentioned as a close competitor. When looking at the three closest competitors to Aon, Marsh and WTW are clearly named most often by competitors, followed by Gallagher with a large gap. Again, smaller and more local players are considered only few times each.[526]

(495) As for WTW, the results are overall similar. LMCs consider Marsh and Aon to be the closest competitors to WTW. Other competitors are rarely named as closest competitor to WTW. Regarding the top three competitors to WTW, again, Marsh and Aon are predominantly considered to be part of this selection, followed by the Tier two brokers Gallagher and Lockton with a considerable gap. Other brokers such as Siaci, Howden and Funk are named to an even lesser extent.[527] In line with that, competitors see Aon and Marsh as the closest competitor to WTW. Both Aon and Marsh are named predominantly among the top three competitors to WTW by competitors, followed by Gallagher with a considerable gap. Other smaller and regional brokers are only named sparsely each.[528]

(496) Asked about the overall competitive strengths of available brokerage competitors specifically in the property & casualty risk class, LMCs identified Aon, Marsh and WTW clearly as the strongest competitors, with as significant gap to the fourth strongest competitor, Gallagher. This analysis confirms previous findings that Aon, WTW and Marsh compete on a comparable level for LMCs, which cannot be said about any Tier two or regional broker.[529]

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524 Even though market feedback suggests that Marsh may be marginally the closest competitor to both Aon and WTW, the Commission notes that the Big Three compete comparably close to each other.

525 Replies to question 56 of questionnaire Q1 to Customers.

526 Replies to question 47 of questionnaire Q5 to Competitors.

527 Replies to question 56 of questionnaire Q1 to Customers.

528 Replies to question 47 of questionnaire Q5 to Competitors.

529 Replies to question 26 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

(497) *Secondly*, the Commission carried out an analysis of tender data for large customers in property & casualty risk insurance brokerage, that is by considering customers generating more than EUR 1 billion turnover per year,[530] with a participation analysis and a loss analysis.[531,532]

(498) In terms of methodology, the Commission implemented four adjustments compared to the Notifying Party's submissions (see Annex B for further details), by: (i) considering tenders in terms of value, instead of count, due to the significant heterogeneity in tender values, (ii) excluding non-competitive tenders (i.e. tenders without any competitive interactions between suppliers), (iii) considering the period 2017-2019 instead of 2019 only, in order to increase the sample size and therefore mitigates the uncertainty related to samples with a small number of tenders (the analysis for 2019 is reported only as a sensitivity analysis), and (iv) excluding tenders with unknown participants or unknown winners.

(499) As regards the exclusion of tenders with unknown participants or unknown winners, this is based on the assumption that the distribution of winners/participants in the set of tenders with unknown winners or unknown participants is similar to the distribution of winners/participants in the set of tenders with known winners or known participants. The Commission considers that, for property & casualty, excluding tenders with unknown winners/participants is reliable, since, in particular (see Annex B for further details):

(a) When entering the names of winners, Aon's account executives have the choice among more than 1,000 brokers in the pick list. Given how comprehensive the pick list is, the Commission considers that: (i) it is unlikely that Tier two brokers would be missed[533] and (ii) that the main local brokers would be well represented.

(b) Moreover, in property & casualty, the missing brokers identified by the Notifying Party are essentially local brokers, which do not appear as alternatives to the Big-Three brokers for LMCs in the market investigation. It is therefore unlikely that the Commission's analysis misses an important competitive constraint to Aon when "unknowns" tenders are excluded.

(c) In addition, the Commission undertook a manual review of tenders with unknown winners, and compared the corresponding clients with WTW

530 Large customers have been identified by the Notifying Party in Aon tender data. Based on the market investigation (replies to question 1.2 and question 21 of questionnaire Q1 to Customers), the Commission also considers that companies with a turnover exceeding EUR 1 billion) is a reliable proxy for LMCs (i.e., companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries) since: (i) most companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated to have insurance needs in more than 5 countries, and (ii) the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less.

531 A participation analysis considers which brokers participate in tenders against Aon, and therefore allows to assess the degree of competitive interactions between the merging Parties relative to third-parties.

532 A loss analysis considers to which brokers Aon loses tenders. The Commission considers the participation and loss analyses jointly to assess the competitive interactions between the Parties and their competitors. This is because participation in tenders is particularly credible if it also results in wins; the participation analysis therefore needs to be seen in conjunction with the analysis of win rates (i.e. the loss analysis).

533 The only exception is McGill, who has entered in 2019 (Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. The Notifying Party did not mention any other recent entrant as Tier two broker.

customer data provided in the Reply to RFI 33. Among the tenders for property & casualty with unknown winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with known winners: for the period 2017-2019, while the loss rate from Aon to WTW is [a significant percentage] in the sample of tenders with known winners (see recital (500)(b)), WTW's customers represent a proportion which is actually even higher with [a significant percentage] of the value of tenders with unknown winners.[534,535] This indicates that the Commission's assumption is valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(d) The Commission considers that the argument on missing brokers in the pick-list of Aon tender data is mainly applicable to the loss analysis.[536] In contrast, as regards the participation analysis, it is possible for Aon's account executives to enter as free text the name of other participants.[537] The Commission therefore considers that, while Aon's account executive did not enter the full list of participants in a tender (that is, not all participants are listed for a given tender), there is no reason to believe that the participation rates of WTW relative to their competitors would be biased when tenders with missing information on participants are excluded.

(500) The analysis of Aon's tender data for property & casualty shows that WTW and Marsh are […], while other brokers are […] (see Annex B for a detailed description of the Commission's analysis of tender data).[538] This is based on the following:

(a) The participation analysis, which shows that, for the period 2017-2019:

– Aon encounters WTW ([a significant percentage] by value) the most frequently after Marsh ([a significant percentage] by value).

– By contrast, […].

534 Given the high number of tenders for large customers in property & casualty ([…] tenders for the period 2017-2019), the Commission carried out the manual matching exercise for tenders representing [a significant percentage] of total value in 2017-2019 (corresponding to […] tenders).

535 These findings are also confirmed when only 2019 is considered, where WTW's customers in the sample of tenders with unknown winners reviewed by the Commission represent a proportion (in term of value) which is similar than in the sample of tenders with known winners.

536 Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. This is because the internal system of Aon prevents the account executives from manually entering as free text in the winner field the names of winners not present in the default pick list.

537 Reply to RFI37, paragraph 1.9: […]

538 Similar to the analysis of Aon tender data submitted by the Notifying Party in the Reply to the 6(1)(c) Decision, the Commission considers tenders for large customers. The Commission notes that the Notifying Party, in its submissions on tender data, was not able to identify the geographical coverage for insurance needs for their large customers due to data limitations. Therefore, it is also not possible for the Commission to capture such geographical scope of insurance needs given the lack of data available. Nevertheless, despite this data limitation, the Commission still considers that such data limitation does not prevent if from carrying out a reliable analysis of tender data for LMCs. In particular, most companies responding to the market investigation with a turnover exceeding EUR 1 billion (which corresponds to the definition of large customers) indicated that they have insurance needs in more than 5 countries. Conversely, the majority of companies with a turnover below EUR 1 billion submitted that their insurance needs covered 5 countries or less. On that basis, the Commission considers that tender data for large customers (i.e. companies with a turnover exceeding EUR 1 billion) is a reliable proxy for tender data for LMCs (i.e., companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries).

(b) The loss analysis, for the period 2017-2019, which shows that other brokers (with the exception of WTW and Marsh) […]:[539]

– After Marsh […].

– By contrast, […].

(c) The sensitivity analysis for 2019 confirms the findings of the baseline analysis based on the period 2017-2019 for both the participation analysis and the loss analysis.[540]

(501) Notwithstanding the exclusion of the direct channel from the relevant product market, […]:[541, 542]

(a) The participation analysis shows a […].

(b) Similarly, the loss analysis shows that the direct channel […] wins against Aon (close to [a very small percentage] of tender value for the period 2017-2019).

(502) Lastly, as regards the competitive constraints faced by WTW, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW (see Annex B for further details). As an alternative, the Commission has used Aon tender data to perform a targeted incumbent analysis to assess the competitive constraint faced by WTW, for the period 2017-2019.[543]

(a) Among the opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), WTW and Marsh were the incumbents for more than [a very high percentage] of the revenues corresponding to these opportunities (WTW was the incumbent for [a significant percentage] of the revenue, and Marsh was the incumbent for [a significant percentage]).

(b) Other incumbents, such as Gallagher, Howden and Lockton, represent a […] share of the new business that Aon tried to acquire (ranging between [a very small percentage] for each incumbent).

(c) While the tender data provided by WTW do not allow for an assessment of the competitive constraint that Aon exerts on WTW (see Annex B for further details), this analysis of Aon tender data still indicates that WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh).

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539 Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Annex B for further details), the results also confirm the findings from the loss analysis carried out by the Commission, where WTW was the second competitive constraint to Aon, after Marsh, but significantly ahead of other brokers and the direct channel.

540 Following the comment of the Notifying party to consider only 2019, since some brokers would be absent from Aon internal system in 2017-2018 due to a different internal system, the Commission carried out as well a sensitivity analysis for 2019 only.

541 While the Commission defined a product market limited to the provision of brokerage services, excluding direct distribution as per Section 6.1.3 above, considering the Notifying Parties' arguments that the direct channel exerts a competitive constraint on brokers, the Commission assesses the direct channel as a potential 'out of market' competitive constraint.

542 These findings are also confirmed when only 2019 is considered.

543 These findings are also confirmed when only 2019 is considered.

(503) Based on the above, the Commission considers that the analysis of tender data for large customers in EEA in property & casualty shows that Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon and WTW.

(504) The closeness of competition between Aon, WTW and Marsh in the provision of property & casualty risk brokerage can be explained by the specific features of this risk class which match the competitive strengths of the Big Three brokers against smaller competitors. A crucial element is the large network of owned offices Aon, WTW and Marsh operate, which distinguish them from Tier two and regional brokers, who rely to a greater extent on partner networks, as explained in Section 6.3.4.1 of this Decision. Such network capability is particularly important in the property & casualty risk class. The global presence of a broker is indeed the second-most important criterion for LMCs when choosing a property & casualty broker, after overall quality of service.[544] A clear majority or responding LMCs confirm that the type of the network influenced their broker selection.[545] Customers require a local presence of a broker for services such as local servicing in local language, claims handling and the issuing of local policies. Local knowledge is also needed to ensure that a customer's insurance program complies with all national legal requirements, and in some jurisdictions, using a local broker is legally required. A large majority of responding LMCs of property & casualty risk brokerage services state that a broker needs to have specific expertise for each country where risks are to be covered.[546]

(505) On the one hand, in this context, the scope of the network of a broker, as further explained in Section 6.3.4.1, is particularly important for the provision of property & casualty brokerage services to LMCs. For the overwhelming majority of LMCs responding to the market investigation, a physical presence of their property & casualty broker in each country is either very important or at least important.[547] The need for a local presence is further underlined by the fact that property & casualty brokerage LMCs do not consider it sufficient if a broker has a physical office only in a number of key locations, and provides its services from there.[548] One customer explained specifically with respect to property & casualty: *"Local presence is key, mainly in the locations where there are local regulations imposing to have local policies in place, placed with local insurers. Furthermore, it is more efficient to have local contacts between our entities and the local broker, to manage the insurance policies and claims adequately."*[549] Consequently, particularly for property & casualty, LMCs see a network of owned offices as more suitable to provide property & casualty services compared to broker partner offices, considering factors such as

544 Replies to question 10 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

545 Replies to question 21 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

546 Replies to question 55 of questionnaire Q1 to Customers.

547 Replies to question 18 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

548 Replies to question 18.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

549 Reply to question 19 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty (Document ID 9639).

quality, coordination and speed of service, economic efficiency, cost transparency and ability to handling claims.[550]

(506) The Commission notes that the reason for closeness between the Parties and Marsh in the property & casualty risk class is not limited to the superior network capabilities of the Big Three compared to smaller brokers. LMCs typically have considerable property & casualty risks to insure. The experience with large and complex risks is therefore a further criterion LMCs consider very important in relation to property & casualty brokerage.[551] This is in line with the view of LMCs that the provision of property & casualty brokerage services require a high level of specific expertise by a broker.[552] One customer explained that *"P&C risks for large industrial organizations are as complex as other specialty risk classes, requiring in-depth analysis, sound advisory services and high level of expertise."*[553] A second customer submitted: *"Property and Casualty have their own complexity which have not be underestimated* [sic] *when it comes to design the right tailor made policy wording to respond properly should a loss / claim occur"*.[554] In the view of responding LMCs, Aon, Marsh and WTW have the strongest track record with LMCs in property & casualty, with a significant gap to the next competitor Gallagher.[555] This explains why Aon, WTW and Marsh are perceived as particularly close competitors in the LMCs market.

(507) This point is further evidenced by internal documents by the Parties. WTW, for instance, […].[556] […]. This further evidence that indeed the property & casualty risk class includes very diverse types of risks, and that large and complex property & casualty risks are indeed specific in nature. The Commission considers that brokers with pronounced expertise and experience in handling such specific risks compete particularly closely compared to other brokers.

Figure 15: [Internal document]

[Internal document]

Source: WTW internal document Document ID 10682-86818.

(508) Finally, strong data analytics capabilities, as discussed in Section 6.3.4.2 of this Decision, are an important feature that distinguish Aon, WTW and Marsh from other brokers. Responding LMCs confirm its importance for the provision of property & casualty brokerage services to LMCs, especially with respect to risk modelling capabilities.[557] A customer explained: *"If the broker doesn't have data of the*

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550 Replies to question 22.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

551 Replies to question 10 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

552 Replies to question 44 of questionnaire Q1 to Customers.

553 Reply to question 44.1.1 of questionnaire Q1 to Customers (Document ID 4125).

554 Reply to question 44.1.1 of questionnaire Q1 to Customers (Document ID 4163).

555 Replies to question 27 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

556 WTW internal document on WTW's central property & casualty Global Hub dated 1 July 2019, Document ID 10682-86818.

557 Replies to question 41 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

relevant industry and geographic spread, the broker would not be of interest. The bigger the customer portfolio of the broker, the more valuable the benchmarking."[558]

(509) On the basis of the above, the Commission concludes that Aon and WTW are particularly close competitors compared to almost all other brokers in the market for commercial risk brokerage for property & casualty for LMCs at the global level. Only Marsh is comparable to and equally close to Aon and WTW.

(510) In light of the above, the Commission considers that, pre-Transaction, Aon and WTW are close competitors and that WTW exercises a significant competitive constraint on Aon. That competitive constraint would be lost as a result of the Transaction. The loss of direct and important competition between the Parties, together with the other elements assessed in this Section 6.3.5.1. will likely result in a significant increase in Aon's market power in the market for commercial risk brokerage for property & casualty for LMCs at the global level and a significant reduction of competitive pressure in this market.

B.3 Switching

(511) The market investigation confirmed that LMCs are limited in their switching abilities, because of a lack of alternatives, as well as switching costs. This is further supported by the fact that a high share of competitors report a retention rate of over 90% for overall commercial risk brokerage regardless of risk type, showing that LMCs tend not to switch brokers regularly.[559]

(512) *Firstly*, LMCs will be left with insufficient alternatives in the property & casualty brokerage market to whom they can switch. In the market investigation, LMCs were asked about suitable alternative providers in the event of a 5-10% price increase in remuneration, or a reduction of quality of service, for their current broker (either Aon or WTW). The only competing broker such customers generally identified as a suitable alternative to the Parties is Marsh, which was named by a large majority of LMCs. The majority of LMCs did not identify a further broker as a suitable alternative to the Parties. The next-best alternative named by respondents to the market investigation is Gallagher, which follows the Big Three brokers only with a significant gap, and is identified as an alternative only by a minority of LMCs. These findings are in line with the structure of the property & casualty brokerage market, as described in Section 6.3.5.1 B1, as well as the closeness of competition between Aon and WTW, as explained in Section 6.3.5.1 B2. Other competitors mentioned by even fewer LMCs are other Tier two brokers Lockton and Howden. Market entrants such as McGill and regional players such as Siaci, Diot and Funk only play a minor role.[560]

(513) In fact, a significant number of LMCs described the Transaction explicitly as a 3-to-2 in the property & casualty risk class during the first and second market investigation. One customer explained: *"The reduction in the number of global players (from 3 to 2) will reduce the number of choices and then the potential alternatives"*.[561] A high number of other LMCs expressed similar views on the market structure in property &

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558 Reply to question 41.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty (Document ID 9141).

559 Replies to question 19 of questionnaire Q16 to Competitors.

560 Replies to question 28 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

561 Reply to question 14.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty (Document ID 7979).

casualty brokerage. Notwithstanding the fact that other companies responding to the market investigation consider other brokers as potentially suitable for their needs, a significant number of LMCs consider that the Transaction will leave their company with only two credible alternatives. The Commission notes, however, that LMCs typically invite three or more brokers to participate in such tenders, but usually only three brokers meet the criteria set out in the request for proposal.[562] Therefore, the number of suitable alternatives in tenders would significantly reduce due to the Transaction.

(514) *Secondly*, there are significant barriers to switching in place that prevent LMCs to switch property & casualty brokers. The main barrier considered by such customers is the knowledge the incumbent broker has compared to competitors.[563] One customer explained that a *"long lasting commercial relation and thus its implicit knowledge of the firm with the current broker AON has been the main barrier to switch to an alternative broker"*.[564] These findings are in line with the fact that LMCs consider the knowledge a broker has of the company and its risks one of the most important criteria when choosing a property & casualty broker.[565] Additionally, a significant proportion of LMCs consider the global scope and complexity of their insurance program a barrier to switch brokers, as such transfer would be particularly difficult and costly.[566] One French customer explained: *"We operate in more than 50 countries worldwide. And for France, we could consider changing our broker but we have a significant number of policies in place. This makes it difficult to change the brokers, and would create a huge workload for which we don't have enough resources. It would be very costly and would create a lot of operational risk"*.[567]

(515) Based on the above, the Commission considers that whilst switching a broker is in any event relatively costly and entails difficulties for customers, the fact that the Transaction will eliminate WTW as a choice available to LMCs will limit still further the number of possible alternatives available for LMCs with respect to their global commercial risk brokerage for property & casualty needs to only two alternative suppliers. Such reduction of available options from three to two would likely result in a significant loss of competition from WTW to the other Big Three brokers that existed pre-Transaction and will likely soften the competitive pressure in future tenders on Aon and Marsh. In line with the Horizontal Merger Guidelines, customers that have difficulties switching to other suppliers because there are few alternative suppliers, are particularly vulnerable to price increases (or more generally to worsening terms and conditions offered in tenders in this market).[568] As such, by eliminating the competitive pressure that WTW exercised on Aon and significantly decreasing the competitive pressure on the remaining credible competitor (i.e. Marsh), the Transaction is likely to result in a significant reduction in competitive

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562 Replies to questions 11, 11.3 and 11.4 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

563 Replies to question 31 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

564 Reply to question 31.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9014).

565 Replies to question 10 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

566 Replies to question 31 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

567 Reply to question 31.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9639).

568 Horizontal Merger Guidelines, paragraph 31.

pressure in the market for commercial risk brokerage for property & casualty for LMCs at the global level.[569]

B.4 Likely reaction from competitors

(516) In its assessment of likely reactions from competitors towards the Merged Entity, the Commission distinguishes between Marsh on the one hand and Tier two brokers and other smaller brokers individually and in aggregate on the other hand. This assessment covers the likely ability and incentive of the competing brokers to constrain the Merged Entity post-Transaction.

(517) As regards Marsh, the Commission acknowledges that Marsh, one of the Big Three, will likely remain a credible broker for LMCs in the market for property & casualty. However, the Commission considers it likely that Marsh will benefit from any price increases by the Merged Entity and therefore have a reduced incentive to compete compared to the (counterfactual) situation absent the Transaction.

(518) The Commission firstly notes that, in accordance with its guidance and in line with economic models of oligopolistic competition markets with differentiated products, competitive pressure and incentives to compete for non-merging firms can be reduced.[570] The Commission's Horizontal Merger Guidelines specify that *"mergers in oligopolistic markets involving the elimination of important competitive constraints that the Parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition"*.[571] In line with models of oligopolistic competition and differentiated products, in the present case, Marsh as a non-merging firm may also benefit from the reduction of competitive pressure that results from the merger, since the merged firms' price increase is likely to switch some demand to the rival firms, which in turn can find it profitable to increase their prices.[572]

(519) This is further supported by the findings set out in Section 6.3.5.1 B.2 above, which sets out the Commission's findings that the Parties and Marsh are particularly close competitors, with other brokers not considered as suitable by many LMCs. Thus, in the event of a price increase by the Merged Entity, Marsh would be the most likely alternative for most LMCs and directly benefit from the significant loss of competition between the merging parties. Against this background, the Commission considers that Marsh is likely to have less incentive to compete post-Transaction compared to the situation absent the Transaction.

(520) The Commission's assessment of Marsh's incentive to compete is also supported by some respondents to the market investigation.

(521) Several LMCs [573] and competitors[574] were sceptical that Marsh will have the same incentives to compete with the Merged Entity. One property & casualty risk insurance brokerage LMC explained: *"Marsh, Aon and WTW already dominate the market with few other actors capable of competing with them, and the transaction*

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569 Horizontal Merger Guidelines, paragraph 24.
570 Horizontal Merger Guidelines, paragraphs 24-25.
571 Horizontal Merger Guidelines, paragraph 25.
572 Horizontal Merger Guidelines, paragraph 24.
573 Replies to question 30 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.
574 Replies to question 23 of questionnaire Q16 to Competitors.

will likely reduce Marsh's incentive to compete more aggressively".[575] Similarly, one competitor explained: "*[t]he Aon-WTW combination will become the clear market leader for Large Multinational Clients in a large range of geographies and industries. Marsh are nearing completion of the JLT Specialty integration and will seek to capitalise on service and talent disruption at Aon-WTW strengthening competition in the short-term. WTW played a role in the industry as a smaller but highly credible substitute for Aon and Marsh. No other broker is equipped to play this role at this point. The removal of WTW will reduce the competitive discipline on Aon and Marsh. Clients who want the comfort of a large broker (nobody ever got fired for hiring IBM) like to split their placement will be particularly impacted by the loss of choice.*"[576] With another competitor stating: *"Marsh will be the primarily beneficiary of clients who used two brokers when these were Aon/Willis."*[577]

(522) Moreover, this assessment is supported by reported statements made by Marsh's CEO Daniel Glaser with respect to the Transaction. In a call with investors, Glaser said: *"And on a personal comment, as somebody who's had almost 40 years in this business, I don't think the Aon Willis combination is good for clients or good for the market. But I do think it's good for Marsh & McLennan. I mean, come on, the big three becomes the big two, how could that not be a benefit to us?"*.[578] In this respect the Notifying Party criticised in its response to the 6(1)(c) Decision the fact that the Commission relies on a single informal statement, which in the Notifying Party's opinion is clearly an inadequate basis for such a wide-ranging provisional conclusion.[579] Nevertheless, the commission considers that this statement by Marsh's CEO is in line with economic models of oligopolistic competition with differentiated products, with the Merger Guidelines, and is echoed by some LMCs.

(523) For the sake of completeness, the Commission notes that the majority of responding LMCs and competitors stated that Marsh will either step up competition or will compete just the same with the Merged Entity.[580] [581] However, the Commission considers that those opinions should not be attributed considerable weight because the drafting of the respective question in the market investigation was ambiguous and implied efficiency gains for the merging parties. The question reads: "*In your view, how will the acquisition of WTW by Aon impact on Marsh's competitive behaviour regarding large multinational customers?*". For example, one option to answer was formulated as follows: *"faced with a stronger competitor, Marsh will likely step up its efforts and compete even stronger for large multinational customers."* This question therefore pre-supposed that the Merged Entity would be a stronger competitor than it is today. In line with economic theory, such efficiencies on the side of the Merged Entity could increase its competitors' incentive to compete. However, no such efficiencies have been demonstrated in the present case. For this reason and in light of the overall context of the case, the Commission considers that it is likely that Marsh's incentives to compete would be reduced post-Transaction.

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575 Response to question 30.1 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

576 Reply to question 23.1 of questionnaire Q16 to Competitors (Document ID 8961).

577 Reply to question 23.1 of questionnaire Q16 to Competitors (Document ID 8802).

578 Marsh / McLennan Companies, Inc. (MMC) CEO Dan Glaser on Q2 2020 results – Earnings Call Transcript, Seeking Alpha, dated 30 July 2020, Document ID 6465.

579 Reply to 6(1)(c) Decision, paragraphs 16 and 17.

580 Replies to question 30 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty.

581 Replies to question 23 of questionnaire Q16 to Competitors.

(524) In any event, even if Marsh had the incentive to strongly compete against the Merged Entity, the Commission considers that Marsh alone as single credible competitor remaining in the market would not be sufficient to prevent a significant loss of competition post-Transaction. The Commission notes that competitive tenders are the preferred way of LMCs to select brokers for property & casualty brokerage services. Typically, LMCs invite three or more brokers to participate in such tenders, but usually only three brokers meet the criteria set out in the request for proposal.[582] Consequently, the number of suitable alternatives in tenders would significantly reduce due to the Transaction. In fact, the clear majority of LMCs responding to the market investigation provide that the Transaction, will lead to a decreasing level of competition in future tenders[583] and therefore to a significant decrease of competitive pressure on Aon.

(525) As for other brokers, Tier two brokers such as Gallagher, Howden and Lockton, as well as local brokers such as Siaci, Verspieren or Funk, are not a credible competitive constraint to Aon and WTW, and it is unlikely that they will credibly compete with the Merged Entity post-Transaction. As explained in Section 6.3.5.1 B.2, the Parties and Marsh are close competitors, and no other competitor competes equally close. Further, as detailed in Section 6.3.5.1 B.3, the majority of LMCs do not consider brokers other than the Big Three as suitable for their needs individually. Such brokers lack crucial features that would enable them to compete credibly for LMCs and that are difficult to build in the near future, for example within a three year timeframe. On the one hand, the lack of a global network comparable in reach and quality to the Big Three is a significant competitive disadvantage of those brokers. Even if other brokers have further extension plans, competitors largely consider it to be difficult to build a network comparable to Aon or WTW, and it would require a long time (i.e. more than 3 years) or very significant investment.[584]

(526) On the other hand, a credible track-record with LMCs and the experience and expertise, including in data analytics, is a further important criterion to compete for LMCs. Tier two and regional brokers would first need to significantly improve expertise and track-record before becoming a credible competitor. In the view of the Commission, this would require significant investment and time, even in a case where smaller competitors would be able to hire some personnel in the course of the integration between Aon and WTW post-Transaction. One competitor explained: *"It is a limited market which requires first to gain credibility to have a change to become a challenger and it takes time* [and] *cost money"*.[585] In this context, the Commission notes that LMCs would not promote smaller brokers, for example by granting a share for the services needed, in such a case the company would consider that an insufficient number of suitable brokers is available.[586]

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582 Replies to questions 11, 11.3 and 11.4 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

583 Replies to question 14 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

584 Replies to question 40 of questionnaire Q5 to Competitors.

585 Reply to question 26.1 of questionnaire Q16 to Competitors (Document ID 9147).

586 Replies to question 40 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

(527) The Parties have submitted a memorandum showing constraint by other brokers based on internal documents.[587] Submissions by Aon and WTW contain a number of internal documents referencing to competitors such as Gallagher, Lockton and Howden. However, the Commission notes […].[588] Internal documents presented by Aon refer to business opportunities lost in the property & casualty risk class where Aon was the incumbent broker in connection to the LMCs […].[589]

(528) The Commission notes that the internal documents provided by the Notifying Party with respect to […] date from 2016 and are therefore not considered to be a recent example of loss of business to a smaller competitor.[590] As for […], the Commission understands that […]. However, no loss of business has yet materialised for Aon with respect to this client.[591] […].[592] From internal documents, the Commission understands that […] was ultimately taken over by the American company […]. The US broker of […] at the time was Hylant, which cooperates with Funk in Germany.[593] The Commission understand that […] ultimately stayed with Hylant, including with its newly acquired […] business. Given the circumstances described, losing the […] account does not qualifies as a relevant example of a customer switching to a smaller competitor in the course of normal business activities that would be capable of undermining the Commission's conclusions.

(529) As for […], the Commission acknowledges that Aon may have lost the account to its smaller competitor Südvers, and the Commission was not able to further investigate the circumstances of this loss. It has to be noted that the internal document the Notifying Party is referring to is a power point presentation that simply states […].[594]

(530) Finally, the example of the customer […] rather shows the clear limitations smaller brokers, in this specific case […], have when competing with Aon. The Commission understands that […] indeed intended to use […] to wholesale the liability program, as […], and asked Aon to do the retail part of the business, meaning that […] would be placing the risk, while Aon would use its international network for the servicing.[595] In internal e-mails discussing this proposition, Aon's Chief Broking Officer in Brazil concluded that […]. The employee further noted: *"[…]"*[596] The Commission considers that this example, though showing a case in which a client moved business from Aon to a smaller competitor, underlines the reasons why smaller brokers have a competitive disadvantage when competing with Aon, WTW and Marsh.

(531) The Commission acknowledges that the abovementioned examples in the context of this specific submission by the Parties do not constitute a conclusive list of property

587 Memorandum on evidence of constraint from rival brokers in commercial risk broking in Aon's internal documents, 19 February 2021; WTW's commercial risk broking (CRB) internal documents, 22 February 2021.
588 Reply to RFI 48, WTW response, annex 1.
589 Reply to RFI 48, Aon response, annex 1.
590 Reply to RFI 48, Aon response, paragraph 1.1.
591 Reply to RFI 48, Aon response, annexes 29, 30 and 31.
592 […].
593 Aon internal document on the status of the […] account dated 19 February 2018, Doc-ID: 10526-34.
594 Memorandum on evidence of constraint from rival brokers in commercial risk broking in Aon internal documents, submitted by Aon on 19 February 2021, annex 1, page 4.
595 Aon internal document on the […] account dated 29 September 2020, Document ID 10263-32563.
596 Aon internal document on the status of the […] account dated 29 September 2020, Document ID 10263-32563.

& casualty LMC of losses to smaller competitors.[597] Nevertheless, the analysis above shows that losses may take place under very customer-specific circumstances that do not necessarily indicate significant competitive pressure exercised by smaller brokers.

(532) Finally, the Commission does not consider that smaller brokers could collectively exercise meaningful competitive pressure on the Merged Entity. Firstly, even when combining all of the market shares attributed to Tier two or regional brokers, such competitors would collectively still only account for a much smaller proportion of the market compared to the Merged Entity. Secondly, smaller brokers would, if invited, still participate in tenders as independent competitors and would therefore not exercise significant competitive pressure on the Merged Entity as each has significantly weaker competitive strengths compared to the Big Three. In that sense, LMCs clearly dispute that smaller brokers, even on the aggregate, could together exercise a similar competitive pressure as Aon, WTW or Marsh individually.[598] One customer explained in that sense that *"smaller brokers aggregated are just independent smaller brokers that cannot work as one the way Aon, WTW and Marsh individually can."*[599]

(533) The Commission considers, in the view of the above, that a combination of Aon/WTW would create a dominant position for the Merged Entity, and the resulting impediment of effective competition would likely not be countered by remaining competitors who either lack the ability or incentive to constrain the Merged Entity.

B.5 Countervailing factors

(534) In line with the view of the Notifying Party, LMCs currently consider that they have strong negotiating power vis-à-vis insurance brokers.[600] LMCs partly explain this with the size of their company, which would be particularly attractive to brokers. One client submitted that *"as a FTSE 100, we are a large name and as a result, a client that any broker would wish to have on their books"*.[601] It has to be noted, though, that property & casualty is a very large risk class for which a high number of companies in general and LMCs in particular source brokerage services. Therefore, even larger clients only account for a small fraction of turnover generated by a broker in this risk class. The Commission is of the view that this limits the negotiating power of single customers, which was also noted by a respondent to the market investigation who submitted that the *"amount of fees that we pay to the chosen broker is significant, but their overall income is so significant that, despite we are important in terms of image, we are not that important in terms of revenue"*.[602]

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597 The Parties point, for example, at annex 6.A.12.1 (CR) to the Notificaiton.

598 Replies to question 29 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

599 Reply to question 29.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9347).

600 Replies to question 33 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

601 Reply to question 33.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 8069).

602 Replies to question 33.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 7979).

(535) A main reason for negotiating power of LMCs is the tender process, which is the main way LMCs choose their property & casualty broker.[603] Respondents to the market investigation considered the level of competition in the last property & casualty tender to be strong.[604] A large majority of LMCs further submit that the fact that they source from different brokers, for example by risk class, would increase their negotiating power vis-à-vis brokers.[605] As one customer expressed, *"using different brokers on different lines of insurance helps us maintain a strong relationship with various brokers.* […] *Moreover, when it comes to tenders, it also shows that there is no major link between* [customer name] *and one broker but that the competition is actually open."*[606] Consequently, a majority of LMCs is of the view that it can play brokers off against each other in the tender process to achieve more favourable terms.[607]

(536) However, the ability to exercise negotiating power depends on the number of credible alternatives a customer has. The Commission considers that the Transaction limits the number of suitable brokers for LMCs, and thereby decreases the buyer power of these clients. This view is shared by LMCs responding to the market investigation. A number of such customers explicitly explain their buyer power with the alternatives currently available. One customer submitted: *"As it still exists a real competition and sufficient possible alternative we have a negotiation power. This power will decrease rapidly and proportionally to the reduction of the number of realistic alternatives"*[608]. A second customer explained that *"as long as a customer does have the realistic opportunity to choose from several other brokers with somewhat the same level of services, it is important for a broker to service the client with the right quality."*[609] Indeed, the clear majority of LMCs consider that the level of competition will decrease due to the Transaction.[610] Consequently, reduction in suitable alternatives also reduces the degree of buyer power.

(537) Apart from alternative brokers, other forms of risk management, such as direct placement or the retention of risks, are no suitable alternative for LMCs for property & casualty risk brokerage. In the event of a price increase, or a reduction in service level, a clear majority of LMCs would not regard risk retention as a suitable alternative. Even customers that would consider retaining more risk explain this would only be possible only for a smaller part of their property & casualty exposures.[611] Similarly, in the event of a price increase, or a reduction in service level, a clear majority of LMCs does not view direct placement as an alternative to a

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603 Replies to question 11 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

604 Replies to question 13 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

605 Replies to question 36 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

606 Reply to question 36.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9648).

607 Replies to question 34 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

608 Reply to question 33.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9485).

609 Reply to question 33.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9347).

610 Replies to question 14 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

611 Replies to questions 28.1 and 28.2 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

broker, and again would in any event only be able to place a small share of its insurance needs directly. The fact that property & casualty risks are common risks in the sense that the overwhelming majority of LMCs have to insure them does not mean that they are easier to place directly with insurers. Specifically to property & casualty risks, a clear majority of LMCs stated that having a broker for this particular risk class was equally important to other specialty risk classes.[612] Therefore, the Commission considers that direct placement is not a significant out of the market constraint on brokers in property & casualty brokerage services to LMCs.

(538) In the view of the above, the Commission considers that countervailing factors, such as buyer power and sourcing via competitive tenders, would not be sufficient to prevent a significant loss of competition due to the Transaction in the property & casualty market for LMCs on the global level.

B.6 Barriers to entry and expansion

(539) There exist significant barriers to entering the commercial risk brokerage market for LMCs overall, as confirmed by a majority of competitors.[613] The reasons for these barriers exist also in property & casualty brokerage, and are partly even especially pronounced in this risk class.

(540) *Firstly*, a robust owned network is particularly difficult to replicate by entrants or smaller competitors, since a network of various brokers is not considered a suitable alternative.[614] A clear majority of competing brokers consider that it would be difficult and take a long time or very significant investment to expand the own global network comparable to the Parties'. One competitor described the barriers as follows: *"Our current global footprint leaves many countries and geographic areas where we do not have our own presence. To build businesses in these areas would be unfeasible"*.[615] A second competitor identified two elements that would pose a barrier to increasing the own global footprint: first *"the economic cost to set up an office in a location where we aren't presently based"*, and second *"the ability to attract high performing individuals to join our company"*.[616] The Commission acknowledges the fact that competitors have grown their network of owned offices to some extend in the recent past, and have further expansion plans for the next three years.[617] However, given the significant gap with respect to owned network coverage between the Parties and Marsh on the one hand, and Tier two and smaller brokers on the other hand, as explained in Section 6.3.4.1, the Commission regards it as unrealistic that any smaller competitor will be able to grow its own network within the next 3 years to an extent comparable to the Big Three brokers.

(541) *Secondly*, experience with large and complex risks is a very important criterion for property & casualty risk brokerage LMCs when choosing their broker.[618] A Tier two broker entering into the property & casualty risk brokerage market for LMCs would therefore need to build a track record in order to credibly compete. This barrier was pointed out by a number of competitors in the phase 2 investigation. One competitor

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612 Replies to question 44.1 of questionnaire Q1 to Customers.

613 Replies to question 26 of questionnaire Q16 to Competitors.

614 Replies to question 22.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

615 Reply to question 40.1 of questionnaire Q5 to Competitors (Document ID 2203).

616 Reply to question 40.1 of questionnaire Q5 to Competitors (Document ID 6697).

617 Replies to questions 28 and 31 of questionnaire Q16 to Competitors.

618 Replies to question 10 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

explained the high barriers to enter the property & casualty brokerage market for LMCs would exist due *"to financial resources, scale, geographic coverage and expertise and the established reputations and track record of the large established players"*.[619] A second competitor stressed that *"large MNCs* [multinational customers] *wont award tenders to a new org and is a slow build before a new organisation grows organically and inorganically to see its first large MNC"*.[620]

(542) *Thirdly*, data analytic capabilities are important to service LMCs, as explained in Section 6.3.4.2 of this Decision. However, such capabilities are difficult to build for smaller competitors, as they depend not only on know-how, but also on data availability, which partly can only be collected from past transactions with LMCs. One customer explained: *"Data must be relevant to the industry in which we are active to do the relevant benchmarking. If the broker doesn't have data of the relevant industry and geographic spread, the broker would be not of interest. The bigger the customer portfolio of the broker, the more valuable the benchmarking."*[621] Consequently, a majority of LMCs who expressed an opinion considered that the Merged Entity would have a significant competitive advantage for serving LMCs because of the combination of datasets post Transaction.[622]

(543) *Fourth*, broker movement does not facilitate entry into the market in the sense that LMCs would generally follow individuals or teams to the entering competitor. Indeed, in line with the view of the Notifying Party, frequent broker movement is a reality also in the property & casualty market, either by individual brokers or sometimes by teams of brokers.[623] However, in the market investigation, almost no customer stated that it would have followed an individual or a team to the new broker on the next occasion. The reason is that LMCs consider their business relation rather with the brokerage company and not with individual brokers.[624] One customer explained: *"A team is important but so is the background organization of the company allowing the team to get necessary tools and time it needs to provide a competitive and suitable service."*[625] A second customer stated *"the relationship between my company and broker is at a corporate level, not based on individual brokers or teams"*.[626]

(544) *Fifth*, the market entry of […] demonstrates that recent entrants do not compete credibly with Aon, WTW and Marsh. Internal documents suggest that the Parties themselves consider […] as a competitor with limited credibility for services that require a global network, such as property & casualty brokerage services to LMCs. In an e-mail of 22 November 2019 to a number of colleagues, including Aon's CEO Commercial Risk Solutions, Aon's Global Chief Broking Officer in the Netherlands

619 Reply to question 26.1 of questionnaire Q16 to Competitors (Document ID 3566).

620 Reply to question 26.1 of questionnaire Q16 to Competitors (Document ID 9108).

621 Reply to question 41.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9141).

622 Replies to question 42 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

623 Replies to question 32 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

624 Replies to question 32.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

625 Reply to question 32.1.2.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9543).

626 Reply to question 32.1.2.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9485).

commented […]. The senior employee further identified […]: *"[…]"*. The employee's further descriptions shows why […] is not in a position to compete with global brokers such as the Parties and Marsh for clients with global needs, but would rely on a broker with a robust network to provide services to LMCs: *"[…]"*.[627] In line with this view, the large majority of LMCs did not indicate any entrant within the last three years into the property & casualty market that would be able to serve its company, even though […] was proposed as a potential response.[628]

(545) In view of the above, barriers to entry or expand in this market are very significant so that other brokers would not be in a position to grow quickly and effectively to compete against the Merged Entity in a timely manner, and thereby make up for the loss of competition between the Parties or counteract the reduction in competitive pressure caused by the Transaction on the current competitors (in particular Marsh).

B.7 Results of the market investigation on likely impact of the Transaction

(546) In the course of the phase 1 and phase 2 market investigations, a considerable number of LMCs raised concerns regarding the Transaction with respect to property & casualty risk brokerage. The main concern of LMCs was that the Transaction would reduce the level of choice of service for their company. This, in turn, may translate into an increase of brokerage fees.

(547) In the phase 2 market investigation, a significant share minority of LMCs expressed concerns that the Transaction will have an overall negative impact on the market for property & casualty risk insurance brokerage services. The Commission notes that especially very large customers appear to have concerns regarding the Transaction. Of customers with business activities in more than 50 countries, even a majority foresee that the Transaction will impact the property & casualty risk brokerage market for LMCs in a negative way.[629]

(548) This is in line with results of the phase 1 market investigation, where around half of LMCs considered that the Transaction would have a negative impact on choice of service in property & casualty brokerage. A slightly smaller share of LMCs provided that the Transaction would negatively impact the price of services, meaning the remuneration the company has to pay for their property & casualty broker.[630] Given the high response rate to the Commission's market investigation and the general need of services in this risk class, the number of concerned respondents is significant in absolute terms.

(549) The quantitative findings are substantiated by qualitative responses among the share of concerned clients. One customer expects the Transaction to allow the Parties *"to further dominate the market allowing them to determine brokerage fees as well as brokerage terms and conditions as they deem useful for their business. The merger of these two major players may also allow them to act more selectively towards new customers (and may be existing customers) as well as insurance companies."* Therefore, the company *"is considering the tightening of options in the insurance broker market that will inevitably follow implementation of the merger between Aon*

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627 Aon internal document on […] dated 22 November 2019 Document ID 10263-61273.

628 Replies to question 38 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

629 Replies to question 47 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty.

630 Replies to question 59 of questionnaire Q1 Customers.

and WTW as a serious issue from a competitive point of view."[631] A second customer argued similarly that the price of service might increase for companies that, because of the nature of their property & casualty risks, may be left with insufficient alternatives post-Transaction. A potential negative impact on prices *"will depend on the size of your organisation, complexity of risks you need to insure and availability of alternatives accordingly."*[632] LMCs not only raised concerns regarding brokerage fees, but also with respect to service levels that may decline as a result of less competitive pressure post-Transaction, as one customer explained: *"The number of truly suitable brokers is probably just around 3 (incl. Aon and WTW), as it has been for many years. Hence, clients probably know what to expect in terms of competitiveness. A further of reduction of choice is not preferred and may impact the overall service performance of the global broker industry due to less competition."*[633]

(550) Views of competitors regarding the Transaction are even more negative than those of customers. A majority of responding brokers that formed an opinion on the possible impact of the Transaction consider that the Transaction will, on balance, have a negative impact on the property & casualty risk insurance brokerage market for LMCs.[634] One competitor explained: "*We do not see any positive impact on the market from this transaction, particularly for large multinational clients. This is because Aon and WTW already have sufficient scale independently to offer clients innovative and effective solutions*"[635]. The same customer, in turn, listed a number of potential negative effects of the Transaction on the property & casualty market for LMCs: "*By reducing choice from three to two global brokers for most of these clients, we would expect the following impacts: (1) price increases (we consider commissions to particularly susceptible increase, though large clients tend to pay us a fee); (2) reduced incentives to innovate, as clients will be offered less completion solutions; (3) possible reductions in service quality; and (4) reduced buyer power.*"[636]

(551) The Commission notes similar qualitative feedback from other competitors, describing a general lack of choice LMCs would face in property & casualty brokerage post-Transaction.[637] One competitor described its view on the impact of the Transaction on property & casualty risk brokerage to LMCs as follows: *"Large multinational customers face a significant reduction in choice. This reduction in competition will materially reduce their ability to secure effective service and Pricing. The effects are particularly pronounced on those lines which are core lines that clients tend to arrange globally with local service. There is a risk that Aon-WTW will use market power for their own benefit rather than that of their clients.*"[638]

(552) In the view of the above, the Commission states a significant level of concern among LMCs and competitors with regard to the impact of the Transaction on customer choice and on prices. The Commission considers that this feedback confirms its

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631 Reply to question 58.1 of questionnaire Q1 to Customers (Document ID 2341).
632 Reply to question 44 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9176).
633 Reply to question 13.1 of questionnaire Q7 to commcercial risk brokerage Customers for property & casualty (Document ID 9471).
634 Replies to question 44 of questionnaire Q16 to Competitors.
635 Reply to question 42 of questionnaire Q16 to Competitors (Document ID 9055).
636 Reply to question 43 of questionnaire Q16 to Competitors (Document ID 9055).
637 Replies to questions 42 and 43 of questionnaire Q16 to Competitors.
638 Reply to question 43 of questionnaire Q16 to Competitors (Document ID 8961).

assessment made in Sections 6.3.5.1 B1 to B6, particularly the lack of sufficient alternatives for LMCs post-Transaction and consequently potential negative impacts on prices in the market.

C. Conclusion on commercial risk brokerage for property & casualty for LMCs

(553) In the light of the above, the Commission concludes that the Transaction will lead to the creation of a dominant position for the Merged Entity in the global market for commercial risk brokerage for property & casualty to LMCs and thus result in a significant impediment to effective competition. This is because, amongst other factors, (i) Aon's market share which is already very high [50-60%] will be further increased; (ii) the market investigation indicates that WTW is a close competitor and an important competitive constraint on Aon and the market – a constraint that will be lost following the Transaction; and (iii) absence of significant other suppliers (other than Marsh) or other competitive constraints. Moreover, the countervailing factors to the extent they exist, such as buyer power, are not sufficient to counter the negative effects due to a reduction of choice.

6.3.5.2. Property & casualty for non-LMCs on national markets

(554) With regard to property & casualty risk insurance brokerage services for non-LMCs, for which the geographic market definition is national, as explained in Section 6.2.2 of this Decision, the Transaction results in horizontally affected markets in Denmark, the Netherlands, Norway, Poland and Spain.[639] The detailed list of affected markets is set out below.

Table 8: Market shares of affected national markets in property & casualty risk insurance brokerage to non-LMCs, 2019

Country	**Aon**	**WTW**	***Combined***
Denmark	[5-10]%	[20-30]%	*[30-40]%*
Netherlands	[20-30]%	[0-5]%	*[20-30]%*
Norway	[10-20]%	[10-20]%	*[20-30]%*
Poland	[5-10]%	[20-30]%	*[20-30]%*
Spain	[5-10]%	[10-20]%	*[20-30]%*

Source: Notifying Party's Reply to the 6(1)(c) Decision, Annex 8 (CR)

639 For completeness, the Commission notes that the Parties' combined market share levels exceed 20% in some segments of property & casualty risk brokerage services. The Commission did not find separate markets for these services. These concern the following sub-segments, presented along with the Parties' combined market shares: property in Denmark ([30-40]%), Finland ([20-30]%), Ireland ([20-30]%), Italy ([20-30]%), the Netherlands ([30-40]%), Norway ([20-30]%) and Spain (20-30]%); for casualty in Denmark ([20-30]%), the Netherlands ([20-30]%) and Poland ([30-40]%); for commercial motor in Denmark ([20-30]%), Italy ([20-30]%), the Netherlands ([20-30]%) and Poland ([30-40]%); construction in the Netherlands ([20-30]%). The Commission notes that most sub-segments refer to countries were the overall property & casualty market for all customers is affected, and for which the Commission presents a competitive assessment in this Section. The Commission stresses that it carried out a phase 1 market investigation also for countries where only a sub-segment of property & casualty is affected, namely Finland, Ireland and Italy. The Commission notes that (i) market shares for each sub-segment in those three countries are moderate and well below 30%; (ii) in each of these markets, at the very least one competitor with a market share of 10% or more and two competitors with market shares of 5% or more are present; (iii) market feedback do not indicate competition concerns in those markets.

A. The Notifying Party's view

(555) The Commission notes that the Notifying Party considers that the geographic market definition for all customers, including non-LMCs, for the provision of property & casualty risk insurance brokerage services to be EEA-wide in scope, and that it would therefore to be incorrect to assume national markets.

(556) The Notifying further provides that the Transaction would not give rise to any unilateral effects on national level in any event, because:

(a) Market shares are generally moderate or below a level that could give rise to a competitive concern;

(b) The property & casualty segment would be highly fragmented, as many brokers would be able to provide services particularly in this rather commoditised segment, and multiple brokers would continue to act as a significant competitive constraint to the Merged Entity;

(c) Direct insurers and alternative capital will continue seeking to win business directly from clients;

(d) Barriers to entry and expansion in this segment are low, particularly as it would be a mainstream segment;

(557) Specifically for the Netherlands, in the response of the Commission's 6(1)(c) Decision, the Notifying Party disputes that there is a credible basis on which the Transaction could raise a significant impediment to effective competition in respect of small and mid-sized customers of property & casualty brokerage services in the Netherlands, for the following reasons.

(a) The Notifying Party considers the geographic market for the distribution of property & casualty services for all customers to be EEA-wide in scope;

(b) The Parties combined market shares are below the level that should give rise to any concern, and the increment from WTW is minimal;

(c) The segment will remain highly competitive and there will be competitive pressure on the Merged Entity, because

- The Parties are not particularly close competitors in the Netherlands, and Marsh is the closest competitor for both Aon and WTW;
- The Parties will continue to face strong competitive pressure from Marsh and other brokers. The sale of WTW's subsidiary Miller will further weaken WTW's position in the Netherlands, and tender data shows the constraint exercised on the Parties by Marsh and other competitors;
- The Parties will continue to face strong competition from direct distribution in certain circumstances

(d) The results of the market investigation are inconclusive as regards the negative impact of the Transaction;

(e) The Commission did not carry out any national assessment of buyer power or entry and/or expansion for this segment, which are important features of the market.

B. The Commission's assessment

(558) As explained in this Section, the Commission considers that the Parties appear to exert important competitive constraints on each other in the Netherlands for the provision of property & casualty risk insurance brokerage services to non-LMC

customers. This market is distinct from other affected markets, *first*, because of significant concerned feedback from customers in the phase 1 market investigation. These concerns were confirmed by customers and competitors in the phase 2 market investigation. *Second*, market shares in the Netherlands are, together with Denmark and Poland, somewhat higher than in Norway and Spain. The Commission further obtained evidence suggesting that the market share estimates for the Netherlands underestimate the actual market power of the Parties. *Third*, contrary to other markets, no other broker than Marsh is considered a suitable alternative by a large share of customers responding to the market investigation, and customers indicated they would be left with insufficient choice post-Transaction.

(559) On markets in Denmark, Norway, Poland and Spain, the Commission notes that other competitors remain available post-Transaction that would compensate for the loss of competition due to the Transaction.

B.1 Market structure

(560) The Notifying Party provided market share estimates for potential national property & casualty risk brokerage markets for all customers regardless of size, including LMCs. Absent of market shares excluding LMCs, as defined for the purpose of this Decision, the Commission will use the overall market shares as a proxy to assess the market position of the Parties, but acknowledges that the market shares based on the estimates of the Notifying Party may differ, and may, based on these calculations, potentially be lower.

(561) **In the Netherlands**, based on the market share estimates of the Notifying Party, Aon is the comfortable market leader in property & casualty brokerage prior to the Transaction, followed by Marsh. The Commission acknowledges that WTW is a relatively small player in the Netherlands. With the Transaction, Aon would further fortify its position as market leader ahead of Marsh, and with a considerable gap to other competitors, most of whom each constitute only a tiny fraction of the overall market. The Commission presents the detailed market shares in the Table below to provide context for the assessment on the feedback from other market participants regarding the structure of the Dutch property & casualty risk insurance brokerage market.

Table 9 Notifying Party's estimates property & casualty risk insurance brokerage market in the Netherlands to all customers (GWP, 2017-2019)

Company	Value (GWP – USD)			Share of supply (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[20-30]%	[20-30]%	[20-30]%
WTW	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Rabobank	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Meijers	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Raetsheren	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Howden	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others[640]	[…]	[…]	[…]	[40-50]%	[40-50]%	[40-50]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Notifying Party's Reply to the 6(1)(c) Decision, Annex 8 (CR)

(562) Based on the market shares of the Notifying Party, concentration levels would be modest with a HHI of around [1,000-1,500] and a small HHI delta of around [0-500].

(563) As a result of the phase 1 investigation, based mainly on closeness between the Parties and negative customer feedback, the Commission found that the Transaction raises serious doubts as to its compatibility with the internal market, and therefore conducted an in-depth investigation into this market in the course of the phase 2 investigation. In this context, the Commission found evidence suggesting that that the market shares as provided above by the Notifying Party do not reflect the actual competitive strengths of the Parties in the property & casualty market for all customers in the Netherlands, for the following reasons.

(564) *Firstly,* during the market investigation, a competitor of the Parties informed the Commission that it would not be in a position to provide information for this particular market because it only has a legal entity in the Netherlands focussing on marine risks. The company would therefore not be a competitor in property & casualty risk insurance brokerage in the Netherlands. If the competitor would provide any services that could be attributed to the property & casualty risk class, this would only be either as additional services for its marine customers, or for customers based outside the Netherlands requiring some brokerage services in the Netherlands, and in any event those services would only amount to an immaterial extent.[641] The Commission notes, however, that the Notifying Party attributes non-negligible market shares to this competitor, which would, according to this information, have a property & casualty business of more than half of WTW's size in the Netherlands, and be stronger than the large majority of national players.

(565) *Secondly*, other brokers point at a market position of Aon stronger than implied by the market share estimates by the Notifying Party, especially with respect to the gap to its competitor Marsh. One competitor described the competitive landscape as

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640 The Notifying Party lists a considerable number of competitors with market shares of 1% in all three years, namely Zicht, Schouten Zekerheid, Boval, SSA Verzekeringen, Van Lanschot Chabot, Gebr. Sluyter, BeneVia, Concordia, Vandien, Boogaard, Van Breda, Boelaars & Lambert Group, Sibbing & Wateler, Klap, Eijgendaal & Van Romondt, Wuthrich, VLC, Kuiper Verzekeringen.

641 Non-confidential version of information submitted to the Commission by a Competitor (Document ID: 9211).

follows: *"Aon is by far the largest broker in the Netherlands, and Marsh is the second in the commercial risk brokerage. If Aon and WTW were to combine their activities in the Netherlands, the combined business would be 7 times the size of Marsh"*.[642] This description was provided in response to a question referring to the closest competitors to the Parties in the Dutch property & casualty risk insurance brokerage market. Even if this statement was based on a rough estimation, it is still in stark contrast to the market structure as described by the Notifying Party.

(566) *Thirdly,* in line with this, internal documents of WTW indicate that it considers […].[643] The market share estimates provided by the Notifying Party, however, do not show this significant gap to Marsh, nor would they be a credible basis for such broad concern as described by the WTW employee.[644]

(567) A stronger market position is also suggested […].

Figure 16: [Internal document]

[Internal document]

Source: WTW internal document Document ID: 008009-000613

(568) *Fourthly,* the Commission notes that the level of concerns regarding the transaction raised by customers and competitors, as detailed in the following Sections of this Decision, are not in line with the competitive strength suggested by combined market shares of below 30%.

(569) *Fifthly*, the Commission notes that, in the market share estimates as provided by the Notifying Party, a large part of the market (namely close to [40-50]%) is attributed to small players, a significant number of them unidentified, who will individually hold each a market share of maximum 1%. Even if it were correct that these players make up a significant share of the market, it is unlikely that they exercise meaningful competitive pressure given their minor market shares.

(570) Even if there was any basis for the calculation of market shares as provided by the Notifying Party[645], the Commission does not consider, in the light of the above, that those shares reflect the competitive strengths of the Parties, and especially of Aon. Similarly, the concentration levels as stated above would not express the *de facto* level of concentration in the market. This may be, *inter alia*, because of the high number of small players in the market that are not perceived as alternatives by a significant portion of non-LMCs.

(571) **For Denmark**, the Merged Entity would become the clear market leader with a combined market share of [30-40]% and a significant increment brought by Aon of [5-10]% market share. The second-strongest broker post-Transaction would be Marsh with a market share of [20-30]%, followed with [5-10]% market share of Söderberg & Partners, which has a significant presence across the Nordic countries in general, and is a Gallagher Global Network partner. The Commission further notes

642 Reply to question 22.3 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9481).

643 WTW internal document on the Dutch market, dated 16 December 2020 Document ID: 10683-59003.

644 The Commission notes that VNAB did not raise concerns regarding the Transaction *vis-a-vis* the Commission in a call on 26 February 2021, and described that there would be sufficient competition left in the Netherlands (Document ID: 11071).

645 The Commission acknowledges that the market share of Aon, as provided by the Notifying Party, is broadly in line with market shares used internally by Aon on at least one occasion regarding the commercial risk broking market in the Netherlands, regardless of risk type; Aon internal document on CRB in the Netherlands, undated (Document ID 10262-7289).

that Lockton, which has a market share of [0-5]%, operates an owned office in Denmark. Finally, market shares attributed to not-identified competitors, or competitors with a market share of 1% or lower, account for around [a small percentage] of the market, which means that very small competitors, which may not be perceived as credible alternative by some customers, only account for a relative moderate share of the overall market.

(572) The Commission notes that the concentration levels would still be modest with a HHI of around [1,500-2,000], but with a considerable HHI delta of around [0-500].

(573) The Commission considers that the market structure as such, considering the combined market share levels of the Merged Entity and the existence of significant other competitors, would not indicate competition concerns, but would also not exclude them given the relatively strong position of the Merged Entity compared to most competitors. As further explained below, however, the Commission received feedback from the market that the existing competitors would form credible alternatives. Customers therefore do not consider that the Transaction would have a negative impact on the property & casualty risk insurance brokerage market for non-LMCs.

(574) **For Norway**, the Transaction would combine the current number four in the market, Aon, with the current number five, WTW. The merged entity would have a moderate combined market share of [20-30]%, with a significant increment brought by WTW of [10-20]%. The Commission notes that Marsh would remain the market leader with [20-30]% market share, and that Söderberg & Partners ([20-30]%) and Gabler ([10-20]%) are further significant players on the property & casualty risk insurance brokerage market in Norway. Concentration levels would still be modest with a HHI of around [1,500-2,000] with a non-negligible HHI delta of around [0-500]. The Commission considers that the described market structure as such is unlikely to raise any competition concerns, in line with the Merger Regulation.[646]

(575) **For Poland**, WTW is already the clear market leader. The Merged entity would account for [20-30]% of the market, with a non-negligible increment of [5-10]% brought by Aon. Other competitors follow only with a significant gap, namely MAK/STBU with [5-10]% and Marsh with [5-10]%. Other notable competitors include Mentor ([0-5]%), NORD ([0-5]%) and EIB ([0-5]%). The Commission further notes that a very high share of the market, exceeding 40%, are attributed to unnamed competitors, or competitors with market shares of 1% or less. Finally, the Commission notes the absence of any international tier-2 brokers.

(576) The Commission notes that the concentration levels be modest with a HHI of around [1,000-1,500] and a non-negligible HHI delta of around [0-500].

(577) The Commission considers that combined market shares below 30% and a number of competitors with a credible market presence would not as such indicate competition concerns, but, given the clear position as market leader of the Merged Entity, would also not exclude them. As further explained below, however, the Commission received feedback from the market that the existing competitors would form credible alternatives, and that customers therefore do not consider that the Transaction would have a negative impact on the property & casualty risk insurance brokerage market in Poland.

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646 Merger Regulation, paragraph 32.

(578) **For Spain**, WTW is currently already the market leader in property & casualty risk insurance brokerage. Aon would add a non-negligible increment of [5-10]% market share, which would clearly make the Merged Entity the strongest competitor in the market, however still with a moderate combined market share of [20-30]%. Other brokers follow with a significant gap, but still have a credible presence, namely Marsh ([5-10]%), Howden ([0-5]%) Volkswagen Insurance Services ([0-5]%), Alkora / Adartia ([0-5]%) and March Risk Solutions ("March R.S.") ([0-5]%). The Commission notes especially the credible presence of the international Tier two broker Howden, which also as an owned presence in Spain. Further, a significant share of the market, namely around 40%, are attributed to customers with a market share of 1% or less. Concentration levels would be low post-Transaction with a HHI of around [500-1,000] and a non-negligible HHI delta of [0-500]. Despite the Merged Entity being the clear market leader in Spain, the Commission considers that the market structure in property & casualty risk insurance brokerage is unlikely to give rise to competition concerns, especially because of the moderate combined market share levels of the Merged Entity,in line with the Merger Regulation.[647]

B.2 Closeness of competition

(579) In each of the affected national markets, there are a high number of other, mostly local, competitors active in property & casualty risk insurance brokerage, and the Commission does not dispute that those brokers do serve customers and are therefore an alternative for some non-LMCs. However, Aon, WTW and Marsh compete closely in property & casualty on national markets for customers other than LMCs because their service offering is distinct from those of smaller local competitors. This is evidenced by the feedback from the market investigation, where also smaller customers identified the Big Three as close competitors. This is further confirmed by feedback from customers in countries where national property & casualty risk insurance brokerage markets are affected, as discussed below.

(580) The Commission has explained in Section 6.1.5.1 why a separate market for LMCs exist, distinct from the property & casualty risk insurance brokerage market for all customers. The Commission has further explained in Section 6.3.5.1 B2 of this Decision why specific features of Aon, WTW and Marsh make them close competitors for LMCs, including the owned network, the experience with large and complex risks and their abilities regarding data analytics capabilities. While the Commission considers that these qualities are overall more important to service LMCs, including particularly in the risk class property & casualty, it notes that those features are not irrelevant for smaller customers. This analysis is supported by market feedback. Indeed responding customers other than LMCs value an international network, experience with large and complex risks and access to proprietary data of a broker clearly not as high as LMCs when selecting a broker regardless of risk type.[648] In absolute terms, however, these factors are still of some importance on average also for other customers, and especially mid-sized customers. One customer explained: *"We target and adequate price/service level, excellent service, international networks and a good working relationship for a mid-size company like we are"*.[649] This would indeed explain why non-LMCs, and especially mid-market customers, consider that the Parties and Marsh compete closely, albeit

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647 Merger Regulation, paragraph 32.

648 Replies to question 20 of questionnaire Q1 to Customers.

649 Response to question 20.1 of questionnaire Q1 to Customers (Document ID: 3251).

other brokers in some national markets may also have sufficient capabilities in this regard to service non-LMCs.

(581) The view of customers is further confirmed by feedback from other brokers. One competitor pointed to the difference between small and mid-sized customers, particularly in property & casualty risk insurance brokerage: *"Small P&C clients are unlikely to lack brokerage options post-Transaction.* […] *Mid-sized P&C clients often have greater choice, but this is not uniform. Many mid-sized clients have sophisticated buying habits similar to large multinationals (and many have multinational operations), such as wanting to have deeper consulting capabilities and data and analytics, and will end up with only two broking options post-transaction in many countries".*[650] Another competitor pointed to the fact that the size of business of Aon, WTW and Marsh would further provide them with advantages in negotiations with local insurance companies,[651] and therefore a competitive advantage on some local markets.

(582) In the light of the above, the Commission considers that Aon, WTW and Marsh compete closely in markets for customers other than LMCs, especially mid-market clients that may require cross-border capabilities and expertise with somewhat larger and complex risks, even though these needs are overall less pronounced in these markets. This is further evidenced by feedback from non-LMC customers in different countries, where customers point mainly at Marsh as the Parties as being close competitors, while only sparsely naming local competitors or Tier two brokers.

(583) **For the Netherlands**, customers other than LMCs clearly consider Marsh and WTW being Aon's closest competitors, as well as at Marsh and Aon being WTW's closest competitors. Local players such as Meijer are only named sparsely.[652]

(584) Furthermore, in response to the market investigation, non-LMCs considered Marsh, WTW Aon having the greatest competitive strength of property & casualty brokers in the Netherlands, with a significant gap to smaller competitors such as Meijers or Van Breda. It has to be noted that customers attributed a particularly low rating of competitive strength to Rabobank.[653]

(585) Internal documents of the Parties indeed further support that Rabobank lacks the specific features Aon, WTW and Marsh have, and that Rabobank is therefore partnering with the Big Three brokers to service some customers. In an e-mail, send by WTW's Director Placement & Claims in the Netherlands to WTW's Managing Director CRB Western Europe, this senior employee explains that […].[654] In the view of the Commission, these explanations raise doubts as to Rabobank's capabilities to service companies with somewhat larger risks, or some cross-border needs, which may well be mid-market customers. It further casts doubts regarding the level of competition between Rabobank and WTW and potentially Marsh.[655] Finally, it has to be noted that the above mentioned e-mail confirms: *"[...]".*

(586) Therefore, the Commission considers that, pre-Transaction, Aon and WTW are close competitors, and that WTW exercises a significant competitive constraint on Aon in the market for risk brokerage for property & casualty risks for non-LMCs in the

650 Reply to question 51.1.1 of questionnaire Q5 to Competitors (Document ID: 5195).
651 Response to question 51.1.1 of questionnaire Q5 to Competitors (Document ID: 5400).
652 Replies to question 56 of questionnaire Q1 to Customers.
653 Replies to question 8 of questionnaire Q8 to Customers and Competitors in the Netherlands.
654 WTW internal document on Rabobank dated 15 June 2020, Document ID 10683-59692.
655 The Commission acknowledges that the document […].

Netherlands. The loss of direct and important competition between the Parties, together with the other elements assessed in this Section 6.3.5.2., will likely result in a significant increase in Aon's market power and a significant reduction of competitive pressure in this market.

(587) **For Denmark**, non-LMCs based in Denmark point at Marsh, followed by Aon and WTW respectively each as closest competitors of the Parties, without mentioning any local competitors. The Commission acknowledges that it received very few responses from non-LMC customers in response to this question.[656] The few Danish-based competitors responding to the market investigatoin, in turn, pointed also at the regional broker Söderberg & Partners as close competitor to both Parties.[657]

(588) **For Poland**, Polish-based non-LMCs point mostly to Marsh as the closest competitor to both Aon and WTW, followed by Aon and WTW as being close competitors to each other. Single customers, however, point at other regional brokers as competing closely to the Parties, such as Mentor, Nord and MAK.[658]

(589) **For Spain,** Spanish non-LMCs identify mainly Marsh as main competitor of the Parties, followed by WTW as being Aon's closest competitor and *vice-versa*. Single customers also point at the local broker March R.S. as well as Howden as close competitors to the Parties.[659]

(590) **For Norway,** local non-LMC consider consistently Aon, WTW and Marsh as each other's closest competitors without identifying any further competitor.

(591) The Commission recognises that for some of the national markets, it has received only a few responses in the market investigation. Overall, however, given the consistency with which Marsh as well as Aon and WTW respectively are indicated as the Parties closest competitors by non-LMCs based in the different affected national markets, the Commission considers that Aon and WTW, together with Marsh, compete closely for non-LMCs on national level in the provision of property & casualty risk insurance brokerage services, and that this feature does not distinguish the affected national markets from each other. However, the Commission stresses that, as explained in more detail in Section 6.3.5.2 B3, in markets other than the Netherlands, other credible competitors are nevertheless present, which would therefore, despite the Parties being close competitors, replace the competitive pressure lost due to the Transaction.

B.3 Switching

(592) There are two main arguments why the Commission considers that switching may be difficult for non-LMCs in local property & casualty risk insurance brokerage markets. *First*, there may be too few suitable competitors present in the market the customer could switch to, and *second*, there may be barriers to switching preventing customers from moving between competitors. The first analysis is a clear differentiating factor between the market in the Netherlands and all other affected national markets, as it was only for the Netherlands that customers consider that there will be an insufficient number of competitors on the market following the Transaction. For all markets, the Commission still finds that barriers to switching

656 Replies to question 56 of questionnaire Q1 to Customers.
657 Replies to question 47.1 and 47.1 of questionnaire Q5 to Competitors.
658 Replies to question 56 of questionnaire Q1 to Customers.
659 Replies to question 56 of questionnaire Q1 to Customers.

exist which would hamper customers' ability to change brokers easily, even in the event of a small price increase.

(593) **For the Netherlands,** the majority of non-LMCs based in that country indicated in the market investigation that they would be left with an insufficient number of competitors in the market for property & casualty risk insurance brokerage services in the Netherlands post-Transaction.[660] These findings are in line with the fact that Aon, Willis and Marsh are close competitors compared to all other brokers in the market, and that customers consider the Big Three brokers as having more competitive strengths than the other competitors, as explained in Section 6.3.5.2 B2.

(594) One competitor specifically pointed at the Netherlands as a market where customers regardless of size may be faced with insufficient choice: *"Mid-market clients generally have non-multinational broker options. In certain countries like the Netherlands there may be insufficient choice post-transaction given the substantial pre-transaction Aon market share"*.[661] The Commission notes that neither is the competitor Dutch-based, nor was the respective question directed specifically to the Netherlands, but only generally to "regions/countries" with potential differences in market structure, which suggests that this competitor indeed considers the Netherlands to be the market where a lack of choice would be most pronounced.

(595) In the phase 2 investigation, respondents further confirmed the limited options to switching. Non-LMCs responding to the market investigation identified only Marsh as a suitable alternative in the event of a price increase of 5-10%. No other broker was identified by even a third of responding non-LMCs. Smaller competitors Meijer, Rabobank and Raetsheren follow only with a significant gap, and are clearly not considered as alternatives by the large majority of responding non-LMCs.[662] One customer explained the alternatives on the Dutch market as follows: *"There is a significant difference between local brokers and international brokers. Most local (Dutch) brokers work with the local (Dutch) insurance market and do not or have only limited access to the international insurance markets and/or reinsurance capacities"*.[663]

(596) Based on the above, the Commission considers that whilst switching a broker entails costs and difficulties for customers, as explained below in this Section, the fact that the Transaction will eliminate WTW as a choice available will limit still further the number of possible alternatives for non-LMCs, and particularly mid-market clients, with respect to commercial risk brokerage for property & casualty needs in the Netherlands. Such loss of available options results in a significant loss of competition from WTW to the other two Big Three brokers that existed pre-Transaction and will likely significantly soften the competitive pressure on Aon and Marsh.

(597) **For Denmark,** a very large majority of non-LMCs based in that country indicated in the market investigation that there would be sufficient competitors left in the market for property & casualty risk insurance brokerage services in Denmark post-Transaction.[664] One Danish-based customer explained: *"There are several competitors in the Danish market"*.[665] The Commission therefore considers that,

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660 Replies to question 58 of questionnaire Q1 to Customers.

661 Response to question 51.1.1 of questionnaire Q5 to Competitors (Document ID: 4838).

662 Replies to question 9 of questionnaire Q8 to Customers and Competitors in the Netherlands.

663 Response to question 7.1 of questionnaire Q8 to Customers and Competitors in the Netherlands.

664 Replies to question 56 of questionnaire Q1 to Customers.

665 Reply to question 58.1 of questionnaire Q1 to Customers (Document ID 9833).

despite the Parties being close competitors, as explained in Section 6.3.5.2 B2, and despite the fact that the Merged Entity would become the clear market leader in the Danish national property & casualty risk insurance brokerage market to non-LMCs – albeit with a moderate market share, as explained in Section 6.3.5.2 B1, customers still consider that they would have sufficient alternative brokers to choose from post-Transaction.

(598) **For Norway,** similarly, a clear majority of Norwegian non-LMCs responding to the market investigation indicated that there would be sufficient competitors left in the market for property & casualty risk insurance brokerage services in Norway post-Transaction.[666] This view is in line with the market structure, as explained in Section 6.3.5.2 B1, which shows that there are indeed other strong competitors active in the market, and that the Merged Entity would not be the market leader post-Transaction.

(599) **For Poland,** the Commission notes that the overwhelming majority of non-LMCs based in that country consider that sufficient competitors would be left in the market for property & casualty risk insurance brokerage services in Poland post-Transaction.[667] One Polish-based customer provided: *"On the Polish market there are at least 10 strong broker companies with sufficient regional exposure"*.[668] This is despite the fact that the Merged Entity would become clear market leader with a significant gap to other competitors, as explained in Section 6.3.5.2 B1, and the absence of Tier two brokers in the Polish national market.

(600) Based on the market feedback, however, the Commission concludes that non-LMCs consider the existing local brokers as suitable to service their company, and that customers would therefore not be significantly limited in their switching options due to the Transaction.

(601) **For Spain,** again, the clear majority of non-LMCs based in that country indicated in the market investigation that there would be sufficient competitors left in the market for property & casualty risk insurance brokerage services in Spain post-Transaction.[669] This feedback is in line with the moderate market shares of the Merged Entity post-Transaction, as discussed in Section 6.3.5.2 B1. Therefore, the Commission considers that customers would have sufficient alternatives to switch to post-Transaction.

(602) Furthermore, the Commisison notes that, for all non-LMC customers regardless of jurisdiction, there are some switching costs involved when changing the broker. While most non-LMCs responding to the market investigation provide a neutral response regarding switching costs, a significant share of non-LMCs point at costs that would prevent them from freely moving to another competitor.[670] The main barrier customers provide is the time to get the new broker familiar with the particular risks of the company. One customer explained: *"The reason for any difficulty and associated time and cost would relate more particularly to the fact that our current brokers are familiar with our particular business and our risk and claims history. It would obviously take some time to build up that kind of valuable relationship with an alternative broker"*.[671] This view is in line with the fact that

666 Replies to question 56 of questionnaire Q1 to Customers.
667 Replies to question 56 of questionnaire Q1 to Customers.
668 Reply to question 58.1 of questionnaire Q1 to Customers (Document ID 3185).
669 Replies to question 56 of questionnaire Q1 to Customers.
670 Replies to question 34 of questionnaire Q1 to Customers.
671 Reply to question 34.1. of questionnaire Q1 to Customers (Document ID: 5207).

non-LMCs see knowledge of the specific company as a very important criterion when choosing a broker.[672]

B.4 Likely reaction from competitors

(603) In all affected national markets for property & casualty risk insurance brokerage services, Marsh has a credible market presence, even though with varying market share levels between 25% and 6%. For companies that would rely on services as provided by Aon and WTW, Marsh will be a suitable option, as all three companies compete closely with each other in all affected national markets, as explained in Section 6.3.5.2 B2. However, it is questionable if Marsh has the same incentive to compete for non-LMCs, and specifically for mid-market customers, in markets where such customers would be faced with insufficient choice post-Transaction as no Tier two broker with a credible presence would be available, and where customers do not consider local players as suitable alternatives.

(604) The Commission firstly notes, as explained in more detail in Section 6.3.5.1 B4 of this Decision, that in accordance with its guidance and in line with economic models of oligopolistic competition markets with differentiated products, competitive pressure and incentives to compete for non-merging firms can be reduced. As explained in Section 6.3.5.2 B3, customers pointed out that limited credible competitors would remain post-Transaction in the Netherlands, but not in any other national market. This is further supported by the findings set out in Section 6.3.5.2 B.2 above, which sets out the Commission's findings that the Parties and Marsh are particularly close competitors, with other brokers not considered as suitable by many non-LMCs, and especially mid-sized customers. Against this background, the Commission considers that Marsh is likely to have less of an incentive to compete post-Transaction in the Netherlands.

(605) With regards to other competitors, the Commission notes that in the markets in **Denmark, Poland, Norway and Spain,** customers predominantly respond to the market investigation that sufficient alternatives would be available post-Transaction, as explained in Section 6.3.5.2 B3, which suggests that brokers other than Marsh are already considered suitable alternatives to the Parties. It is therefore likely that brokers other than Marsh would be able to service non-LMCs, particularly mid-market customers, and would therefore continue compete for those clients post-Transaction.

(606) **For the Netherlands,** the Commission notes that customers currently do not see sufficient alternatives remaining post-Transaction, and do not consider brokers other than Marsh as suitable alternatives. The Commission notes that some Dutch competitors indicate that they have expansion plans or are at least open to the possibility of future expansion.[673] However, in the light of the barriers to entry and expansion, as detailed in Section 6.3.5.2 B6, it is not likely that competitors would feasibly be able to expand their business in a sufficiently timely manner to compete – in particular for mid-market customers, and that such expansion would require significant investment. In line with this, only a few customers are aware of any broker that would be able to expand to credibly cover property & casualty risk in the

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672 Response to question 20 of questionnaire Q1 to Customers.

673 Response to question 27 of questionnaire Q8 to Customers and Competitors in the Netherlands.

Netherlands in case of price increases or a degrade of service qualities post-Transaction.[674]

(607) Based on the above, the Commission considers that the impediment on effective competition would likely not be countered by the remaining competitors in a timely and sufficient manner because of a lack of ability to compete in the Netherlands – especially with respect to mid-market customers.

B.5 Countervailing factors

(608) As explained in Section 6.1.5.1 of this Decision, property & casualty is a risk class in which most customer require brokerage services. Therefore, the buyer power of a single customer, and consequently the negotiation power the customer has, is limited vis-à-vis a broker that generates its turnover from a high number of customers. This buyer power is even more limited for non-LMCs, who have by definition smaller business activities than very large clients. During the course of its investigation, the Commission has not received any evidence that would indicate that this situation varies depending on location.

(609) Furthermore, non-LMCs do not benefit from potential competition between brokers during their selection process to the same extent as LMCs. While LMCs typically choose their broker as a result of a competitive tender, non-LMCs, regardless of risk-type or location, predominantly rely on a less-organised process in negotiation with multiple brokers in parallel. A significant share of non-LMCs even source services after negotiating only with one broker.[675] This is because non-LMCs often have fewer resources available to organise an elaborated selection process, and the benefits of such process decrease with the size of the risk to be placed. One non-LMC that in fact organises tenders explains in this regard that it would be *"tendering seldomly, perhaps every 5 years as it is a time-consuming process to bring in a new broker"*.[676] A second non-LMC described its selecting process as follows: *"When switching to a new broker in 2019, we simply called a few other companies who were options and discussed their services."*[677]

(610) Finally, the negotiating power a customer has also depends on the number of credible alternatives that the company can choose from. As explained in Section 6.3.5.2 B3, for the markets in **Denmark, Poland, Norway and Spain,** customers confirmed to have sufficient alternatives to switch to. The Commission acknowledges that these findings likely point that non-LMCs in this country have at least some leverage when negotiating with potential brokers. In the Netherlands, however, customers mainly indicated that too few credible alternatives would be left post-Transaction, which in turn would further decrease their negotiation power.

(611) For all markets, the Commission further notes that alternative measures, such as direct placement or risk retention are not credible alternatives for non-LMCs. Indeed, a clear majority of non-LMCs responding to the market investigation provided that direct placement[678] or the use of a captive[679] would not be an alternative. Overall, non-LMCs do not consider the management of their property & casualty risks to be easier without the help of a broker compared to specialty risks such as FinPro or

674 Replies to question 12 of questionnaire Q8 to Customers and Competitors in the Netherlands.
675 Response to question 35 of questionnaire Q1 to Customers.
676 Response to question 35.1 of questionnaire Q1 to Customers (Document ID: 10008).
677 Replies to question 35.1 of questionnaire Q1 to Customers (Document ID: 2946).
678 Replies to question 8 of questionnaire Q1 to Customers.
679 Replies to question 12 of questionnaire Q1 Customers.

Marine.[680] The Commission acknowledges that very small companies with limited GWP volumes may to a significant extent buy insurance directly without the use of a broker if broker costs would outweigh potential savings in premiums. The procurement behaviour of such customers, however, is unlikely to exert constraints on the Parties in case those customers would not consider using a broker regardless of potential changes in prices for brokerage services of 5-10%.

(612) **For the Netherlands**, only a small share of responding Dutch non-LMCs are of the opinion that they hold a strong position vis-à-vis brokers when negotiating brokerage fees or service levels. A significant portion of customers consider that they do not have strong leverage over brokers, while most customers provide a neutral response. One customer explained in this regard that WTW and Aon *"are very large and we are comparatively very small"*[681] This view is broadly in line with the view of Dutch competitors. One broker from the Netherlands indeed confirmed that buyer power of a customer would to some extend *"depend[...] on how big the customer is"*.[682]

(613) The Commission notes that, specifically for the Netherlands, respondents to the market investigation clearly dismissed direct placement and risk retention as potential alternatives outside the market. This is also supported by the explanation of a competitor based in the Netherlands, who does not see direct placement as an option, *"given the (increasing) complexity in general of transferring risks through insurances for e.g. SMEs"*.[683] A second competitor provided: "*In the market for medium-sized and large companies, we do not come across direct placement that quickly and we include risk retention and comparable alternatives in our advice where applicable."*[684]

(614) In the view of the above, the Commission considers that countervailing factors, such as buyer power and sourcing via competitive tenders, exist only to a limited degree in the property & casualty risk brokerage market in the Netherlands to non-LMCs, and would therefore not be sufficient to prevent a significant loss of competition due to the Transaction

B.6 Barriers to entry and expansion

(615) Across all risk classes and jurisdictions, a very significant share of responding non-LMCs, amounting to almost half of all respondents, see entry into the insurance brokerage market in general as difficult or very difficult, while most of other customers have a neutral view.[685] This view is confirmed by competitors that regard entry into the brokerage market generally as difficult or very difficult, and the same accounts for expanding the presence in the brokerage market.[686] Many competitors point at the need to hire qualified and experienced employees, which number would be limited and therefore hiring would be expensive. Other factors such as building relationships, notably with insurers, to build a credible track record, building of an

680 Replies to question 41.1 of questionnaire Q1 to Customers.

681 Response to question 13.1 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9603).

682 Response to question 28.1 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9383).

683 Response to question 29.1. of questionnaire Q8 to Customers & Competitors in the Netherlands (Document ID: 9383).

684 Response to question 29.1. of questionnaire Q8 to Customers & Competitors in the Netherlands (Document ID: 9353).

685 Response to question 32 of questionnaire Q1 to Customers.

686 Replies to questions 45 and 46 of questionnaire Q5 to Competitors.

international network as well as complying with all regulation are provided as well by a number of responding competitors.[687]

(616) The Commission acknowledges that entering a national market for property & casualty risk insurance brokerage for non-LMCs is likely to be easier compared to entry or expansion into the LMC market, given that a smaller operation would need to be build, and that the network capabilities are less required for smaller customers. Nevertheless, as discussed in Section 6.3.5.2 B2, mid-sized customers still consider expertise and cross-border capabilities as important when choosing a broker. A broker entering or expanding into a national market would still need to invest significantly in personnel, sufficient cross-border capabilities, as well as the time required to be regarded as a credible competitor. The Commission acknowledges that entering the Dutch property & casualty market with an own presence would likely not be insurmountable for Tier two brokers such as Howden, Gallagher or Lockton. However, even for these competitors, significant investment and time would still be required, as explained above, to compete with the Parties and Marsh.

(617) The Commission notes that the view of non-LMCs as regards to entry being rather difficult does not differ materially between the affected national markets in **Norway, Poland, Spain,** and – slightly less pronounced – **Denmark.**[688]

(618) **For the Netherlands,** a majority of Dutch non-LMCs that provided an opinion in the market investigation view entering the insurance brokerage market, regardless of risk type, as difficult or even very difficult. Most other customers provided a neutral answer, and few customers regarded entry as easy or very easy. Further, few customers were able to name recent entrants in the Dutch market, and those who did partly did not consider them as suitable alternatives. One customer provided, when asked about recent market entrants: *"Some local brokers (e.g. Rabobank & Meijers) but considered too small for our portfolio/risk."*[689] A second non-LMC replied: *"Not on the level of expertise and impact compared to Aon, WTW and Marsh"*.[690]

(619) These findings where further confirmed in the phase 2 market investigation, where a clear majority of responding non-LMCs again indicated that they were not aware of any new entrants within the last three years.[691] Those customers who were aware of entrants mostly did not identify them as credible alternatives.[692] One non-LMC further explained: *"The new entrants are still relatively small parties and do not have the required quality, scale and staff or do not have presence in the countries we require services to be provided in."*[693] This is in line with the view of the Commission that especially mid-sized customers would still require a certain degree of expertise and cross-border capabilities of their broker, as detailed in Section 6.3.5.2 B3.

(620) Feedback from customers is in line with the view of some competitors, who pointed at barriers to enter the Dutch property & casualty market. One competitor stated that market entry was "[f]*rom a new broker perspective: difficult, you have to build*

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687 Replies to question 45.1 and 46.1 of questionnaire Q5 to Competitors.

688 Responses to question 32 of questionnaire Q1 to Customers.

689 Response to question 57 of questionnaire Q1 to Customers (Document ID: 9820).

690 Response to question 57 of questionnaire Q1 to Customers (Document ID: 2240).

691 Replies to question 11 of questionnaire Q8 to Customers and Competitors in the Netherlands.

692 Replies to question 11.1 of questionnaire Q8 to Customers and Competitors in the Netherlands.

693 Response to question 11.1.1 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9064).

relationships with all major insurers and this is not so easy when you start new."[694] A second competitor pointed to a further multitude of barriers that can prevent potential customers from entering the Dutch property & casualty market. According to this competitor, a broker would need *"a team of experienced senior brokers to compete with other brokers. It is very difficult to enter the P&C market in the Netherlands. Senior brokers are well paid and therefore not easy to persuade to join a new company. A company also needs senior brokers to educate junior brokers."*[695] The competitor also pointed at barriers such as necessary licences that would need to be obtained, the need to build data analytics capabilities and, if needed, cross-border capabilities to service clients that require services to be provided abroad.

(621) In view of the above, barriers to entry or expand in this market are non-negligable so that other brokers would not be in a position to grow quickly and effectively to compete against the Merged Entity in a timely manner, and thereby make up for the loss of competition between the Parties or counteract the reduction in competitive pressure caused by the Transaction on the current competitors in the Netherlands. [696]

B.7 Results of the market investigation on likely impact of the Transaction

(622) Customers other than LMCs have overall a rather neutral view of the Transaction with regards to the property & casualty risk class. However, feedback for the national market in the Netherlands clearly stands out from other national markets, where Dutch non-LMCs consistently pointed to negative effects of the Transaction. The Commission notes that single customers or competitors pointed, at different national markets where the Parties would gain a strong market position post-Transaction. However, only with respect to the the Dutch market did the Commission receive consistent feedback from market participants, which when seen in the light of all other elements as stated above, suggests that the Transaction would have a significant impact in choice that would translate into higher prices for brokerage services in that market.

(623) **For the Netherlands,** a majority of Dutch-based non-LMCs responding to the phase 1 market investigation stated that the Transaction would have a negative impact on choice. This, in turn, would go along with a negative impact on prices for property & casualty risk services highlighted by a further majority of non-LMCs. These findings are consistent with the fact that a majority of Dutch non-LMCs show concern that they would be left with insufficient alternatives post-Transaction, as explained in Section 6.3.5.2 B3. One customer explained: *"A competition between two parties does not really exist in my opinion. It will be the incumbent broker vs. one competitor"*.[697] A second customer provided: *"At the moment there are only 3 major international brokers active in The Netherlands, after the merge this would be only 2"*.[698] The Commission stresses in this context that respondents are mid-market clients that, as explained in Section 6.3.5.2 B2, are the customer group for whom the Parties and Marsh compete closely.

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694 Response to question 24.1. of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9383).

695 Reply to question 24.1 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9481).

696 This situation differs as compared to Norway, Poland, Spain, and Denmark where sufficient competitors already exist in these markets to compensate for the loss of competition between the Parties post-Transaction.

697 Reply to question 58.1 of questionnaire Q1 to Customers (Document ID: 8174).

698 Reply to question 58.1. of questionnaire Q1 to Customers (Document ID: 4682).

(624) As a result of these findings, the Commission conducted an in-depth investigation into the property & casualty brokerage market in the Netherlands, which included a further market outreach to an extended set of Dutch non-LMCs. Also in this phase 2 market investigation, half of the responding customers provided that the transaction would have an overall negative impact on the market, while the other half considered a neutral market impact.[699] Concerned customers pointed, again, at a limited choice. One customer provided: *"We consider ourselves to have limited options to turn to as a midsize (300-400m Eur) group. Both Aon and WTW were used as alternative options."*[700] Furthermore, customers again raised concerns regarding potential price increases post-Transaction. One customer stated: *"Effectively the competition for broker services that can service our account from the Netherlands will be reduced to two parties. We consider this as insufficient for a competitive tender between brokers. We think that this lack of competition has a high risk that pricing of the services increases."*[701] A further customer of significant size but limited cross-border requirements confirmed this view by stating: *"Given the limitation on alternatives after the Transaction I can not imagine and I do not expect that broker costs will decrease. Given the fact that brokers already feel that remunerations/fees are too low I expect the same hardening of the market as with the insurers that during the past years indicated that the premiums were too low."*[702]

(625) This view was further confirmed by responses from competitors. Even though the Commission received only a limited number of responses to its phase 2 investigation into the Dutch property & casualty market from competitors, it notes that those who did reply foresee that the Transaction will have a predominantly negative impact on the property & casualty risk insurance brokerage market in the Netherlands.[703] One competitor explained that *"there is a risk that this* [the Transaction] *will have an impact because Aon and WTW will form such a large party that they can determine the price setting in the market through their dominance. And because of the volume, they could also use price measurements to push competitors out of the market"*.[704]

(626) The Commission considers market feedback from customers and competitors particularly credible as it was provided consistently and by a large share or respondents in both market investigations. It further fits into the overall findings of the Commission's investigation into the markets for the provision of property & casualty services to non-LMCs overall and into the Dutch national market in particular, including the internal document of the Parties.

(627) **For Denmark,** almost no non-LMC responding to the market investigation considered that the Transaction would negatively impact prices in the provision of property & casualty insurance risk brokerage services. Most customers foresee a neutral, and some even a positive impact on prices. Similarly, only a small share of customers consider that the Transaction would have a negative impact on choice of services, while the clear majority see the impact of the Transaction as neutral or even

699 Replies to question 18 of questionnaire Q8 to Customers and Competitors in the Netherlands.

700 Reply to question 15 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9603).

701 Reply to question 15 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 9064).

702 Reply to question 15 to questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID: 8979).

703 Replies to question 34 of questionnaire Q8 to Customers and Competitors in the Netherlands.

704 Reply to question 32 of questionnaire Q8 to Customers and Competitors in the Netherlands (Document ID. 9383).

positive. One non-LMC provided that the *"competitors field will be limited, but there are* [sic] *still competition"*.[705]

(628) **For Norway**, out of a small group of responding non-LMCs, a minority of customers considered that the Transaction may negatively impact prices in the provision of property & casualty insurance risk brokerage services, while most customers foresee a neutral impact. Furthermore, only a small share of customers consider that the Transaction would have a negative impact on choice of services, while the clear majority see the impact of the Transaction as neutral or even positive. The Commission notes that market feedback is inconclusive regarding the impact on quality of service.

(629) **For Poland,** almost no non-LMC responding to the market investigation considered that the Transaction would negatively impact prices in the provision of property & casualty insurance risk brokerage services, as customers foresee almost unanimously a neutral impact. In line with this, only a very small share of customers indicate that the Transaction would have a negative impact on choice, and the majority of respondents consider the impact to be neutral or even positive. One customer stated that the Transaction *"will not have any impact"* on the business of the company.[706]

(630) **For Spain,** the Commission received mixed market feedback from Spanish non-LMCs. On the one hand, most of responding customers foresee a neutral or even positive impact on choice. On the other hand, a slight majority of responding non-LMCs is of the view that the Transaction would lead to price increases, while other customers foresee a neutral or even positive impact. The Commission considers this feedback contradictory, especially in the light of the rather clear view of responding customers that sufficient competitors would be available in the Spanish market, as explained in Section 6.3.5.2 B3, as well as the moderate combined market shares of the Merged Entity, as indicated in Section 6.3.5.2 B1.

C. Conclusion on commercial risk brokerage for property & casualty for non-LMCs on national markets

(631) **Denmark, Norway, Poland, Spain**: For the reasons set out above, the Commission considers that it is unlikely that the Transaction would result in a significant impediment to effective competition in the markets for commercial risk brokerage for property & casualty to non-LMCs in Denmark, Norway, Poland and Spain. For all of these national markets, while some market feedback indicates that the Parties compete closely with each other and with Marsh, the large majority of customers and competitors who responded to the market investigation submitted that the markets would remain competitive and that sufficient number of national insurance brokers would remain, who are suitable for their needs. The majority of respondents indicated that the Transaction would have a neutral impact on the main parameters of competition, i.e., price, quality, and innovation.

(632) **The Netherlands:** For the reasons set out above, the Commission concludes that it is likely, and there is even a strong probability, that the Transaction will result in a significant impediment to effective competition in the internal market, despite moderate market share estimates provided by the Notifying Party. The Commission has substantiated doubts that those market shares reflect the actual competitive strength of the Parties in this market. The Parties are close competitors and the

705 Reply to question 58.. of questionnaire Q1 to Customers (Document ID: 3518).
706 Reply to question 60 of questionnaire Q1 Customers (Document ID: 5235).

Transaction would result in the loss of the important competitive constraints that WTW exercised on Aon pre-Transaction. Consequently, only one competitor would remain post-Transaction that a significant share of non-LMC respondents to the market investigation considered to be suitable for their needs. Furthermore, countervailing factors are limited, barriers to entry are significant, and customers show significant concern regarding the impact of the Transaction on choice and prices.

(633) The Commission notes that for the market in Spain, the Parties have proposed Commitments including the entire country organisation (see Section 12.3), which also includes a divestment of the property & casualty business. To the extent that any competition concerns could potentially arise from the Transaction, they are fully remedied by the divestment of a full overlap for this market. The Commitments proposed by the Parties also remedy the concerns raised with respect to LMCs. Therefore, to the extent any national customers that do not meet the criteria of an LMC, but would have some global operations, the remedy proposed for property & casualty LMCs would also benefits such customers.

6.3.5.3. FinPro for LMCs

A. The Notifying Party's view

(634) The Parties strongly dispute that there is a credible basis on which the Transaction could raise a SIEC in commercial risk brokerage for Finpro for large multinational customers and put forward the following arguments.[707]

(635) *Firstly,* the Parties will continue to face strong competition after the Transaction from both global and regional brokers in the FinPro segment, including a new and aggressive new entrant McGill.[708]

(636) *Secondly,* the Parties are not particularly close competitors, as Marsh is the closest competitor to each Aon and WTW as supported by win-loss data. According to the Parties Aon lost more opportunities to Marsh than to WTW and WTW lost significant customers to Marsh.[709]

(637) *Thirdly*, the Merged Entity will continue to face a significant competitive constraint from Marsh and other brokers, including the Tier two global brokers such as Gallagher, Howden, Lockton and the new entrant McGill, as well as regional brokers.[710]

(638) *Fourthly,* the Parties will continue to face a clear competitive constraint from direct distribution and the use of captives in relation to large multinational customers.[711]

(639) *Fifthly,* the Commission fails to take into account the strong examples of entry and expansion in the FinPro segment. In particular McGill, a recent entrant, has already won clients from each Aon and WTW and attracted FinPro talent from Aon and JLT (now part of Marsh).[712]

(640) *Sixthly,* the Commission underestimates the strong buyer power of customers in this segment. This is particularly true for FinPro where, in *Marsh / JLT*, the Commission

707 Reply to 6(1)(c) Decision, Annex 1, paragraph 45 et seq.
708 Reply to 6(1)(c) Decision, Annex 1, paragraph 49.
709 Reply to 6(1)(c) Decision, Annex 1, paragraphs 50-53.
710 Reply to 6(1)(c) Decision, Annex 1, paragraphs 55-65.
711 Reply to 6(1)(c) Decision, Annex 1, paragraphs 66-68.
712 Reply to 6(1)(c) Decision, Annex 1, paragraphs 69-70.

acknowledged "*most customers state being able to switch brokers at little cost if they needed to*." The Commission further found that most customers are engaged in FinPro brokerage contracts with an average duration of one year, allowing them to re-tender within a short timeframe if the quality of service drops. These dynamics have not changed since the *Marsh / JLT* review and will remain in place post-Transaction.[713]

(641) *Lastly,* the results of the market investigation are inconclusive as regards the negative impact of the Transaction in this segment, whilst also recognising the Transaction will lead to good outcomes for customers.[714]

B. The Commission's assessment

B.1 Market structure

(642) For the reasons set out in Section 6.3.2.1, for the purposes of its competitive assessment, the Commission will rely on the market shares calculated as part of its market reconstruction.

Table 10: Commercial risk brokerage market shares for LMCs based on their global placements of GWP, for FinPro risk (2019, GWP)

Company	Share of supply
Aon	[50-60]%
WTW	[5-10]%
Combined	***[50-60]%***
3rd broker	[30-40]%
4th broker	[0-5]%
Other remaining brokers	[0-5]%

Source: Commission's market reconstruction.

(643) The market shares presented clearly indicate that Aon is a strong market leader in the provision of commercial risk brokerage services for FinPro to LMCs at the global level. Aon already has a market share of at least 50%, which according to the Commission's guidelines and the Union Courts' case law creates a presumption of the existence of a dominant market position.[715] The Transaction would clearly fortify

713 Reply to 6(1)(c) Decision, Annex 1, paragraphs 71-72.

714 Reply to 6(1)(c) Decision, Annex 1, paragraphs 73-75.

715 Horizontal Merger Guidelines, paragraph 17. In the interests of clarity, the Commission notes that, notwithstanding the presumption in the Commission's Horizontal Merger Guidelines and the Union Courts' case law, in the specific circumstances of the present case – in particular, the results of the maket investigation, during which respondents consistently identified the Parties and Marsh as the principal competitors on the market, who competed particularly closely with one another and who did not identify Aon as holding a dominant position in the market as compared to WTW and Marsh – the Commission does not find that Aon enjoyed a dominant position on the market for the provision of commercial risk brokerage services for FinPro to LMCs at the global level pre-Transaction. Rather, and for the reasons set out in this Section 6.3.5.3, the Commission considers that the removal of the competitive constraints exercised by WTW on Aon pre-Transaction resulting in a reduction from three competitors to two competitors (i.e. the Merged Entity and Marsh) capable of adequately serving

Aon's leading position. Although the WTW increment does not exceed [10-20]%, the market investigation and internal documents of the Parties show that WTW is a very strong and close competitor to Aon in this market (as set out below in detail in Section 6.3.5.3 B.2). By merging the first and third leading suppliers on that market, the Transaction would reinforce Aon's leading position whereby the Merged Entity will have combined market shares of [50-60%],[716] with only one other sizeable competitor remaining in the market with lower market shares of [30-40%] compared to the Merged Entity. The next largest competitor has a market share not exceeding 5%, with all remaining competitors together accounting for less than 5% of the market indicating that they are each very small indeed.

(644) The responses to the market investigation support the level of market shares based on the market reconstruction exercise. In particular, the phase 2 market investigation confirmed that the market is largely dominated by the three players (the Parties and Marsh) with other brokers considered as close or suitable competitors to the Parties only by a minority of responding LMCs. Customers that responded rated Marsh, Aon and WTW as particularly strong competitors, with other brokers rated at a significant gap (further discussed in Section 6.3.5.2 B.2).[717] Internal documents of the Parties also support such market structure overall for the commercial risk brokerage for FinPro, […].[718]

(645) In line with the Horizontal Merger Guidelines and established Union Courts' case law,[719] the Commission finds that the market shares of the Merged Entity, combined with the factors set out in the following Sections below, indicate that the Transaction will likely result in the creation of a dominant position for the Merged Entity on the matket for commercial risk brokerage for FinPro to LMCs at the global level, and thus signicantly impede effective competition.

B.2 Closeness of competition

(646) The results of the market investigation, the tender data analysis and review of the Parties' internal documents show that in the global market for commercial risk brokerage for FinPro to LMCs, Aon and WTW are particularly close competitors compared to all other brokers with the exception of Marsh, which is comparable to and competes closely with, each of Aon and WTW. All other smaller brokers compete at the margins with the Parties and Marsh.

LMCs' requirements, taken together with the other factors examined at Sections 6.3.5.3 B.3-B.7, will result in the creation of a dominant position for the Merged Entity.

716 Horizontal Merger Guidelines, paragraph 17.

717 Replies to question 25 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

718 For example: WTW internal document, Western Europe FI Planning, 29-30 November 2017, Document ID 010686-034236.

719 Paragraph 17 of the Horizontal Merger Guidelines: *"According to well-established case law, very large market shares - 50 % or more - may in themselves be evidence of the existence of a dominant market position […] A merger involving a firm whose market share will remain below 50 % after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes. The Commission has thus in several cases considered mergers resulting in firms holding market shares between 40 % and 50 %, and in some cases below 40 %, to lead to the creation or the strengthening of a dominant position."* See also Case T-221/95, Endemol v Commission, [1999] ECR II-1299, paragraph 134, and Case T-102/96, Gencor v Commission, [1999] ECR II-753, paragraph 205; M.1221 - Rewe/Meinl, paragraphs 98-114 and M.2337 - Nestlé/Ralston Purina, paragraphs 44-50.

(647) Responses to the phase and 1 and phase 2 market investigation indicate that customers and competitors consider that the Parties and Marsh compete closely with each other in the global market of commercial risk brokerage for FinPro to LMCs. Responding customers consider that Marsh is the closest competitor to Aon, followed closely by WTW. All other competitors, such as Gallagher, Howden, Lockton, McGill or Siaci, are very rarely identified as the closest or even close competitors to Aon.[720]

(648) With respect to WTW, Aon appears to be a slightly stronger constraint on WTW than *vice versa.* Responding LMCs consider Marsh to be the closest competitor to WTW in the global market of commercial risk brokerage for FinPro to LMCs, but followed very closely by Aon. Other competitors are named only rarely as WTW's closest competitor. Customers identified Gallagher, Lockton, Howden and McGill at a significant gap behind the Parties and Marsh.[721]

(649) In terms of the overall rating of competitive strength, responding customers rated Marsh as a market leader, followed very closely by Aon and WTW as a strong third. All other brokers were rated significantly behind, with the next closest competitor, Gallagher, followed by Lockton and Howden.[722] Responding LMCs explained that there are no significant differences between Marsh, Aon and WTW; but indicated considerable difference to the remaining brokers. For example one customer explained: "*[t]he big three Aon, WTW and Marsh all have a particular expertise and approach to global client service.*"[723] Responding LMCs also consider that other than the three largest brokers – Marsh, Aon and WTW – none of the other brokers has a strong track record with LMCs.[724] This is supported by comments of customers indicating that smaller global brokers appear to focus more on medium- or small-sized customers for FinPro risk and therefore are not prominent in the market of commercial risk brokerage for FinPro to LMCs.[725] Differentiating the largest brokers from smaller Tier two brokers, one customer explained specifically with respect to FinPro risk: "*[s]ome of these have global capability and focus on large commercial accounts, while others are more focused on middle market or are start-ups.*"[726] Other smaller brokers are referred to by customers as either 'boutique' or 'start-ups' and are not generally compared to service offering of the Parties and Marsh. Whilst these brokers are considered suitable for some customers, a majority of responding customers note shortcomings on the part of those brokers as compared with the Parties or Marsh.

(650) Competitors that responded to the market ivestigation also consider Aon and WTW to be close competitors in the global market for commercial risk brokerage for FinPro, in particular with respect to LMCs. One competitor stated: "*Aon-WTW combines two of the largest FinPro broking teams […].*"[727] Another competitor explained that the market is dominated by the three largest players that compete closely: "*[t]here are really only three brokers, Aon, Marsh and WTW who have the*

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720 Replies to question 154 of questionnaire Q1 to Customers.
721 Replies to question 154 of questionnaire Q1 to Customers.
722 Replies to question 25 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
723 Replies to question 25.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9513).
724 Replies to question 26 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
725 Replies to question 25.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
726 Replies to question 25.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9579).
727 Replies to questions 59-61 of questionnaire Q16 to Competitors (Document ID 8961).

owned global networks capable of servicing large multinational clients Financial Lines requirements. Once that number reduces from 3 to 2 there will obviously be a reduction in competition in the marketplace and clients will by definition have less choice and potentially less access to new solutions. For customers who only have exposures in a limited amount of jurisdictions there are plenty of brokers who are able to provide adequate service so it would be the very large companies with very wide international or global exposers who would be most affected."[728]

(651) The Commission carried out an analysis of tender data for large customers requiring commercial risk brokerage for FinPro, that is by considering customers generating more than EUR 1 billion turnover per year,[729] with a participation analysis and a loss analysis.[730,731]

(652) In terms of methodology, the Commission implemented four adjustments compared to the Notifying Party's submissions (see Annex B for further details), by: (i) considering tenders in terms of value, instead of count, due to the significant heterogeneity in tender values, (ii) excluding non-competitive tenders (i.e. tenders without any competitive interactions between suppliers), (iii) considering the period 2017-2019 instead of 2019 only, in order to increase the sample size and therefore mitigates the uncertainty related to samples with a small number of tenders (the analysis for 2019 is reported only as a sensitivity analysis), and (iv) excluding tenders with unknown participants or unknown winners.

(653) As regards the exclusion of tenders with unknown participants or unknown winners, this is based on the assumption that the distribution of winners/participants in the set of tenders with unknown winners or unknown participants is similar to the distribution of winners/participants in the set of tenders with known winners or known participants. The Commission considers that, for FinPro, excluding tenders with unknown winners/participants is reliable, since, in particular (see Annex B for further details):

(a) When entering the names of winners, Aon's account executives have the choice among more than 1,000 brokers in the pick list. Given how comprehensive the pick list is, the Commission considers that: (i) it is unlikely

[728] Replies to questions 59-61 of questionnaire Q16 to Competitors (Document ID 9117).

[729] Large customers have been identified by the Notifying Party in Aon tender data. Based on the market investigation (replies to question 1.2 and question 21 of questionnaire Q1 to Customers), the Commission also considers that companies with a turnover exceeding EUR 1 billion is a reliable proxy for LMCs (i.e., companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries) since: (i) most companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated to have insurance needs in more than 5 countries, and (ii) the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less.

[730] A participation analysis considers which brokers participate in tenders against Aon, and therefore allows to assess the degree of competitive interactions between the merging Parties relative to third-parties.

[731] A loss analysis considers to which brokers Aon loses tenders. The Commission considers the participation and loss analyses jointly to assess the competitive interactions between the Parties and their competitors. This is because participation in tenders is particularly credible if it also results in wins; the participation analysis therefore needs to be seen in conjunction with the analysis of win rates (i.e. the loss analysis).

that Tier two brokers would be missed[732] and (ii) that the main local brokers would be well represented.

(b) Moreover, in FinPro, the missing brokers identified by the Notifying Party are essentially local brokers, which do not appear as alternatives to the Big-Three brokers for LMCs in the market investigation. It is therefore unlikely that the Commission's analysis misses an important competitive constraint to Aon when "unknowns" tenders are excluded.

(c) In addition, the Commission undertook a manual review of tenders with unknown winners, and compared the corresponding clients with WTW customer data provided in the Reply to RFI33. Among the tenders for FinPro with unknown winners reviewed by the Commission, for the period 2017-2019, WTW's customers represent a proportion ([a significant percentage], in term of value) which is similar than in the sample of tenders with known winners ([a significant percentage] as well, by value, see recital (654)(b)).[733,734] This indicates that the Commission's assumption is valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(d) The Commission considers that the argument on missing brokers in the pick-list of Aon tender data is mainly applicable to the loss analysis.[735] In contrast, as regards the participation analysis, it is possible for Aon's account executives to enter as free text the name of other participants.[736] The Commission therefore considers that, while Aon's account executive did not enter the full list of participants in a tender (that is, not all participants are listed for a given tender), there is no reason to believe that the participation rates of WTW relative to their competitors would be biased when tenders with missing information on participants are excluded.

(654) The analysis of Aon's tender data for commercial risk brokerage for FinPro shows that […] are two particularly close competitors to Aon, while other brokers are more distant competitors with limited competitive interactions with Aon, do not appear as credible alternatives to Aon; and thus exert a limited competitive constraint on Aon (see Annex B for a detailed description of the Commission's analysis of tender data).[737] This is based on the following:

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732 The only exception is McGill, who has entered in 2019 (Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. The Notifying Party did not mention any other recent entrant as Tier two broker.

733 Given the high number of tenders for large customers in FinPro ([…] tenders for the period 2017-2019), the Commission carried out the manual matching exercise for tenders representing [a high percentage] of total value in 2017-2019 (corresponding to […] tenders).

734 For the period 2019 only, the Commission considers that the tender analysis is subject to some uncertainty due to the small number of tenders considered in FinPro (for example, there are […] tenders where the winner is known in 2019).

735 Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. This is because the internal system of Aon prevents the account executives from manually entering as free text in the winner field the names of winners not present in the default pick list.

736 Reply to RFI37, paragraph 1.9: […]

737 Similar to the analysis of Aon tender data submitted by the Notifying Party in the Reply to the 6(1)(c) Decision, the Commission considers tenders for large customers. The Commission notes that the Notifying Party, in its submissions on tender data, was not able to identify the geographical coverage for insurance needs for their large customers due to data limitations. Therefore, it is also not possible for the Commission to capture such geographical scope of insurance needs given the lack of data available. Nevertheless, despite this data limitation, the Commission still considers that such data limitation does

(a) The participation analysis, which shows that, for the period 2017-2019:

– Aon encounters WTW ([…] by value) the […] Marsh ([…] by value).

– By contrast, there is a […] in the participation rates against Aon for all other brokers (participation rate by value in the range of [a very small percentage], depending on the broker considered). […].

(b) The loss analysis, for the period 2017-2019, which shows that […]:[738]

– After Marsh ([percentage] win rate against Aon by value), WTW […] against Aon ([percentage] by value).

– By contrast, there is […] in the win rates against Aon for all other listed brokers (in the range of [a very small percentage], by value).

(c) The sensitivity analysis for 2019 confirms the findings of the baseline analysis based on the period 2017-2019 for both the participation analysis and the loss analysis.[739]

(655) Notwithstanding the exclusion of the direct channel from the relevant product market, Aon tender data also shows that the direct channel […] to Aon:[740, 741]

(a) The participation analysis shows a […] of the direct channel ([a very small percentage] participation rate, by value, for 2017-2019) compared to the participation rates […].

(b) Similarly, the loss analysis shows that the direct channel […] Aon (close to [a very small percentage] of tender value for the period 2017-2019).

(656) Lastly, as regards the competitive constraints faced by WTW, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW (see Annex B for further details). As an alternative, the Commission has used Aon tender data to

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not prevent it from carrying out a reliable analysis of tender data for LMCs. In particular, most companies responding to the market investigation with a turnover exceeding EUR 1 billion (which corresponds to the definition of large customers) indicated that they have insurance needs in more than 5 countries. Conversely, the majority of companies with a turnover below EUR 1 billion submitted that their insurance needs covered 5 countries or less. On that basis, the Commission considers that tender data for large customers (i.e. companies with a turnover exceeding EUR 1 billion) is a reliable proxy for tender data for LMCs (i.e., companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries).

738 Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Annex B for further details), the results also confirm the findings from the loss analysis carried out by the Commission, where WTW was the second competitive constraint to Aon, after Marsh, but significantly ahead of other brokers and the direct channel.

739 Following the comment of the Notifying party to consider only 2019, since some brokers would be absent from Aon internal system in 2017-2018 due to a different internal system, the Commission carried out as well a sensitivity analysis for 2019 only. However for FinPro, the Commission notes that the 2019 analysis is carried out based on a small number of observations ([…] tenders for the participation analysis and […] tenders for the loss analysis).

740 While the Commission defined a product market limited to the provision of brokerage services, excluding direct distribution as per Section 6.1.3 above, considering the Notifying Parties' arguments that the direct channel exerts a competitive constraint on brokers, the Commission assesses the direct channel as a potential 'out of market' competitive constraint.

741 These findings are also confirmed when only 2019 is considered.

perform a targeted incumbent analysis to assess the competitive constraint faced by WTW, for the period 2017-2019.[742]

(a) Among the opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), WTW and Marsh were the incumbents in [a high percentage] of the revenues corresponding to these opportunities (WTW was the incumbent for [a significant percentage] of the revenue, and Marsh was the incumbent for [a high percentage]).

(b) Other incumbents, such as Gallagher, Hyperion and Lockton, represent […] of the new business that Aon tried to acquire (ranging between [a very small percentage] and [a small percentage] for each incumbent).

(c) While the tender data provided by WTW do not allow for an assessment of the competitive constraint that Aon exerts on WTW (see Annex B for further details), this analysis of Aon tender data still indicates that WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh).

(657) Based on the above, the Commission considers that the analysis of tender data for large customers in EEA in FinPro shows that Aon and WTW are […]. Only Marsh is […].

(658) Internal documents of the Parties also indicate that Aon and WTW see each other and Marsh as close competitors for FinPro in particular. For example, WTW Strategic Plan 2019-2023 identified […][743] […].[744] Aon's internal documents in the same vein indicate that only […] are comparable by customers for global FinPro requirements. With respect to a request for proposal (RFP) from a potential customer, Aon's internal email indicates that […] were distinguished from other brokers, "[customer] *is looking to better evaluate the broader industry's capabilities and then focus on Aon, Willis, and Marsh specifically*."[745]

(659) The reasons for closeness of competition between Aon, WTW and Marsh in the provision of commercial risk brokerage for FinPro to LMCs can be explained by a number of factors, namely: (i) the network of owned offices and global reach of the large three brokers is deemed superior; and (ii) ability to deal with complex and large FinPro risks (including superior analytical and benchmarking capabilities).

(660) LMCs responding to the market investigation indicated that the largest three brokers are differentiated from the other brokers due to their owned network capabilities (for further discussion on broker networks see Section 6.3.4.1).[746] One customer explained: "*[t]he three brokers with integrated networks, namely AON, Marsh and WTW, are usually the ones used by large multinationals, even if some of them may prefer to use more specialized and smaller brokers for specific insurance lines, such*

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742 For 2019 only, the Commission considers that the analysis is subject to a significant uncertainty given the smaller number of tenders considered ([…] tenders with known incumbent compared to […] tenders for the period 2017-2019).

743 WTW internal document, GB Finex Strategic Plan 2019 – 2023, dated January 2018 (Document ID 010687-024018).

744 Note that […].

745 Aon's internal email, dated 13 August 2018 (Document ID 10261-39321).

746 Replies to question 23 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

as nuclear, construction, etc."[747] The majority of LMCs indicated that because of the geographic footprint and the size of their company, their choice of suitable brokers for FinPro risks is more limited than that of other companies.[748] Responding customers explained that choice for smaller customers may be greater, but is limited for LMCs, for example one stated: "*[s]maller local companies may be able to choose from a larger number of suitable brokers. The size of our company and insurance program is too big for a more local and smaller broker*."[749]

(661) Further, FinPro risk is deemed complex and this is also a limiting factor when choosing a broker for the majority of respondents.[750] As one customer explained: "*FinPro are very complex and evolving risks, so geographical scope, market understanding and high expertise is necessary to ensure proper support to large companies*."[751] LMCs also note that Aon, Marsh and WTW are able to provide services based on their data and benchmarking capabilities that smaller brokers are not able to (see Section 6.3.4.2 on data analytics capabilities). One customer stated: "*[t]here is only a small number of large brokers that have such large impact in the market that they are able to get the best conditions for their clients. Furthermore their large client based provides them with excellent data to benchmark and to spot trends. This benchmarking data allows the large multinational customers to compare (on an anonymized basis) to their peers in the industry*."[752] Close to a majority of LMCs also indicated that the size of their commercial risk brokerage for FinPro that they require brokerage services for limits choice of a broker, primarily because only the largest brokers are able to find the required insurance capacity.[753] One customer explained: "*[w]e need large insurance capacity for some risks, e.g. high insured limits. For some risks, we have many different international insurers participating. Only a few brokers are able to find such capacity in the market*."[754]

(662) The Commission also assessed if the Parties are constrained by any out-of-market constraints, for example direct placement with insurers or the use of risk retention strategies, such as captives. With regard to the out-of-market constraints, the market investigation feedback in phase 2, supports the findings of the phase 1 investigation. The majority of LMCs that responded indicate that it would not be possible for them to place FinPro risk directly with insurance companies.[755] Customers cite a number of reasons, but primarily note that FinPro risk is too complex for direct insurance.[756] Nearly all responding customers, with a very small exception, indicate that they do not have in-house capabilities for FinPro risk and therefore would not be able to exert any constraint on the Parties.[757] Moreover, when responding to a SSNIP-type

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747 Replies to question 26.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9089).

748 Replies to questions 4 and 4.2 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

749 Replies to question 4.2 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9037).

750 Replies to question 6 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

751 Replies to question 4.3 of questionnaire Q9 to commercial risk brokerag Customers for FinPro (Document ID 9588).

752 Replies to question 26.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9138).

753 Replies to question 5 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

754 Replies to question 5.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9135).

755 Replies to question 16.2 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

756 Replies to question 16.2.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

757 Reply to question 16.3 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

question, i.e. when faced with 5-10% increase in broker's remuneration or reduction of quality of service, only a very small minority indicated that they would instead seek to place FinPro risk directly with insurers, or use an in-house broker or risk retention solutions, such as captives.[758] Close to a majority of responding customers indicated that they would switch to Marsh in the event of an increase in the Merged Entity's price, with other brokers such as Lockton, Gallagher, Howden or McGill chosen only by a few responding customers each.

(663) On the basis of the above, the Commission concludes that Aon and WTW are particularly close competitors compared to almost all other brokers in the market for commercial risk brokerage for FinPro for LMCs at the global level. Only Marsh is comparable to and equally close to Aon and WTW.

(664) As such, the Commission considers that, pre-Transaction, Aon and WTW are close competitors and that WTW exercises a significant competitive constraint on Aon. That competitive constraint would be lost as a result of the Transaction. The loss of direct and important competition between the Parties, together with the other elements assessed in this Section 6.3.5.3 will likely result in significant reduction in Aon's market power in the market for commercial risk brokerage for FinPro to LMCs at the global level and a significant reduction of competitive pressure in this market.

B.3 Switching

(665) The phase 2 market investigation supports the initial findings of the phase 1 investigation and indicates that whilst switching is possible, there are significant limitations and costs for customers to switch their broker.

(666) Responding LMCs indicated that there are factors limiting switching of a broker with respect to their commercial risk brokerage for FinPro needs.[759] Only less than a third of responding customers indicated that there are no barriers to switching broker. The vast majority identified limiting factors, such as: (i) long-term claims handling and disputes over claims; (ii) global reach and complexity of the risk means that switching is difficult and costly; (iii) broker's knowledge of customer's company and insurance needs is vital and difficult to transfer without significant investment of time/resources on the part of a customer; and (iv) a minority indicated that proprietary data owned by the broker cannot be replicated or easily transferred without a cost.[760] One customer noting costs of switching specific to FinPro risk explained: "*[t]he complexity of the risks insured makes the transfer to another broker costly. The investment required for such a transfer requires a truly significant advantage for the winning broker, which is difficult to obtain.*"[761]

(667) With regard to the Parties' argument that individual brokers often change brokerage firms and customers follow (whereby broker movement is common in the industry and customers generally follow those relationships) this is not supported by customer feedback to the market investigation for the commercial risk brokerage for FinPro to LMCs. Whilst over a third of responding customers indicated that they are aware of an individual broker movement, not a single customer has followed that broker to another brokerage firm. The majority of respondents have indicated that the

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758 Replies to question 17 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

759 Replies to question 30 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

760 Replies to question 9 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

761 Replies to question 30.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 8709).

relationship with a broker is at a corporate level, not based on individual broker or team, and a new tender process would be required. In this respect, it is important to note that a majority of responding customers tender no more than every three years or even less frequently.[762]

(668) The majority of LMCs indicated that they source their broker through a form of tender process.[763] Nearly all responding customers invite at least three brokers to tender, and vast majority invite either four or five.[764] The majority of responding customers indicate that only three brokers currently meet their company's criteria for selecting a broker.[765] Moreover, the majority of responding customers indicate that they expect competition to decrease in future tenders if the Transaction were to go ahead. A number of customers refer to a three-to-two reduction, one customer summarised the expected outcomes of such reduction: "*[i]f there are only two large suppliers, the remaining suppliers are much better able to assess the strengths and weaknesses of the single competitor. This may result in bids that are not competitive at all (the broker may already give up in advance knowing about the competition) or bids that are less competitive in relation to elements where the broker has a cost advantage. In line with conventional economic literature, we expect higher prices in what for us effectively is a duopoly*."[766]

(669) In the market investigation, customers were asked about suitable alternative providers in the event of a 5-10% price increase in broker remuneration, or a reduction of quality of service of the Merged Entity. The only competing broker responding customers generally identified as a suitable alternative to the Parties is Marsh, which was named by a large majority of customers. Other brokers, Gallagher, Lockton, Howden and McGill were identified as suitable options by a far fewer number of responding LMCs.[767] One customer that indicated Marsh as the only alternative explained: "*[o]ther brokers currently do not have the scale*."[768] Based on the above, the Commission considers that whilst switching a broker is in any event relatively costly and entails difficulties for customers, the fact that the Transaction will eliminate WTW as a choice available to LMCs will limit the number of possible alternatives available for LMCs with respect to their global commercial risk brokerage for FinPro needs to only two alternative suppliers. Such reduction of available options from three to two would likely result in a significant loss of competition from WTW on the other two Big Three brokers that existed pre-Transaction and will likely soften the competitive pressure in future tenders on Aon and Marsh. In line with the Horizontal Merger Guidelines, customers that have difficulties switching to other suppliers because there are few alternative suppliers, are particularly vulnerable to price increases (or more generally to worsening terms and conditions offered in tenders in this market).[769] As such, by eliminating the competitive pressure that WTW exercises on Aon and significantly decreasing the

762 Replies to questions 31 and 10.2 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

763 Replies to question 10 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

764 Replies to question 10.3 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

765 Replies to question 10.4 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

766 Replies to question 34.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9037).

767 Replies to question 27 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

768 Replies to question 27.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 8470).

769 Horizontal Merger Guidelines, paragraph 31.

competitive pressure on the remaining credible competitor (i.e. Marsh), the Transaction is likely to result in a significant reduction in competitive pressure in the matket for commercial risk brokerage for FinPro to LMCs at the global level.[770]

B.4 Likely reaction from competitors

(670) In its assessment of likely reactions from competitors towards the Merged Entity, the Commission distinguishes between Marsh on the one hand and Tier two brokers and other smaller brokers individually and in the aggregate. This assessment covers the likely ability and incentive of the competing brokers to constrain the Merged Entity post-Transaction.

(671) As regards Marsh, the Commission acknowledges that Marsh, one of the Big Three brokers, will likely remain a credible broker for LMCs in the market of commercial risk brokerage for FinPro to LMCs. However, the Commission considers it likely that Marsh will benefit from any prices increases by the Merged Entity and therefore have a reduced incentive to compete compared to the (counterfactual) situation absent the Transaction (as further discussed in Section 6.3.5.1 B.4).

(672) This is further supported by the findings set out in Section 6.3.5.1 B.2 above, which sets out the Commission's findings that the Parties and Marsh are particularly close competitors, with other brokers not considered as suitable by many LMCs for their commercial risk brokerage for FinPro needs. Thus, in the event of a price increase by the Merged Entity, Marsh would be the most likely alternative for most LMCs and directly benefit from the significant loss of competition between the merging Parties. Against this background, the Commission considers that Marsh is likely to have less incentive to compete post-Transaction compared to the situation absent the Transaction.

(673) The Commission's assessment of Marsh's incentive to compete is also supported by some respondents to the market investigation specific to commercial risk brokerage for FinPro. Several responding LMCs[771] and competitors[772] were sceptical that Marsh will be able to or will have the same incentives to compete with the Merged Entity. One customer explained the reasons for the reduced competition it foresees specific to FinPro: "*[i]f the situation remained the same, i.e. without the emergence of new global brokers that would not be absorbed, we deem that it might lead to a reduced competition, for the 2 reasons below: 1. […] eventually AON & Marsh would often end up sharing the business for each of their large clients. As there would be fewer options to move to another broker if the service is not satisfactory, Marsh or AON might keep some business that they would have lost in the past if a third option was available. 2. Both brokers will likely look for synergies and economies of scale following their acquisitions. Therefore, the quality of service might end up being the same, despite the addition of new resources with the merger.*"[773]

(674) Similarly, one competitor explained: "[t]*he Aon-WTW combination will become the clear market leader for Large Multinational Clients in a large range of geographies and industries. Marsh are nearing completion of the JLT Specialty integration and will seek to capitalise on service and talent disruption at Aon-WTW strengthening*

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770 Horizontal Merger Guidelines, paragraph 24.
771 Replies to question 29 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
772 Replies to question 23 of questionnaire Q16 to Competitors.
773 Replies to question 29. of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9741).

competition in the short-term. WTW played a role in the industry as a smaller but highly credible substitute for Aon and Marsh. No other broker is equipped to play this role at this point. The removal of WTW will reduce the competitive discipline on Aon and Marsh. Clients who want the comfort of a large broker (nobody ever got fired for hiring IBM) like to split their placement will be particularly impacted by the loss of choice."[774] With another stating: "*Marsh will be the primary beneficiary of clients who used two brokers when these were Aon/Willis*."[775] This last statement is in line with the Horizontal Merger Guidelines, which state that in particular, customers that have used dual sourcing from the two merging firms as a means of obtaining competitive prices would be negatively affected by the reduction of the available suppliers.[776]

(675) Moreover, this is supported by reported statements made by Marsh's CEO Daniel Glaser with respect to the Transaction. In a call with investors, Glaser said: "*And on a personal comment, as somebody who's had almost 40 years in this business, I don't think the Aon Willis combination is good for clients or good for the market. But I do think it's good for Marsh & McLennan. I mean, come on, the big three becomes the big two, how could that not be a benefit to us?*"[777] In this respect the Notifying Party criticised in its response to the Article 6(1)(c) Decision the fact that the Commission relies on a single informal statement, which in the Notifying Party's opinion is clearly an inadequate basis for such a wide-ranging provisional conclusion.[778] Nevertheless, the Commission considers that this statement by Marsh's CEO is in line with economic models of oligopolistic competition with differentiated products, with the Horizontal Merger Guidelines, and is echoed by some customers.

(676) For the sake of completeness, the Commission notes that the majority of responding customers and competitors stated that Marsh will either step up competition or will compete just the same with the Merged Entity.[779,780] However, the Commission considers that those opinions should not be attributed considerable weight because the drafting of the respective question in the market investigation was ambiguous and implied efficiency gains for the merging Parties. The question read: "*In your view, how will the acquisition of WTW by Aon impact on Marsh's competitive behaviour regarding large multinational customers?*". For example, one option to answer this question was formulated as follows: "*faced with a stronger competitor, Marsh will likely step up its efforts and compete even stronger for large international customers.*" This question therefore pre-supposed that the Merged Entity would be a stronger competitor than it is today. In line with economic theory, such efficiencies on the side of the Merged Entity could increase its competitors' incentives to compete. However, no such efficiencies have been demonstrated in the present case. For this reason and in light of the overall context of the case, the Commission considers that it is likely that Marsh's incentives to compete would be reduced post-Transaction.

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774 Replies to question 23.1 of questionnaire Q16 to Competitors (Document ID 8961).
775 Replies to question 23(1) of questionnaire Q16 to Competitors (Document ID 8802).
776 Horizontal Merger Guidelines, paragraph 31.
777 Marsh & McLennan Companies, Inc. (MMC) CEO Dan Glaser on Q2 2020 Results - Earnings Call Transcript, Seeking Alpha, dated 30 July 2020, Document ID 6465.
778 Reply to 6(1)(c) Decision, paragraphs 16 and 17.
779 Replies to question 29 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
780 Replies to question 23 of questionnaire Q16 to Competitors.

(677) In any event, in line with paragraph 31 of the Horizontal Merger Guidelines, the Commission considers that Marsh alone as a credible alternative to the Merged Entity would not be enough to counter the negative effects from the significant loss of competition as a result of the Transaction. In this respect the majority of customers indicated that they source their broker through a form of tender process (as explained in Section 6.3.5.2 B.3 above) and nearly all customers invite at least three brokers in tenders, and the vast majority invite either four or five.[781] The majority of responding customers also indicate that only three brokers currently meet their criteria.[782] In addition, the majority of responding customers indicate that they expect competition to decrease in future tenders if the Transaction were to go ahead.[783] In fact, the clear majority of LMCs responding to the market investigation provide that the Transaction will lead to a decreasing level of competition in future tenders[784] and therefore will result in the elimination of the important competitive constraint that Aon and WTW exerted on each other, together with a significant decrease of competitive pressure on the remaining competitor (i.e. Marsh).

(678) As for other brokers, as explained in Section 6.3.5.3 B.2 above, the majority of customers do not consider smaller brokers such as Gallagher, Howden, Lockton and regional brokers, individually suitable for their needs, as compared to Marsh and the Parties and therefore it is unlikely that they will credibly compete with the Merged Entity post-Transaction. Moreover, the vast majority of responding customers said that in the aggregate other brokers (excluding Marsh) will not be a significant competitive constraint on the Merged Entity.[785] A number of customers refer to three to two reduction, one customer summarised the expected outcomes of such reduction: "*[i]f there are only two large suppliers, the remaining suppliers are much better able to assess the strengths and weaknesses of the single competitor. This may result in bids that are not competitive at all (the broker may already give up in advance knowing about the competition) or bids that are less competitive in relation to elements where the broker has a cost advantage. In line with conventional economic literature, we expect higher prices in what for us effectively is a duopoly*."[786]

(679) The Commission considers, on the basis of the market feedback that a combination of Aon/WTW would create a dominant position on the part of the Merged Entity, and the impediment on competition would likely not be countered by the remaining competitors who either lack the ability or incentive to constrain the Merged Entity.

B.5 Countervailing factors

(680) The Commission considers that the buyer power of customers in the global market of commercial risk brokerage for FinPro to LMCs is limited vis-à-vis the Parties and would be even further diminished post-Transaction. It therefore concludes, for the reasons set out in this Section 6.3.5.3, that the customers would not be able to discipline the Merged Entity to counter any potential price increases and would not be able to reduce the potential impact on a reduction in the quality of service. Whilst

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781 Replies to question 10.3 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

782 Replies to question 10.4 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

783 Replies to question 13 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

784 Replies to question 14 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

785 Replies to question 28 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

786 Replies to question 34.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9037).

some responding customers have indicated that they have a degree of buyer power,[787] for this risk type, it is also reported that price is not the most important criterion when choosing a broker (responding customers indicated that expertise and ability to deal with a complex risk is more important).[788] One customer explained that even if it perceives to have some negotiating power currently, it expects such position to diminish post-Transaction if the number of competitors is reduced in the market for commercial risk brokerage for FinPro to LMCs: "*[w]e trust that we currently have a strong negotiating power, but future tenders will truly measure the reality of this. If brokers were to push for higher fees in the future tenders, the lack of alternative options can certainly be detrimental to the customer's ability to push back.*"[789]

(681) While the majority of responding LMCs indicated that they use tender processes in order to get the best procurement outcomes and thus play brokers off against each other; the majority also indicated that they expect their ability to play brokers off in tenders will significantly decrease as a result of the Transaction.[790] One customer explained, "*[i]n our case, the options for overall brokers from 3 to 2 is a considerable reduction*..."[791]

(682) The Commission acknowledges that tenders are commonly used by customers and that brokers compete against each other.[792] However, as indicated by the market investigation, post-Transaction[793] there will be a limited number of credible competitors left to participate in those tenders, which will reduce the bargaining power of those customers in that they would have a reduced choice (as explained above in Section 6.3.5.3 B.3), and thus the Transaction also reduces buyer power in relation to factors such as price and quality in the market of commercial risk brokerage for FinPro to LMCs.

B.6 Barriers to entry and expansion

(683) Barriers specific to the market of commercial risk brokerage for FinPro to LMCs at global level exist. First, customers require that a broker has an extensive global network. However, a robust global network is difficult to build for entrants or for competitors to expand. The market investigation indicates that networks of other brokers (with an exception to Marsh) (as presented above in Section 6.3.4.1 – Global Reach and Network Comparison), are not considered as suitable alternatives by a significant share of responding LMCs for commercial risk brokerage for FinPro.[794] Second, brokers would need to attract specialised talent to build the necessary expertise[795] demanded by LMCs. In terms of growing customer base, it is noted that LMCs generally do not follow individual brokers if they move to a different company, which is confirmed by a majority of customers responding to the market investigation.[796] In this respect, the majority of responding customers also value a

787 Replies to question 32 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

788 Replies to question 9 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

789 Replies to question 32 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9741).

790 Replies to questions 33 and 34 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

791 Replies to question 34.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 8833).

792 Replies to question 35 of questionnaire Q1 to Customers.

793 The majority of responding customers indicate that only three brokers currently meet their criteria. Replies to question 10.4 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

794 Replies to question 23 of questionnaire Q1 to Customers.

795 Replies to question 163 of questionnaire Q1 to Customers.

796 Replies to question 28 of questionnaire Q1 to Customers.

broker's track-record with similar companies, as well as its track record of dealing with complex and large risks.[797] The need for a track record with a significant number of LMCs that would allow a broker to benchmark within and across customer's industries is an impediment to expanding quickly in the commercial risk markets to LMCs, including for commercial risk brokerage for FinPro. Lastly, data analytics capabilities are increasingly requested by customers and a requirement to have a pool of risk specific data for large customers is considered as restricting factor to entry and expansion.

(684) With respect to data capabilities, two key impediments exist. First, data analytics capabilities require significant investment and second, data specific to large international customers is necessary for benchmarking and modelling (see Section 6.3.4.2). One competitor stated: *"Aon-WTW combines two of the largest FinPro broking teams and creates a very substantive data-lake. Clients are facing significant challenges securing capacity for their risks given contractions in underwriting appetite from recent loss history and uncertainty over risk trends. Possible that the Aon-WTW will be able to leverage data and analytical insights to build market capacity or to create more efficient proprietary solutions that create value for clients."*[798]

(685) The difficulties of entry into the market of commercial risk brokerage for FinPro to LMCs are further indicated by the fact that very few customers could identify any new entrants in the FinPro risk brokerage market in the past three years.[799] McGill was only named by a small number of customers and only a minority considered McGill to be a credible competitor to Aon and WTW.[800] The Commission further notes that even one of the few customers that did identify McGill as a new entrant and stated that it would consider new entrants as credible competitors, pointed to competitive disadvantages of this brokerage firm due to a lack of global reach: *"[f]rom publicly available information to date, the new entrants' global footprint does not currently match that of Aon, Marsh/JLT and WTW. Nevertheless it cannot be excluded that once the current service agreement with Aon expired, the new entrants would not be invited to compete."*[801] Only a small number of customers considered that McGill may expand within the next three years to compete with the Merged Entity.[802]

(686) While the Parties submit that McGill is a strong new entrant, including for commercial risk brokerage for FinPro to LMCs, internal documents of the Parties indicate that there are […]. For example, in internal emails Aon executives state that […].[803] One other internal exchange discusses "*[…]*"[804]

(687) In view of the above, the Commission considers that the barriers to entry or expansion in the global market of commercial risk brokerage for FinPro to LMCs are very significant so that other brokers would not be in a position to grow quickly and effectively to compete against the Merged Entity in a timely manner, and thereby

797 Replies to question 9 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
798 Replies to questions 59-61 of questionnaire Q16 to Competitors (Document ID 8961).
799 Replies to question 28 of questionnaire Q1 to Customers. Replies to question 37 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
800 Replies to question 170.1 of questionnaire Q1 to Customers.
801 Replies to question 170.1.1 of questionnaire Q1 to Customers.
802 Replies to question 38.1 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
803 Aon's internal email, dated 16 April 2020 (Document ID 10264-7739).
804 Aon's internal email, dated 15 October 2020 (Document ID 10263-71026).

make up for the loss of competition between the Parties or counteract the reduction in competitive pressure resulting from the Transaction on the current competitors (in particular Marsh).

B.7 Results of the market investigation on likely impact of the Transaction

(688) A significant share of LMCs (over a third) consider that the Transaction would have a negative impact on the choice of service in the market for commercial risk brokerage for FinPro to LMCs.[805] Given the high number of replies overall, the Commission notes that these concerns were raised by a considerable number of customers in absolute terms.[806] Quantitative feedback illustrates that a number of customers expect the price of broker fees to increase and service quality to decrease. One customer stated that the Transaction risks "*increase of brokerage fees.*"[807] Another specified lack of choice for LMCs: "*The risk is that the two brokers left will monopolize their knowledge and experience by increasing fees: they are the only two that are able to serve multinationals.*"[808] Another customer argued the following indicating specifically reduction of choice: "*[f]or large multinational companies that require full access to the global insurance market, global servicing through a network and extensive data and analytical skills, the number of brokers that meet those requirements will be reduced.*"[809]

(689) This negative view is generally shared by competitors. A very significant share of responding competitors consider that the Transaction would limit the choice of service for LMCs for FinPro commercial risk brokerage services. A smaller, but still significant proportion of competitors envisage that the Transaction would have a negative impact on prices customers would need to pay for FinPro commercial risk brokerage services.[810] One competitor explained: "*[t]here are really only three brokers, Aon, Marsh and WTW who have the owned global networks capable of servicing large multinational clients Financial Lines requirements. Once that number reduces from 3 to 2 there will obviously be a reduction in competition in the marketplace and clients will by definition have less choice and potentially less access to new solutions*."[811]

C. Conclusion on commercial risk brokerage for FinPro for LMCs

(690) In the view of the above, the Commission concludes that the Transaction will lead to the creation of a dominant position for the Merged Entity in the global market for commercial risk brokerage for FinPro to LMCs and thus result in a significant impediment to effective competition. This is because, amongst other factors, (i) Aon's market share which is already very high [50-60%] will be further increased; (ii) the market investigation indicates that WTW is a close competitor and an important competitive constraint on Aon and the market – a constraint that will be lost following the Transaction; and (iii) absence of significant other suppliers (other

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805 Replies to question 46 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

806 Replies to question 171 of questionnaire Q1 to Customers.

807 Reply to question 43 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9034).

808 Reply to question 43 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 8294).

809 Reply to question 45 of questionnaire Q9 to commercial risk brokerage Customers for FinPro (Document ID 9138).

810 Replies to question 52.10.2 of questionnaire Q5 to Competitors. Replies to questions 59-61 of questionnaire Q16 to Competitors.

811 Replies to questions 59-61 of questionnaire Q16 to Competitors (Document ID 9117).

than Marsh) or other competitive constraints. Moreover, the countervailing factors to the extent they exist, such as buyer power, are not sufficient to counter the negative effects due to a reduction of choice.

6.3.5.4. FinPro for non-LMCs

(691) With regard to the market of commercial risk brokerage for FinPro to non-LMCs, for which the geographic market is national, the Transaction results in horizontally affected markets in Denmark, Italy, the Netherlands, Spain and Sweden. The list of affected markets and respective market shares is set out in the Table below.

Table 11: Affected national markets, commercial risk brokerage for FinPro to non-LMCs, 2019

Country	Aon	WTW	*Combined*
Denmark	[10-20]%	[10-20]%	*[20-30]%*
Italy	[10-20]%	[0-5]%	*[20-30]%*
The Netherlands	[20-30]%	[0-5]%	*[30-40]%*
Spain	[10-20]%	[10-20]%	*[20-30]%*
Sweden	[10-20]%	[5-10]%	*[20-30]%*

Source: Notifying Party's Reply to the 6(1)(c) Decision, Annex 8 (CR); for Spain, EC RFI 59 - Annex 1 - Response to Q. 2

(692) On the basis of the results of the phase 1 market investigation, the Commission raised serious doubts about the compatibility of the Transaction with the internal market for commercial risk brokerage for FinPro to non-LMCs only in Spain and carried out an in-depth assessment during the phase 2 market investigation. The findings of which are set out in the following Sections.

A. The Notifying Party's view

(693) The Notifying Party argues that the Transaction will not give rise to any unilateral effects in the distribution of commercial non-life insurance (including FinPro) at either a global, EEA-wide level or national level and submits the following arguments: (i) multiple brokers, including global, regional, local and specialised brokers, will continue to act as an effective competitive constraint on the Merged Entity post-Transaction; (ii) the industry is characterised by aggressive entry and/or expansion by brokers in recent years (e.g. BGC, Howden and McGill & Partners) which will be unaffected (and likely even accelerated) by the Transaction; (iii) barriers to entry and/or expansion will remain low such that actual or potential competition from these and/or other new entrants and/or existing competitors seeking to expand their footprint is, and will always be, a significant competitive constraint on the Merged Entity; (iv) insurers will continue seeking to win business directly from clients, thereby exercising additional competitive constraints on brokers post-Transaction in many segments; and (v) the bargaining power of clients is strong and will continue to act as a significant competitive constraint on the Merged Entity post-Transaction.[812]

(694) With respect to Spain, i.e. the market of commercial risk brokerage for FinPro to non-LMCs in Spain, where the Commission raised serious doubts as to its compatibility with the internal market in phase 1 market investigation, the Notifying Party argues that (i) global, regional and local brokers, and especially Marsh, would continue to act as an effective competitive constraint on the Merged Entity in Spain with respect to commercial risk brokerage for FinPro to non-LMCs; (ii) the Spanish

812 Form CO, paragraph 174.

market is highly fragmented and the Transaction would not reduce the choice of customers; and (iii) entry barriers are particularly low, and new entrants would be viable competitors.[813] Lastly, the Parties further argue that WTW has recently been weakened by the departure of part of its executive team, which set up a new broker, Deasterra Partners, active in multiple commercial risk brokerage markets, including commercial risk brokerage for FinPro. The Notifying Party argues that the entry of this new company in the Spanish market would prove that barriers to entry are not so high, that talent mobility has an impact on brokers' strength and that the market is becoming more and more dynamic since Deasterra would represent a significant threat for the Parties in Spain, including for FinPro risk.[814]

B. The Commission's assessment

(695) In the 6(1)(c) Decision the Commission raised serious doubts regarding the compatibility of the Transaction with the internal market for the commercial risk brokerage for FinPro to all other customers excluding LMCs in Spain. It is noted that the findings were made based on the combined market share of the Parties of approximately [30-40]% and market investigation feedback which indicated a lack of credible alternatives in Spain. In the course of the phase 2 investigation the Notifying Party submitted revised figures for Spain slightly reducing the combined market shares of the Merged Entity to approximately [20-30]% and the Commission received more targeted feedback from market participants, including the new entrant, Deasterra. The Commission therefore sets out its overall findings below, concluding based on the evidence received during the in-depth investigation that the Transaction is unlikely to result in a significant impediment to effective competition in the market for commercial risk brokerage for FinPro to non-LMCs in Spain.

(696) With respect to the other affected national markets – Denmark, Italy, the Netherlands and Sweden, based on the level of market shares and market feedback indicating a sufficient number of competitors remaining in the market, the Commission's market investigation as described below did not raise any competition concerns.

(697) The Commission notes that for the markets in the Netherlands and Spain, the Parties have proposed Commitments as part of the entire country organisations in the Netherlands and Spain (see Section 12.3), which also include a divestment of FinPro businesses in these countries, and thereby addressing any possible competition concerns in these markets.

B.1 Market structure

(698) The Notifying Party provided market share estimates for a potential national FinPro risk brokerage markets for all customers regardless of size, including LMCs. Absent market shares excluding LMCs, as defined for the purpose of this Decision, the Commission will use the overall market shares as a proxy to assess the market position of the Parties, but acknowledges that the market shares based on the estimates of the Notifying Party may differ, and may potentially be lower with respect to non-LMCs. In addition, the market shares are only a useful first indication of the market structure and the Commission relied also on extensive qualitative feedback received during the market investigation.

(699) **Denmark**: Based on the estimates provided by the Notifying Party, the combined market shares of the Parties in Denmark for commercial risk brokerage for FinPro to

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813 Form CO, paragraph 706.

814 Response to 6(1)(c) Decision.

non-LMCs are around [20-30]%, with [10-20]% increment brought by WTW. The Merged Entity would face competition from the next largest competitor Söderberg & Partners ([20-30]% market share) and Marsh ([10-20]% market share).[815] The rest of the market is shared by a large number of smaller competitors, such as RTM Insurance Brokers, Honestus & Partners, Riskpoint, DLBR and others. The HHI levels are approximately [1,000-1,500] with a delta of approximately [0-500], a level at which further analysis is warranted in line with paragraph 20 of the Horizontal Merger Guidelines.[816] This market structure was confirmed by the large majority of customers who responded to the market investigation, namely the vast majority of responding customers consider that post-Transaction there will be enough brokers to serve their needs for FinPro commercial risk brokerage to non-LMCs in Denmark.[817] One customer echoing quantitative feedback stated: "*[t]here are several competitors in the Danish market.*"[818]

(700) **Italy:** The combined market shares of the Parties in Italy for commercial risk brokerage for FinPro to non-LMCs are low, at just [20-30]%, and the increment brought by WTW is moderate, of just [0-5]%. The Merged Entity would not be the market leader as Marsh has the highest market share of [20-30]%. The rest of the market is shared by a large number of smaller competitors, Assiteca with [0-5]%, GBSAPRI Group with [0-5]%, at least six brokers with [0-5]% each and over ten national and international brokers with approximatey [0-5]% each.[819] The market structure is confirmed by the market investigation as the large majority of customers consider that they will have sufficient choices of a broker for FinPro risk in Italy.[820] The HHI level post-merger is approximately [1,000-1,500] with a delta of around [0-500], a level which the Commission is unlikely to identify horizontal competition concerns.[821] The Commission considers that taken together with the market investigation feedback, the market shares below 25%[822] and the HHI levels as described, indicate that it is unlikely that any competition concerns would arise as a result of the Transaction in Italy for commercial risk brokerage for FinPro to non-LMCs.

(701) **The Netherlands:** The combined market shares of the Parties in the Netherlands for commercial risk brokerage for FinPro to non-LMCs are [30-40]%, with a moderate increment of [0-5]% brought by WTW. The next largest competitor is Marsh with an estimated market share of [20-30]%, with the next two largest competitors – Leons and Meijers – with market shares of [5-10]% each. The rest of the market is shared by a large number of smaller competitors, each having a market share of 1%.[823] The HHI level post-merger is approximately [1,500-2,000] with a delta of around [0-500], a level at which the Commission is unlikely to identify horizontal competition concerns.[824] While the Commission notes that some doubt may have been raised as to the level of the market shares as provided by the Notifying Party (see Section 6.3.5.2 B1), the market structure is largely confirmed by the market investigation as the

815 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
816 Horizontal Merger Guidelines, paragraph 20.
817 Replies to question 156 of questionnaire Q1 to Customers.
818 Replies to question 156 of questionnaire Q1 to Customers (Document ID 1733).
819 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
820 Replies to question 156 of questionnaire Q1 to Customers.
821 Horizontal Merger Guidelines, paragraph 20.
822 Horizontal Merger Guidelines, paragraph 18.
823 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
824 Horizontal Merger Guidelines, paragraph 20.

majority of customers consider that they will have sufficient choices of a broker for commercial risk brokerage for FinPro to non-LMCs in the Netherlands.[825] The Commission notes that considering feedback only from Dutch companies (a very small sample of under 10 companies responded to FinPro questions), the market feedback is mixed and just over half of customers consider their choices to be limited post-Transaction. However, the responses to the market investigation also support the somewhat weak position of WTW in the Netherlands for FinPro, as one respondent stated: "*[i]n the Netherlands, WTW is very small, so we don't really consider them to be a competitor*."[826] The Commission therefore considers that taken together with the wider market investigation feedback, the combined market shares of the Parties below 25%[827] and a very small increment brought by the Transaction, it is unlikely that any competition concerns would arise due to the Transaction in the Netherlands. In any event, as set out in Section 12.3, any possible anti-competitive effects are addressed by the proposed divestment of the entire CRB business in the Netherlands.

(702) **Spain:** According the market shares provided by the Notifying Party (as revised during the phase 2 investigation), post-Transaction, the Merged Entity would have a combined market share of [20-30]%, followed by the next competitor, Marsh with a [10-20]% market share in the market of commercial risk brokerage for FinPro to non-LMCs in Spain. The increment brought by WTW is [10-20]%. According to the market share estimates by the Notifying Party, in addition to Marsh with a [10-20]% market share, there would be at least two other competitors with estimated market shares of [5-10]% each, Howden and Madicorase, with five other competitors with market shares below 5% each. The HHI level post-merger is approximately [1,000-1,500] with a delta of around [0-500], a level at which further analysis is warranted in line with paragraph 20 of the Horizontal Merger Guidelines.[828] This market structure was confirmed by the large majority of customers who responded to the phase 2 market investigation and indicated that post-Transaction other brokers such as Howden, March R.S., Alkora, Artai would remain in the market as credible suppliers. Moreover, several competitors who responded to the phase 2 market investigation confirmed that the market is sufficiently competitive with several alternatives available, especially for non-LMCs.[829] One competitor explained: "*[a]t least three other additional competitors operate in the mid-market for the same lines. Examples of competitors in FinPro […] include: March RS, Ferrer y Ojeda, Artai, Howden, Confide. These companies can and do compete with Aon and WTW. They have smaller portfolios, and they are smaller in size, but they can compete in the Spanish market, except for the large multinational companies that require an international network*."[830]

(703) The Commission notes that the Notifying Party submitted that in Spain WTW has been seriously weakened by the recent loss of part of its executive team who have set up a new brokerage firm, Deasterra Partners, that the Parties argue will be a formidable new entrant and could threaten a significant portion of WTW's business over the next 3 years.[831] To verify if the market share of WTW has indeed reduced

825 Replies to question 156 of questionnaire Q1 to Customers.
826 Replies to question 156 of questionnaire Q1 to Customers (Document ID 4 444).
827 Horizontal Merger Guidelines, paragraph 18.
828 Horizontal Merger Guidelines, paragraph 20.
829 Non-confidential minutes of the call with a market participant (Document ID 10772).
830 Non-confidential minutes of the call with a market participant (Document ID 10772).
831 Reply to 6(1)(c) Decision, paragraph 34.

since 2019, the Commission asked the Parties to provide total revenue lost for commercial risk brokerage for FinPro in Spain. As at February 2021, WTW confirmed that it lost [a very small percentage] GWP and [a very small percentage] revenue specific to Finpro risk (in the period between […]).[832] WTW also confirmed that […].[833] While the Commission recognises that the market shares of WTW and the Merged Entity may in fact be lower, it also notes that the departures appear to have affected other areas of commercial risk brokerage more and appear to have a more limited effect on WTW's FinPro business in Spain. Moreover, market feedback in phase 2 investigation did not identify WTW as significantly weakened competitor in the market of commercial risk brokerage for FinPro to non-LMCs in Spain.

(704) **Sweden:** The combined market shares of the Parties in the market of commercial risk brokerage for FinPro to non-LMCs in Sweden are low at [20-30]%, with an increment brought by WTW of [5-10]%. The next two largest competitors Söderberg & Partners and Marsh have market shares of [10-20]% and [0-5]% respectively. Söderberg & Partners is a strong regional player headquartered in Sweden with international capabilities. Howden and Sakra have market shares of [0-5]% each. The rest of the market is shared by a large number of smaller competitors. The HHI level post-merger is estimated as below [500-1,000], which is the level at which the Commission is unlikely to find concerns and such markets normally do not require extensive analysis.[834] The market investigation indicated that customers consider that there would be a sufficient number of competitors remaining in the market post-Transaction in Sweden.[835] The Commission considers that taken together with the market investigation feedback, the combined market shares of below 25%[836] and low levels of HHI indicate that it is unlikely that any competition concerns would arise due to the Transaction in Sweden in the market of commercial risk brokerage for FinPro to non-LMCs.

B.2 Closeness of competition

(705) In the affected markets for commercial risk brokerage for FinPro to non-LMCs in Denmark, Italy, the Netherlands and Sweden, the market investigation shows that the Parties compete closely with each other, but are not always each other's closest competitor and that they also compete closely with other commercial risk brokers active in each national market. This is reflected by customer and competitor responses.[837] Marsh is consistently named by the customers as a closer competitor to each of the Parties, however, national competitors in these markets are also named as credible alternatives for commercial risk brokerage for FinPro to non-LMCs by a number of responding customers. This is in particular the case for the Netherlands, where Marsh is indicated as the closest competitor to Aon by the a majority of customers, and while Aon is noted as the closest competitor to WTW by majority of customers, customers also ranked Marsh, Mercer and others as closely competing with WTW.[838] As explained in Section 6.3.5.4 B.1 above, for commercial risk brokerage for FinPro to non-LMCs WTW appears to be weaker in the Netherlands

832 Reply to RFI 44, question 1.
833 Reply to RFI 44, question 4.
834 Horizontal Merger Guidelines, paragraph 19.
835 Replies to question 156 of questionnaire Q1 to Customers.
836 Horizontal Merger Guidelines, paragraph 18.
837 Replies to question 154 of questionnaire Q1 to Customers and replies to questions 47 and 48 of questionnaire Q5 to Competitors.
838 Replies to question 154 of questionnaire Q1 to Customers.

and not deemed suitable by at least one respondent. WTW's weak market position is also supported by a moderate market share of [0-5]%.

(706) **Spain:** In Spain, however, the phase 2 market investigation feedback[839] and some internal documents of the Parties[840] indicated that the Parties may compete particularly closely in one segment of FinPro risk - medical malpractice in the public health sector in Spain. The Commission therefore investigated this in more detail and reached out with specific questions to two insurance providers active specifically in this segment in Spain. The responses received indicated that they are being served not only by the Parties, but also by other brokers, both international and local, namely: Marsh, Confide, Medicorasse, and Howden.[841] No competition concerns were raised regarding the Transaction for this segment as part of the targeted market investigation. The market investigation indicated that overall the Parties are not considered by the responding customers and competitors as each others' closest competitor in the market for commercial risk brokerage for FinPro to non-LMCs in Spain.[842]

B.3 Switching

(707) The majority of responding non-LMCs indicated that switching to a different broker from an incumbent broker is either very easy, easy or neutral.[843] This is distinguished from the responses by the LMCs with complicated and sizeable insurance covers, which indicate that knowledge of their company by a broker is a limiting factor to switching a broker. One Danish non-LMC customer explained: "*[t]he time and cost by switching brokers would probably - being a small company in a global perspective - be relatively small.*"[844] Taking into account that factors listed by the LMCs as limiting switching, for example a need to run a new tender, are generally not present for non-LMCs, which use tenders less for commercial risk brokerage for FinPro procurement, and as such, the Commission considers that factors limiting switching for non-LMCs are less pronounced.

(708) For the Spanish market which was investigated further in phase 2, a majority of customers and competitors responding indicated that they consider there to be no particular barriers to switching a broker for non-LMCs in Spain.[845] In qualitative feedback, respondents explained that any difficulties with switching would be more present for large and complex companies, where the broker's knowledge of the customer's company may be a barrier to switching. No specific factors were identified that would inhibit switching specific to non-LMCs with respect to commercial risk brokerage for FinPro.

B.4 Likely reaction from competitors

(709) As discussed above, for Denmark, Italy, the Netherlands, Spain and Sweden, the Parties' competitors appear to have the ability to counteract the loss of competition deriving from the Transaction in the markets for commercial risk brokerage for FinPro to non-LMCs. In particular, in all affected national markets for commercial risk brokerage for FinPro to non-LMCs, Marsh has a credible market presence and is

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839 Minutes of the call with a market participant (Document ID 10772).
840 WTW internal emails, RE: MDI agreements in Spain (Document ID 10682-7200).
841 Non-confidential version of reply to email RFI to market participants, (Document ID 10 936).
842 Replies to questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).
843 Replies to question 34 of questionnaire Q1 to Customers.
844 Replies to question 34(1) of questionnaire Q1 to Customers (Document ID 3263).
845 Replies to question 12 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

considered as a close competitor to each of the Parties. The majority of customers and competitors who responded to the market investigation confirmed that the markets would remain sufficiently competitive post-Transaction, with a sufficient number competitors capable of competing sufficiently closely with the Parties. The market invesiagtion indicates that in these markets there appear to be sufficient competition from national and regional brokers that cater for non-LMCs and they clearly have the ability to provide commercial risk brokerage service for FinPro services to non-LMCs. This is also confirmed by the rather neutral view of the Transaction expressed by the majority of responding customers and competitors as explained in Section 6.3.5.4 B.7. The Commission received no evidence with respect to these markets that the competitors active in these markets pre-Transaction will be less incentivised to compete post-Transaction and in particular, the Commission notes that none of these markets post-Transaction will be oligopolistic. In fact, customers predominantly responded to the market investigation that sufficient alternatives would be available post-Transaction, as explained in Section 6.3.5.3 B.3, which suggests that brokers other than Marsh are already considered suitable alternatives to the Merged Entity. It is therefore likely that brokers other than Marsh would be able to service non-LMCs, particularly non-LMCs, and would therefore continue compete for those customers post-Transaction.

B.5 Countervailing factors

(710) The Commission did not identify competition concerns in the affected national markets for commercial risk brokerage for FinPro to non-LMCs, therefore it was not necessary to consider the countervailing factors in detail. In terms of buyer power, the Commission notes that the national markets include small and medium-sized companies, which can be distinguished from the LMC in terms of their negotiating strength with respect to a broker, as by definition they would have smaller risks to insure compared to LMCs. The Commission considers that this holds true for non-LMCs regardless of the national market, because during the course of its investigation the Commission has not received any evidence that would indicate that this varies depending on location. Moreover, as explained in Section 6.3.5.2 B.4 above, non-LMCs do not generally use tender processes, which are commonly used by the LMCs and allow them to play brokers against each other. A significant share of non-LMCs even source services after negotiating only with one broker,[846] which does not indicate the existence of a strong negotiating position by customers.

(711) The negotiating power a customer has also depends on the number of credible alternatives that the company can choose from. As explained in Section 6.3.5.4 B.1, for the markets in **Denmark, Italy, the Netherlands, Spain and Sweden,** customers confirmed to have sufficient alternatives to switch to. The Commission acknowledges that these findings likely indicate that non-LMCs in this country have at least some leverage when negotiating with potential brokers.

B.6 Barriers to entry and expansion

(712) As explained in Section 6.3.5.2 B.6, a very significant share of responding non-LMCs see enry into the commercial risk brokerage market in general as difficult or very difficult and this view is also confirmed by a significant number of competitors.[847] Primarily barriers appear to relate to the high cost of hiring qualified and experienced brokers, as well as some limitation concerning available

846 Response to question 35 of questionnaire Q1 to Customers.

847 Replies to questionnaires Q1 to Customers and Q6 to Competitors.

experienced brokers. Other factors such as building relationships with insurers and credible track record also were inidicated as limiting factors. For more complex risks such as FinPro, the expertise is even more specialised. Customers and competitors did not mention any new entrants for the affected national markets for commercial risk brokerage for FinPro in **Denmark, Italy, the Netherlands or Sweden**.

(713) **Spain:** The Commission's market investigation shows that the new entrant, Deasterra Partners was barely mentioned as a viable alternative to the Parties in the context of the phase 2 market investigation, but this may be explained by a very recent entry which predated the market investigation only by a couple of months.[848] In addition, Deasterra confirmed that their strategy is focused on the segment of largest and international companies that have the most complex and sizeable risk. Deasterra believe that this is the most concentrated segment of the market.[849]

(714) Whilst the Commission considers that some barriers to entry and expansion with respect to commercial risk brokerage markets for FinPro to non-LMCs may exist, it also notes that as explained in Sections 6.3.5.4 B.1 and B.3, the markets in Denmark, Italy, the Netherlands, Spain and Sweden appear to have a sufficient number of competing brokers deemed capable by the responding customers for their needs and thereby compensate for the loss of competition between the Parties post-Transaction.

B.7 Results of the market investigation on likely impact of the Transaction

(715) The majority of non-LMCs (approximately three quarters) indicated that for all affected national markets – Denmark, Italy, the Netherlands, Spain and Sweden – there will be sufficient competitors left in those markets for commercial risk brokerage for FinPro to non-LMCs to serve their needs.[850] Qualitative feedback from customers in Denmark, Italy, the Netherlands,[851] Spain and Sweden also indicates that customers consider there to be a sufficient number of national brokers, as well as EEA brokers operating in their national markets.

(716) The majority of responding customers consider that the Transaction is unlikely to have a negative impact on commercial risk brokerage for FinPro to non-LMCs in terms of prices, levels of premiums, quality of service, choice of brokers or innovation in any of the affected national markets.[852] The majority of customers also considered that there would be no negative impact on the incentive of the Merged Entity to negotiate favourable terms and conditions suitable for their company.[853] The qualitative feedback also indicates that customers from all these affected national markets expect the impact of the Transaction to be either neutral or limited for their company. One company from the Netherlands stated: "*for FinPro risk brokerage we see no material impact on our business*," which is echoed by a number of respondents.[854]

(717) In addition, the majority of responding competitors do not foresee the Transaction having a negative impact for commercial risk brokerage for FinPro to non-LMCs, in

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848 Replies to questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).
849 Minutes of the call with a market participant (Document ID 10772).
850 Replies to question 156 of questionnaire Q1 to Customers.
851 The Commission notes that qualitative feedback received specific to FinPro in the Netherlands is limited, however, Commission notes that no specific negative feedback was included, in contrast to other areas where concerns were identified, namely property and casualty in the Netherlands.
852 Replies to questionnaire Q1 to Customers.
853 Replies to question 157 of questionnaire Q1 to Customers.
854 Replies to question 158 of questionnaire Q1 to Customers.

terms of price of services (remuneration of brokers and commission), level of premiums, quality of service or innovation.[855] While half of responding competitors indicate that they expect the choice to be reduced, they do not expect customers' ability to negotiate favourable terms and conditions with the Merged Entity to be impacted in a negative way. In particular noting that the choices for non-LMCs would remain, one competitor stated specific to FinPro risk: "*there will likely be sufficient competition post-Transaction for smaller and many mid-sized clients.*"[856] This is contrasted with the FinPro market for LMCs, which requires a global reach of a broker and the choice is greatly reduced, as the same competitor explained: "*There will be a significant reduction in supplier choice for larger FinPro clients [...] particularly so for clients with global operations.*"[857]

C. Conclusion on commercial risk brokerage for FinPro for non-LMCs

(718) For the reasons set out above, the Commission considers that it is unlikely that the Transaction will result in a significant impediment to effective competition for commercial risk brokerage for FinPro to non-LMCs in Denmark, Italy, the Netherlands, Spain and Sweden. In particular the Commission notes that in Italy and in Sweden the combined market shares of below 25% and low levels of HHI alone indicate that competition concerns are unlikely. While the market feedback suggests that the Parties may be close competitors with each other and with Marsh, market feedback indicates that in all these national markets the Parties also compete with smaller national and regional brokers (as explained in 6.3.5.4 B.1 and B.2). Moreover for all these national markets, the large majority of customers and competitors who responded to the market investigation submitted that the markets would remain sufficiently competitive post-Transaction and that the Transaction would have a neutral impact on the main parameters of competition, i.e., price, quality, and innovation (as explained in Section 6.3.5.4 B.7).

(719) The Commission notes that for the markets in the Netherlands and Spain, the Parties have proposed Commitments as part of the disposal of the entire country organisations of WTW in the Netherlands and Spain (see Section 12.3), which also include a divestment of FinPro businesses in these countries. To the extent any competition concerns could arise from the Transaction in these national markets, they are fully remedied by the divestment of a full overlap for these two markets. In addition, as explained in Section 12.3 the Commitments proposed by the Parties include all WTW FinPro customers in these national markets (LMCs and non-LMCs). Therefore, to the extent any national customers that do not meet the criteria of an LMC, but would have some global operations, the remedy proposed for FinPro LMCs would also benefits such customers.

6.3.5.5. Cyber for LMCs

A. The Notifying Party's view

(720) The Notifying Party submits that the Transaction does not raise any competition concerns in relation to commercial risk brokerage for cyber for the following reasons.

(721) *Firstly*, the combined market share of the Parties is moderate with a modest increment resulting from the combination of Aon and WTW and is below the level

855 Replies to question 52(7)(1) of questionnaire Q5 to Competitors.
856 Replies to question 52(7)(2) of questionnaire Q5 to Competitors (Document ID 5 195).
857 Replies to question 52(7)(2) of questionnaire Q5 to Competitors (Document ID 5 195).

that should give rise to any concern.[858] Moreover, the market shares do not represent the long-term market strength, on the basis that this is a nascent market and Aon and WTW are amongst the first movers. The Parties argue that this market segment is growing significantly and the market of the Parties are expected to decrease, as the segment grows, attracting new entrants and encouraging expansion of existing commercial risk brokers.[859] Parties further argue that a large majority of entities remain underinsured against cyber risk, but as the risk perception shifts towards digitalisation, cyber risk is expected to quickly become the next peak of segment with great potential. Therefore, the Parties' combined market share will likely decrease, and competitive pressure increase, over time as the segment grows, attracting new entrants and encouraging the expansion of existing players.[860]

(722) *Secondly,* the Parties are not particularly close competitors, Marsh is the closest competitor to both Aon and WTW and that the Commission's assessment understates the constraint from Marsh. This is supported by win-loss data provided by the Parties and phase 1 market investigation responses.[861]

(723) *Thirdly*, commercial risk brokerage of cyber risk is ever more fragmented with multiple brokers operating at global, regional and national levels and constraining the Parties. The Merged Entity will continue to face a significant competitive constraint from Marsh and other brokers, namely Gallagher, Howden, Lockton and McGill.[862]

(724) *Fourthly*, the Merged Entity will continue to face a clear competitive constraint from the use of captives in relation to large customers. The volume of cyber risk premium being covered by captives is accelerating at a rapid pace and will continue to impact brokers.[863]

(725) *Fifthly*, there are strong examples of entry and expansion in the cyber segment, namely a recent aggressive entry by McGill. Examples of recent broker hired for cyber risk by McGill, Lockton and Gallagher illustrate expansion in their cyber practices.[864]

(726) *Sixthly*, the Commission underestimates the strong buyer power of customers in this segment, given that it concerns the largest companies in the world with significant negotiating power vis-à-vis commercial risk brokers, including for cyber risk.

(727) *Lastly,* the results of the market investigation are inconclusive as regards negative impact on the Transaction in this segment.[865]

B. The Commission's assessment

B.1 Market structure

(728) For the reasons set out in Section 6.3.2.1, for the purposes of its competitive assessment, the Commission will rely on the market shares calculated as part of its market reconstruction.

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858 Reply to 6(1)(c) Decision, Annex 1, paragraph 77 et seq.
859 Reply to 6(1)(c) Decision, Annex 1, paragraph 77 et seq.
860 Reply to 6(1)(c) Decision, Annex 1, paragraph 108.
861 Reply to 6(1)(c) Decision, Annex 1, paragraphs 83-86.
862 Reply to 6(1)(c) Decision, Annex 1, paragraphs 87-102.
863 Form CO, paragraphs 103-104.
864 Reply to 6(1)(c) Decision, Annex 1, paragraph 105.
865 Reply to 6(1)(c) Decision, Annex 1, paragraphs 106-107.

Table 12: Commercial risk brokerage market shares for LMCs based on their global placements of GWP, for cyber risk (2019, GWP)

Company	2019
Aon	[60-70]%
WTW	[5-10]%
Combined	***[70-80]%***
Competitor 3	[20-30]%
Competitor 4	[0-5]%
Other brokers combined	[0-5]%

Source: Commission's market reconstruction

(729) The market shares presented clearly indicate Aon as a strong market leader in the provision of commercial risk brokerage for cyber to LMCs at global level. The Transaction would clearly fortify Aon's leading position. Apart from WTW, there is only one other competitor pre-Transaction with a meaningful market presence. In this context and based on the feedback from the market investigation and internal documents of the Parties, WTW is clearly a strong and close competitor to Aon in this market (as set out in detail in Section B.2 Closeness of Competition). By merging the first and third leading suppliers on that market, the Transaction would propel the market leader to a dominant position (with combined market shares of [70-80%]),[866] with only one other sizeable competitor remaining in the market at a significant distance with market share of [20-30%]. No other competitor will have market shares exceeding 5%.

(730) The responses to the market investigation support the level of market shares based on the market reconstruction exercise. In particular, the phase 2 market investigation confirmed that the market is dominated by the three players and customers did not identify another strong broker at a global level, other than the Parties and Marsh. Competitors note that for this risk, outside of the *Big Three*, competition is restricted to major financial centres such as London and competition is limited to three or even two brokers capable of supplying commercial risk brokerage for cyber services to LMCs.[867] One competitor explained: *"[t]he reduction from 3 major cyber brokers (with Marsh), will see large multinational customers predominantly served by just 2 brokers. While there exists a thriving independent and specialist broker cyber*

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866 Horizontal Merger Guidelines, paragraph 17. In the interests of clarity, the Commission notes that, notwithstanding the presumption in the Commission's Horizontal Merger Guidelines and the Union Courts' case law, in the specific circumstances of the present case – in particular, the results of the maket investigation, during which respondents consistently identified the Parties and Marsh as the principal competitors on the market, who competed particularly closely with one another and who did not identify Aon as holding a dominant position in the market as compared to WTW and Marsh – the Commission does not find that Aon enjoyed a dominant position on the market for the provision of commercial risk brokerage services for cyber to LMCs at the global level pre-Transaction. Rather, and for the reasons set out in this Section 6.3.5.5, the Commission considers that the removal of the competitive constraints exercised by WTW on Aon pre-Transaction resulting in a reduction from three competitors to two competitors (i.e. the Merged Entity and Masrh) capable of adequately serving LMCs' requirements, taken together with the other factors examined in Sections 6.3.5.5 B.3-B.7, will result in the creation of a dominant position for the Merged Entity.

867 Reply to Part C.7 of questionnaire Q16 to Competitors (Document ID 9119).

market, this is restricted to the London market and most EEA territories will see just 2 brokers competing for business."[868]

(731) With respect to the Parties' argument that this is a nascent and growing market (with a "*huge growth potential*"),[869] the market investigation shows that the market growth is less pronounced than the Parties argue. In particular the following is noted:

(a) Overall, the majority of responding customers note that they expect cyber insurance brokerage market specific for LMCs to grow moderately, on the basis that large companies have already invested in this risk.[870] Therefore, while it may be correct that smaller and medium-sized companies may be underinsured for cyber risks as the Parties claim, and the overall market may be growing as Parties submit, specific to LMCs this does not appear to be the case to a significant degree.

(b) Customers also note that this is a complex risk to insure and expect difficult market conditions for the coming years.[871] For example, one customer states: "*Especially for the Cyber insurance, there is a lack of capacity on the market for the last 2 years and this situation should even worsen in coming years.*" Another echoes similar concerns: "*[...] particularly in the current hard market which is also reporting disadvantageous cyber insurer loss ratios. Changing brokers could pose a significant risk in terms of obtaining cyber insurance.*"[872] This translates to customers noting that there are more risks in switching a broker in current market conditions and customers may be more cautious before switching in particular to avoid gaps in insurance cover, which makes an entry and expansion for new brokers more difficult and less certain.

(c) Some customers also explained that for this quite new and challenging insurance line they require services from the largest and the most professional insurance broker. In addition, competitors referred to public announcements made by Aon and WTW indicating significant investments in cyber risk that would be difficult to match for a smaller new entrant.[873] One competitor noted: "*Furthermore, both Aon and WTW have invested heavily in their cyber risk consultancy divisions, a combined operation will provide a significant barrier to entry for competing brokers and reduce the choice available to large multinational customers*."[874] Therefore it appears that the first mover advantage may also present a barrier to entry or expansion for competitors (as discussed in Section 6.3.5.5 B.7).

(d) WTW internal cyber strategy document (dated May 2020) also shows that according to WTW […].[875]

(732) The Commission considers that there is no evidence that the market of commercial risk brokerage for cyber to LMCs will grow to such a degree that market shares cannot be relied upon as an indication of the Parties' market strength. The very high market shares of Aon indicate that it is a market leader, which is also supported by

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868 Reply to Part C.7 of questionnaire Q16 to Competitors (Document ID 9119).

869 Reply to RFI 37 (Cyber risk investment).

870 Replies to question 43 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

871 Reply to questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9698).

872 Reply to questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 13 583).

873 Replies to Part C.7 of questionnaire Q16 to Competitors.

874 Replies to Part C.7 of questionnaire Q16 to Competitors (Document ID 9119).

875 Willis Towers Watson […], May 2020 (Document ID 10686-17636).

the findings of the market investigation and internal documents of the Parties as discussed in the Sections below (in particular Section 6.3.5.5 B.2 Closeness of competition).

(733) Moreover, the barriers to entry and expansion (as set out in Section 6.3.5.5 B.7) are also high, which would inhibit a timely and effective entry or expansion. The market position of WTW as the third strongest player is also supported by the market investigation, bidding data and internal documents of the Parties. The market investigation also confirmed that the market is very concentrated, with majority of LMCs referring to the Big Three, the Parties and Marsh, as the only suitable suppliers for their cyber commercial risk brokerage needs at the global level.

(734) Even if Aon is not dominant pre-Transaction, the Commission finds that the Transaction will create a dominant position for the Merged Entity as a result of a combined market share of [70-80%] and for the reasons set out in Sections 6.3.5.5 B.2-B.7 – namely the fact that WTW exercises a competitive constraint on Aon, in an already very concentrated market, where customers rely on tender processes to play brokers against each other and require at least three suitable competitors to participate in those tenders. Post-Transaction, there will be only one other suitable competitor – Marsh – for the majority of responding LMCs. In addition, the market investigation indicates existence of barriers to entry and expansion.

B.2 Closeness of competition

(735) The Commission assessed the constraints faced by the Parties on the relevant market by assessing how closely Aon and WTW compete with each other, compared to other market players. The Commission based its assessment on qualitative feedback from the market investigation and internal documents of the Parties.[876] The findings are presented in this Section 6.2.5.5.

(736) The results of the market investigation show that, in the provision of commercial risk brokerage for cyber to LMCs, Aon and WTW are particularly close to each other, and each is close to Marsh. The investigation also indicates that the market is very concentrated with three leading brokers followed by a few smaller brokers at a significant distance.

(737) Customers that responded to the market investigation regard Marsh as the closest competitor to Aon, followed closely by WTW with all other competitors at a significant gap from the Big Three. Asked about the three main competitors to Aon, competitors named Marsh and WTW, and with a significant gap Gallagher. Other brokers are only named rarely.[877] Aon is generally recognised as the strongest and a market leader by customers and competitors.

(738) As regards WTW, responding customers consider Marsh as the closest competitor, followed closely by Aon. Other brokers follow at a considerable distance. This is also confirmed by competitors that consider Aon and WTW as leading providers.[878] One competitor stated: "*[t]he transaction combines two of the most significant cyber*

876 The Commission was not able to carry out tender analysis for cyber risk because the Parties did not provide any submission on tender data.

877 Replies to question 169 of questionnaire Q1 to Customers and to question 47 of questionnaire Q5 to Competitors.

878 Replies to question 169 of questionnaire Q1 to Customers and to question 47 of questionnaire Q5 to Competitors.

offerings and in doing so may reduce the level of innovation in the sector by reducing the competitive imperative to innovate."[879]

(739) For the overall criteria, customers ranked Aon the highest, with an average rating of 4.86 out of 5;[880] closely followed by Marsh with 4.76 and WTW 4.71. Other competitors are rated much lower, with the next closest competitor, Lockton, rated as 3.33, followed by Gallagher, Howden and other brokers.[881]

(740) In the phase 2 market investigation, the Commission asked customers to provide details of their tender data. The vast majority of responding customers said that there were no significant differences between Aon, Marsh and WTW when the three brokers were responding to tenders. One customer stated: "*Aon had highest level of cyber expertise. Marsh was second.*"[882] Which supports the market positioning of the Parties based on the Commission's market reconstruction.

(741) Moreover, the Parties were not able to provide any meaningful evidence of LMCs lost to other brokers. The Parties submitted examples of 'lost customers' to Tier two brokers based on internal document review to illustrate the competitive pressure from smaller brokers on Aon and WTW.[883] Only […] customers were identified with respect to cyber risk as lost by Aon – […]. WTW […]. With respect to […], a review of internal correspondence indicates that Aon did not lose this customer to a Tier two broker. Aon participated in a request for proposal (RFP), but the customer retained the incumbent broker as a result of what appears to be timing factors. In fact Aon's internal analysis and correspondence with the client indicate that it may in the future renewal win this client from a Tier two broker.[884] In an internal email Aon's Director stated: "*[...]*"[885] […] appears to be a specific example where a customer transferred business to […] from Aon. […] responded to the market investigation and explained that […] may be suitable for their company, but this is specific to each customer's needs.[886] Moreover, internal documents of Aon indicate that Aon has […].[887]

(742) The market investigation results further show that the Parties compete closely on a number of important parameters – for example, on risk specific expertise (ability to place complex risks), global reach (network) and quality of service.

(743) With respect to expertise and quality of service, the market investigation indicates that Aon is considered by a majority of respondents as the market leader, followed by Marsh and then closely by WTW. A number of customers indicated that there were no significant differences between the three brokers (the Parties and Marsh) when they have all tendered.[888]

879 Replies to question 63 of questionnaire Q16 to Competitors (Document ID 8961).
880 5 as the overall highest rating and 1 as the lowest.
881 Replies to question 9 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
882 Replies to question 9 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 8359).
883 White Paper Aon CRB Constraints from Rival Brokers (as evidenced from internal documents), 19 February 2021; White Paper WTW CRB Constraints from Rival Brokers (as evidenced from internal documents), 23 February 2021 and RFI 46 response.
884 Response to RFI 48, Annexes 5-8.
885 Response to RFI 48, Annex 5.
886 Reply questionnaire Q7 to commercial risk brokerage Customers for property & casualty (ID Document 11060).
887 Aon's internal email (Document ID 010197).
888 Replies to question 26(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber.

(744) Specifically regarding network requirements, a majority of responding customers consider that only Marsh would have a comparable network offering to that of the Merged Entity (most customers consider that Aon and WTW have comparable networks meeting their needs).[889] One customer compares the Parties closely and notes limited number of suitable brokers: "*[...] we do consider our geographic footprint does limit the number of suitable brokers which we would include WTW, Aon and Marsh as part of that category.*"[890]

(745) In the market investigation the customers were asked if there are any reasons their company would be restricted to procuring brokerage services only from one of the three largest brokers (i.e. Marsh, Aon or WTW) for cyber risk. A sizeable number of responding customers stated that they could only use one of the largest three brokers for their cyber risks, for a number of reasons, but primarily because of the complexity and technical expertise associated with this risk, which only the three largest brokers have. One customer stated: "*due to the complexity of risk, only the major brokers have expertise to place the cyber risk*".[891] Responding LMCs also note that their global footprint means that they can only rely on a truly global broker, and cite that only three largest brokers are able to meet their needs in terms of their global network. One other customer noting complexity and size of their cyber risk also stated that the number of brokers is limited for their needs: "*The size of the* [customer] *necessitates a broker with a large, specialised and experienced client management team to collate and present the information required for the cyber insurance renewal submission. To obtain the high level of coverage limit required by the [customer], capacity contributions from over 30 individual insurers are required. Only a small number of brokers have the resources, expertise and relationships necessary to support these needs*."[892]

(746) The internal documents show that with respect to cyber risk specifically, the Parties […]. […]. One WTW internal document states: […].[893]

(747) In addition, it is clear from internal documents of the Parties that they have a very strong and technically developed cyber offering, including a considerable range of wider cyber risk services as part of the commercial risk brokerage offer for cyber. For example, one WTW internal document (see Figure 17) notes that […]. This range of technical expertise has been expanded by the Parties through third-party partnerships aimed at enhancing specific technology expertise, as well as through acquisitions.[894]

Figure 17: [Internal document]

[Internal document]

Source: WTW document titled Cyber Reflections on Strategy since 2016, dated May 2020, Document ID 10686-17636

889 Replies to question 23 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

890 Replies to question 4(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9475).

891 Replies to question 4(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9475).

892 Reply to Q10 to commercial risk brokerage Customers for cyber (Document ID 13 583).

893 Willis Towers Watson Cyber, Reflections on strategy since 2016 review, May 2020. (Document ID 10686-17636).

894 Reply to RFI 46.

(748) The internal documents of the Parties also show that […]. For example, in one tender document Aon claims to have "*[…]*". Followed by a detailed description of Stroz Friedberg capabilities (a cyber-risk specialist that Aon acquired in 2016)[895]:

> *"[…]"*[896]

(749) The Commission also carried out an analysis of tender data for large customers in Cyber, that is by considering customers generating more than EUR 1 billion turnover per year,[897] with a participation analysis and a loss analysis.[898,899]

(750) In terms of methodology, the Commission implemented four adjustments compared to the Notifying Party's submissions (see Annex B for further details), by: (i) considering tenders in terms of value, instead of count, due to the significant heterogeneity in tender values, (ii) excluding non-competitive tenders (i.e. tenders without any competitive interactions between suppliers), (iii) considering the period 2017-2019 instead of 2019 only, in order to increase the sample size and therefore mitigates the uncertainty related to samples with a small number of tenders (the analysis for 2019 is reported only as a sensitivity analysis), and (iv) excluding tenders with unknown participants or unknown winners.

(751) As regards the exclusion of tenders with unknown participants or unknown winners, this is based on the assumption that the distribution of winners/participants in the set of tenders with unknown winners or unknown participants is similar to the distribution of winners/participants in the set of tenders with known winners or known participants. However, for Cyber, the Commission was not able to verify this assumption by a manual review of tenders with missing winners:[900] among the tenders where the winner is unknown and which were part of the manual review, WTW's customers represent [a small percentage] of the value of these tenders, compared to [a significant percentage] win rate of WTW against Aon in the sample of tenders with known winners.

(752) On the other hand, the Commission notes that: (i) given how comprehensive is the pick list available to Aon's account executives is (with a choice of more than 1,000

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895 Reply to RFI 46, paragraph 1.7. Stroz Friedburg: acquired by Aon in 2016 for USD 280m. Stroz is a New York based advisory firm which provides systems testing, security advisory, incident response and digital forensics services.

896 Aon internal document on customer tender dated July 2019, Document ID 010264.

897 Large customers have been identified by the Notifying Party in Aon tender data. Based on the market investigation (replies to question 1.2 and question 21 of questionnaire Q1 to Customers), the Commission also considers that companies with a turnover exceeding EUR 1 billion) is a reliable proxy for LMCs (i.e., companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries) since: (i) most companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated to have insurance needs in more than 5 countries, and (ii) the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less.

898 A participation analysis considers which brokers participate in tenders against Aon, and therefore allows to assess the degree of competitive interactions between the merging Parties relative to third-parties.

899 A loss analysis considers to which brokers Aon loses tenders. The Commission considers the participation and loss analyses jointly to assess the competitive interactions between the Parties and their competitors. This is because participation in tenders is particularly credible if it also results in wins; the participation analysis therefore needs to be seen in conjunction with the analysis of win rates (i.e. the loss analysis).

900 Given the high number of tenders for large customers in resect to commercial risk brokerage for cyber ([…] tenders for the period 2017-2019), the Commission carried out the manual matching exercise for tenders representing [a high percentage] of total value in 2017-2019 (corresponding to […] tenders).

brokers), it is unlikely that Tier-2 brokers would be missed[901], (ii) no Tier-2 brokers (e.g., Gallagher, Howden, and Lockton) achieves a significant win rate and a significant participation against Aon (see recitals (755)-(756)), (iii) the tender data to assess closeness of competition should also be interpreted in conjunction with the other types of evidence in this Section and the market shares for large customers in the EEA, with a combined market share in the range of [70-80]% in Cyber, and with the minor role played by brokers different from the Big-Three.

(753) In particular, the participation analysis shows that, for the period 2017-2019: [902]

(a) Aon encounters WTW ([percentage] by value) […] Marsh.

(b) By contrast, there is […] in the participation rates against Aon for […] (participation rate by value in the range of [a small percentage], depending on the broker considered).

(754) Moreover, the loss analysis, for the period 2017-2019, shows that other brokers (with the exception of WTW and Marsh) […]: [903,904]

(a) After Marsh ([percentage] win rate against Aon by value), WTW has […] win rate against Aon ([percentage] by value).

(b) By contrast, there is […] in the win rates against Aon for […] brokers (in the range of [a small precentage], by value).

(755) Notwithstanding the exclusion of the direct channel from the relevant product market, Aon tender data also shows that […]:[905]

(a) The participation analysis shows […] of the direct channel ([a small percentage] participation rate, by value, for 2017-2019) compared to the […].

(b) Similarly, the loss analysis shows that the direct channel […] Aon (close to [a small percentage] of tender value for the period 2017-2019).

(756) Lastly, as regards the competitive constraints faced by WTW, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW (see Annex B for further details). As an alternative, the Commission has used Aon tender data to perform a targeted incumbent analysis to assess the competitive constraint faced by WTW, for the period 2017-2019.[906]

(a) Among the opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), only […].

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901 The only exception is McGill, who has entered in 2019 (Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. The Notifying Party did not mention any other recent entrant as Tier-2 broker.

902 These findings are also confirmed when only 2019 is considered.

903 For 2019, the Commission notes that this analysis is subject to a significant uncertainty due to the low number of observations available ([…] tenders).

904 Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Annex B for further details), the Commission carried out such analysis in Annex B. However, the switching analysis proposed by the Notifying Party is not interpretable given the small number of tenders ([…] tenders with the required information on incumbent and winner in the period 2017-2019).

905 While the Commission defined a product market limited to the provision of brokerage services, excluding direct distribution as per Section 6.1.3 above, considering the Notifying Parties' arguments that the direct channel exerts a competitive constraint on brokers, the Commission assesses the direct channel as a potential 'out of market' competitive constraint.

906 For 2019, the analysis is based on small a number of observations ([…] tenders).

(b) Other Tier two brokers, such as Gallagher, Lockton, Hyperion, […].

(757) Based on the above, while the analysis of tender data provides evidence pointing toward […], the Commission considers that this analysis is still subject to some uncertainty due to tenders with unknown winners. However, the Commission notes that the analysis of tender data should be seen in conjunction with the other types of evidence, showing that WTW (and Marsh) are able to exercise competitive constraints on Aon, in contrast to other brokers.

(758) The Commission also assessed if the Parties are constrained by any out-of-market constraints, for example direct placement with insurers or the use of captives. With regard to the out-of-market constraints, the market investigation feedback in phase 2, supports the findings of the phase 1 investigation. The majority of LMCs that responded indicate that it would not be possible for them to place cyber risk directly with insurance companies.[907] Customers cite a number of reasons, but primarily note that cyber risk is too complex for direct insurance.[908] Some insurers require a broker to be involved and even if possible to go direct, customers expect premiums would be higher. Others note that capabilities of multiple insurance companies are required and a broker is therefore essential. Others do not have the technical cyber related skills in-house and rely on broker for that expertise. One customer notes: "*It's too complex and my cyber program is made 10 different insurers of which 3 to 4 are changing each year. As the insurance marker is hardening, you need to have a deep knowledge of the actors, the appetite they may have for your risk, the geography in which they can operate.*"[909] Nearly all responding customers, with a very small exception, indicate that they do not have in-house capabilities for cyber risk and therefore would not be able to exert any constraint on the Parties.[910]

(759) Moreover, when responding to a SSNIP type-question, i.e. when faced with 5-10% increase in broker's remuneration or reduction of quality of service, only a very small minority indicated that they would instead seek to place cyber risk directly with insurers, or use an in-house broker or risk retention solutions, such as captives.[911] Close to a majority indicated that they would switch to Marsh, with other brokers such as Lockton, Gallagher, Howden or McGill chosen only by a few responding customers each.

(760) On the basis of the market investigation feedback and internal documents of the Parties, the Commission considers that there are only three global brokers suitable for the needs of LMCs for commercial risk brokerage for cyber – the Parties and Marsh. Those three suppliers all compete closely with each other, and together account for approximately 90% of the entire relevant market. The remaining brokers that were identified as potential competitors in this market, have significant limitations as indicated by the respondents to the market investigation and are not able to exert sufficient competitive pressure on the Parties.

(761) In light of the above, the Commission considers that pre-Transaction, Aon and WTW are close competitors and that WTW exercises a significant competitive constraint on Aon. That competitive constraint would be lost as a result of the Transaction. The

907 Replies to question 16.2 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
908 Replies to question 16.2.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
909 Reply to question 16.2.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 8388).
910 Reply to question 16.3 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
911 Replies to question 17 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

loss of direct and important competition between the Parties, together with the other elements assessed in this Section 6.3.5.5 will likely result in a significant increase in Aon's market power in the matket for commercial risk brokerage for cyber to LMCs at the global level and a significant reduction of competitive pressure in this market.

B.3 Switching

(762) The phase 2 market investigation supports the initial phase 1 findings and indicates that whilst switching is possible, there are significant limitations and costs that customers note as associated with switching their broker. Namely, the following factors are relevant: (i) the cost and difficulties associated with switching; (ii) choice of suitable and able brokers (i.e. having a number of brokers to choose from) and (iii) market conditions.

(763) First, customers indicated that there are factors limiting switching of a broker.[912] Only less than a third of responding customers indicated that there are no barriers to switching a broker. The vast majority identified limiting factors, such as: (i) long-term claims handling and disputes over claims; (ii) global reach and complexity of the risk means that switching is difficult and costly; (iii) broker's knowledge of customer's company and insurance needs is vital and difficult to transfer without significant investment of time/resources on the part of a customer; and (iv) a minority indicated that proprietary data owned by the broker cannot be replicated or easily transferred without a cost.[913] One customer that considers all four factors as limiting switching explained: "*has ticked the first four boxes as these truly reflect the difficulties when switching the broker. Switching a broker may typically only be considered for cause or if broker wishes to end the cooperation.*"[914] Another customer further explained that "*Switching brokers requires to launch a request for proposal, then a selection process, then a deployment process.*"[915] Customer indicate that deployment of a new broker is an actual cost in terms of time and resources.

(764) The Parties argue that individual brokers often change brokerage firms and customers follow, whereby broker movement is common in the industry and customers generally follow those relationships. This is not supported by customer feedback in the market investigation for the commercial risk brokerage for cyber. Whilst over a third of responding customers indicated that they are aware of an individual broker movement, not a single customer has followed that broker to another brokerage firm. The majority have indicated that the relationship with a broker is at a corporate level, not based on individual broker or teams, and a new tender process would be required (a majority of customers tender no more than every three years or even less frequently).[916]

(765) The second key question is whether other competitors can offer the same quality of service to LMCs. The market investigation indicates that the ability of customers to switch to smaller brokers is restricted because of specific criteria they require for this risk. Customers indicate that they choose their broker based on the following criteria (top five in the order of importance): network with insurers, experience with large

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912 Replies to question 30 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

913 Replies to question 9 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

914 Replies to question 30(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 8668).

915 Replies to question 30(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9865).

916 Replies to questions 31 and 10(2) of questionnaire Q10 to commercial risk brokerage Customers for cyber.

and complex risks, quality of service, ability to negotiate the best premiums and global presence.[917] Customers explain that ability to place large and complex risks, deep knowledge and expertise of cyber risk and geographic reach of a broker is very important and currently only the three biggest providers are able to meet the requirements of the tenders.

(766) With respect to network specifically, the vast majority of responding customers used a broker with an 'owned network' and for the majority this was a factor that influenced their choice of a broker. Given that only the largest three brokers have 'owned network' and cyber expertise globally, switching for customers is already essentially restricted to three providers, which would be further reduced post-Transaction. Customers ranked Marsh [4.74], Aon [4.73] and WTW [4.42] the highest with respect to their networks, with the next closest competitor, Gallagher [3.63], at a significant distance.[918] Third-party networks were generally not considered as good alternatives. With respect to global reach, customers in particular note that: "*[C]yber incidents easily spread over some regions unlike fire incidents, it is important to work collaborately among some broker's offices*."[919] Another customer notes: "*[b]roker with strong internal network is much more efficient; particularly in a hardening market*".[920]

(767) Whilst a majority of customers state that FinPro brokers could also offer cyber risk brokerage services, this theoretical option is not deemed to be satisfactory for the customers that require experience and knowledge of cyber risk. Customers overall stated that insufficient number of global cyber risk brokers would remain available to meet their needs post-Transaction.[921]

(768) Lastly, a number of customers referred to a specific restriction that would make it more difficult or less desirable to switch a broker in the current 'hardening' market conditions, which they expect to last at least two years. One customer states: "*[...] particularly in the current hard market which is also reporting disadvantageous cyber insurer loss ratios. Changing brokers could pose a significant risk in terms of obtaining cyber insurance.*"[922] Another customer stated: "*To be transparent, only insurer have currently a significant negotiating power as the Cyber Policy market is a VERY HARD market.*"[923]

(769) Based on the above, the Commission considers that whilst switching a broker is in any event relatively costly and entails difficulties for customers, the fact that the Transaction will eliminate WTW as a choice available to LMCs will limit still further the number of possible alternatives for LMCs with respect to their global commercial risk brokerage for cyber needs to only two suppliers. Such considerable loss of available options from three to two would likely result in a significant loss of competition from WTW on the other two Big Three brokers that existed pre-Transaction and will likely soften the competitive pressure in future tenders on Aon and Marsh. In line with the Horizontal Merger Guidelines, customers that have

917 Replies to question 30 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

918 Replies to question 20 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

919 Replies to question 20 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9171).

920 Reply to questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 8359).

921 Replies to question 171 of questionnaire Q1 to Customers.

922 Reply questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 13 583).

923 Replies to question 29(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9696).

difficulties switching to other suppliers because there are few alternative suppliers, are particularly vulnerable to price increases (or more generally to worsening terms and considtions offered in tenders in this market).[924] As such, by eliminating the competitive pressure that WTW exercised on Aon and significantly decreasing the competitive pressure on the remaining credible competitor (i.e. Marsh), the Transaction is likely to result in a significant reduction in competitive pressure in the market for commercial risk brokerage for cyber to LMCs at the global level. [925]

B.4 Likely reaction from competitors

(770) In its assessment of likely reactions from competitors towards the Merged Entity, the Commission distinguishes between Marsh on the one hand and Tier two brokers and other smaller brokers individually and in aggregate. This assessment covers the likely ability and incentive of the competing brokers to constrain the merged entity post-Transaction.

(771) As regards **Marsh,** the Commission acknowledges that Marsh, one of the Big Three brokers, will likely remain a credible broker for LMCs in the market for commercial risk brokerage for cyber to LMCs. However, the Commission considers it likely that Marsh will benefit from any prices increases by the merged entity and therefore have a reduced incentive to compete compared to the (counterfactual) situation absent the Transaction.

(772) The Commission firstly notes that in accordance with its guidance and in line with economic models of oligopolistic competition in markets with differentiated products, competitive pressure and incentives to compete for non-merging firms can be reduced.[926] The Commission's Horizontal Merger Guidelines specify that "*mergers in oligopolistic markets involving the elimination of important competitive constraints that the Parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition*".[927] In line with models of oligopolistic competition and differentiated products, in the present case, Marsh as a non-merging firm can also benefit from the reduction of competitive pressure that results from the merger, since the merged firms' price increase is likely to switch some demand to the rival firms, which in turn can find it profitable to increase their prices.[928]

(773) This is further supported by the findings set out in Section B.2 above, which sets out the Commission’s findings that the Parties and Marsh are particularly close competitors, with other brokers not considered as suitable by many LMCs. Thus, in the event of a price increase by the Merged Entity, Marsh would be the most likely alternative for most LMCs and directly benefit from the significant loss of competition between the merging parties. Against this background, the Commission considers that Marsh is likely to have less incentive to compete post-Transaction compared to the situation absent the Transaction.

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924 Horizontal Merger Guidelines, paragraph 31.
925 Horizontal Merger Guidelines, paragraph 24.
926 Horizontal Merger Guidelines, paragraphs 24-25.
927 Horizontal Merger Guidelines, paragraph 25.
928 Horizontal Merger Guidelines, paragraph 24.

(774) The Commission's assessment of Marsh's incentive to compete is also supported by some respondents to the market investigation. Several customers[929] and competitors[930] were sceptical that Marsh will be able to or will have the same incentives to compete with the Merged Entity. One customer, specifically with repsect to commercial risk brokerage for cyber, noted: "*[w]e believe that Marsh will potentially not have to compete as hard in circumstances where a corporate client has decided to move away from Aon/WTW. Marsh would only have one or two main rivals […].*"[931] Another customer noted that "*duopoly didn't demonstrate in other market and industries the ability to reinforce the competition…*"[932]

(775) Similarly, one competitor explained: "[t]he Aon-WTW combination will become the clear market leader for Large Multinational Clients in a large range of geographies and industries. Marsh are nearing completion of the JLT Specialty integration and will seek to capitalise on service and talent disruption at Aon-WTW strengthening competition in the short-term. WTW played a role in the industry as a smaller but highly credible substitute for Aon and Marsh. No other broker is equipped to play this role at this point. The removal of WTW will reduce the competitive discipline on Aon and Marsh. Clients who want the comfort of a large broker (nobody ever got fired for hiring IBM) like to split their placement will be particularly impacted by the loss of choice."[933] With another stating: "Marsh will be the primarily beneficiary of clients who used two brokers when these were Aon/Willis."[934] This last statement is in line with the Horizontal Merger Guidelines, which state that in particular, customers that have used dual sourcing from the two merging firms as a means of obtaining competitive prices would be negatively affected by the reduction of the available suppliers.[935]

(776) Moreover, this is supported by reported statements made by Marsh's CEO Daniel Glaser with respect to the Transaction. In a call with investors, Glaser said: "*And on a personal comment, as somebody who's had almost 40 years in this business, I don't think the Aon Willis combination is good for clients or good for the market. But I do think it's good for Marsh & McLennan. I mean, come on, the big three becomes the big two, how could that not be a benefit to us?*"[936] In this respect the Notifying Party criticised in its response to the Article 6(1)(c) Decision the fact that the Commission relies on a single informal statement, which in the Notifying Party's opinion is clearly an inadequate basis for such a wide-ranging provisional conclusion.[937] Nevertheless, the Commission considers that this statement by Marsh's CEO is in line with economic models of oligopolistic competition with differentiated products, with the merger guidelines, and is echoed by some customers.

(777) For the sake of completeness, the Commission notes that the majority of responding customers and competitors stated that Marsh will either step up competition or will

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929 Replies to question 29 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.

930 Replies to question 23 of questionnaire Q16 to Competitors.

931 Replies to question 29.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 13 583).

932 Replies to question 29.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9696).

933 Replies to question 23.1 of questionnaire Q16 to Competitors (Document ID 8961).

934 Replies to question 23.1 of questionnaire Q16 to Competitors (Document ID 8802).

935 Horizontal Merger Guidelines, paragraph 31.

936 Marsh & McLennan Companies, Inc. (MMC) CEO Dan Glaser on Q2 2020 Results - Earnings Call Transcript, Seeking Alpha, dated 30 July 2020, ID 6465.

937 Reply to 6(1)(c) Decision, paragraphs 16 and 17.

compete just the same with the Merged Entity.[938] [939] However, the Commission considers that those opinions should not be attributed considerable weight because the drafting of the respective question in the market investigation was ambiguous and implied efficiency gains for the merging parties. The question read: "*In your view, how will the acquisition of WTW by Aon impact on Marsh's competitive behaviour regarding large multinational customers?*". For example, one option to answer this question was formulated as follows: "*faced with a stronger competitor, Marsh will likely step up its efforts and compete even stronger for large international customers.*" This question therefore pre-supposed that the Merged Entity would be a stronger competitor than it is today. In line with economic theory, such efficiencies on the side of the Merged Entity could increase its competitors' incentives to compete. However, no such efficiencies have been demonstrated in the present case. For this reason and in light of the overall context of the case, the Commission considers that it is likely that Marsh's incentives to compete would be reduced post-Transaction.

(778) In any event, in line with paragraph 31 of the Horizontal Meger Guidelines, the Commission considers that Marsh alone as a credible alternative to the Merged Entity would not be enough to counter the negative effects from the significant loss of competition as a result of the Transaction. In this respect, the majority of responding customers indicated that they source their broker through a form of tender process (as explained in Section B3 above) and nearly all customers invite at least three brokers in tenders, and the vast majority invite either four or five.[940] The majority of responding customers also indicate that only three brokers currently meet their criteria.[941] In addition, the majority of responding customers indicate that they expect competition to decrease in future tenders if the Transaction were to go ahead.[942] In fact, a clear majority of LMCs responding to the market investigation submitted that the Transaction will lead to a reduction in the level of competition in future tenders and therefore will result in the elimination of the competitive constraint that WTW extered on Aon, together with a significant decrease of competitive pressure on the remaining credible competitor (i.e. Marsh).

(779) As for other brokers, as explained in Section B.2 above, the majority of customers do not consider smaller brokers individually suitable for their needs, as compared to Marsh and the Parties. Moreover, the vast majority of responding customers said that in the aggregate other brokers (other than Marsh) will not be a significant competitive constraint on the Merged Entity.[943] The majority of customers indicated that they source their broker through a form of tender process.[944] Nearly all customers invite at least three brokers to tender, and vast majority invite either four or five.[945] The majority of responding customers indicate that only three brokers currently meet their criteria.[946] The majority of responding customers indicate that they expect competition to decrease in future tenders if the Transaction were to go

[938] Replies to question 29 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
[939] Replies to question 23 of questionnaire Q16 to Competitors.
[940] Replies to question 10.3 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
[941] Replies to question 10.4 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
[942] Replies to question 13 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
[943] Replies to question 28 of questionnaire Q9 to commercial risk brokerage Customers for FinPro.
[944] Replies to question 10 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
[945] Replies to question 10.3 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
[946] Replies to question 10.4 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

ahead.[947] A number of customers refer to 3 to 2 reduction, one customer summarised the expected outcomes of such reduction: "*[m]oving from 3 to 2 brokers who are capable of servicing [customer name] needs creates less competition, likely higher prices.*"[948] Another customer summarised the outcome as: "*[f]rom an economics point of view, it seems more likely that reducing the numbers of competitors, especially from 3 to 2, would decrease the competitiveness and incentives for innovation.*"[949] And another customer noting the lack of choice: "*The choice was already not very large – 3 brokerage companies fit our needs. With the Transaction, there will be only 2 choices left.*"[950]

(780) The Commission considers, on the basis of the market feedback that a combination of Aon/WTW would create the dominant position for the Merged Entity, and the impediment on competition would likely not be countered by the remaining competitors who either lack of ability or incentive to constrain the Merged Entity.

B.5 Countervailing factors

(781) The Commission considers that the buyer power of LMCs is limited vis-à-vis the Parties and would be even further diminished post-Transaction. It therefore concludes that the clients would not be able to discipline the Merged Entity to counter any potential price increases and would not be able to reduce the potential impact on a reduction in the quality of services. Whilst some customers have indicated that they have a degree of buyer power, for this risk type, it is also reported that price is not the most important criterion when choosing a broker (expertise and ability to deal with a complex risk is more important).

(782) The Commission acknowledges that tenders are commonly used by customers and that brokers compete against each other.[951] However, post-Transaction, there will be a limited number of credible competitors left to participate in those tenders, which will reduce the bargaining power of those customers in that they would have a reduced choice. The majority of responding customers indicate that only three brokers currently meet their criteria[952] and that they expect competition to decrease in future tenders if the Transaction were to go ahead[953] (as explained above in Section 6.3.5.5 B.3). Thus the Transaction also reduces buyer power in relation to factors such as price and quality.

B.6 Barriers to entry and expansion

(783) Barriers to entry and expansion specific to the cyber risk class would exist. First, as explained above cyber risk is highly complex and difficult to place, which requires high level of expertise and brokers would need to attract specialised talent to build the necessary expertise[954] demanded by LMCs. Data analytics and benchmarking is particularly important for cyber risk. Second, a considerable minority of LMCs for cyber risk indicate a requirement for a robust global network is difficult to build for

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947 Replies to question 13 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

948 Reply to question 13.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9004).

949 Reply to question 13.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9475).

950 Replies to question 13.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

951 Replies to question 35 of questionnaire Q1 to Customers.

952 Replies to question 10.4 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

953 Replies to question 13 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

954 Replies to question 163 of questionnaire Q1 to Customers.

entrants or competitors. A network of various brokers, as discussed before, is not considered a suitable alternative by a significant share of LMCs.[955] Third, it is noted that LMCs generally do not follow individual brokers in case those move to a different company, which is confirmed by a majority of customers in the market investigation.[956] This means that new entrants face challenges to attract and grow their customer base specific to LMCs. The majority of responding LMCs indicate that a track record with companies of a similar size is the third most important criteria when choosing a commercial risk broker for cyber risk.[957]

(784) The majority of responding customers indicate that when choosing a broker for cyber risk they take into account data and analytics and reporting capabilities of the broker.[958] One customer explained: "*Cyber is a relatively new insurance line for us, so yes, all expertise in Cyber insurance is valuable*."[959] And another customer considers that data is "*an important part of cyber broking*."[960] Further, a majority of responding customers considered that the combined Aon/WTW datasets would provide the Merged Entity with a significant advantage for serving LMCs.[961] In particular for benchmarking and risk modelling purposes.[962] Given that data and analytics capabilities are increasingly important for customers, competitors have noted this to be one of the barriers to entry to serve LMCs for complex risk types where wider market benchmarking is more important than individual customer data (see further Section 6.3.4.2). For example, the new entrant […], states: "*[...] At this point the client base is of an insufficient scale to justify deeper capability investment and to derive wide-ranging portfolio insights. Our team are therefore focusing on Large Multinational Customers in industries with complex risks (like mining and commodities) where individual company data is relatively more important than portfolio data.*"[963]

(785) Those customers that indicated that they do not expect a new entrant or current smaller brokers to expand significantly in the next three years, specifically noted network as a limiting factor.[964] One customer stated: "*[t]he other options won't likely have their own network in the coming three years*"[965] While another explained, "*[s]eems it would take longer than 3 years if a broker would want to expand their operations globally to the extent of a Marsh, Aon and WTW*.[966]

(786) The difficulties of entry into the cyber brokerage market are further indicated by the fact that very few customers could identify any new entrants into the cyber risk

955 Replies to question 23 of questionnaire Q1 to Customers.
956 Replies to question 28 of questionnaire Q1 to Customers.
957 Replies to question 9 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
958 Replies to question 40 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
959 Replies to question 40.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9636).
960 Replies to question 40.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 8359).
961 Replies to question 41 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
962 Replies to question 41.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
963 Replies to question 35 of questionnaire Q16 to Competitors (Document ID 8961).
964 Replies to question 38 of questionnaire Q10 to commercial risk brokerage Customers for cyber.
965 Replies to question 38(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 8924).
966 Replies to question 38(1) of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9475).

brokerage market in the past three years.[967] McGill was only named by a small number of customers and only a minority considered McGill to be a credible competitor to Aon and WTW.[968] The Commission further notes that even one of the few customers that did identify McGill as a new entrant and stated that it would consider new entrants as credible competitors, pointed to competitive disadvantages of this brokerage firm due to a lack of global reach: *"From publicly available information to date, the new entrants' global footprint does not currently match that of Aon, Marsh/JLT and WTW. Nevertheless it cannot be excluded that once the current service agreement with Aon expired, the new entrants would not be invited to compete.*"[969] Only a small number of customers considered that McGill may expand within the next three years to compete with the Merged Entity.[970]

(787) In view of the above, barriers to entry or expand in this market are very significant so that other brokers would not be in a position to grow quickly and effectively to compete against the Merged Entity and thereby make up for the loss of competition between the Parties or counteract the reduction in competitive pressure caused by the Transaction on the current competitors (in particular Marsh).

B.7 Results of the market investigation on likely impact of the Transaction

(788) A significant share of LMCs consider that the Transaction would have a negative impact on the choice of service in cyber risk brokerage. A similar share of respondents consider that the concentration would consequently lead to negative effects on the price of these services. Given the high number of replies overall, the Commission notes that these concerns were raised by a considerable number of customers in absolute terms.[971] One customer summarised negative effects of the Transaction – "*[...] Aon and WTW are two very strong actors. They compete today and the transaction would eliminate this competition*."[972]

(789) This view is generally shared by competitors. A very significant share of competitors consider that the Transaction would limit the choice of service for LMCs for cyber brokerage services. A smaller, but still significant proportion of competitors envisage that the Transaction would have a negative impact on prices customers would need to pay for cyber brokerage services, as well as reduced level of innovation in this market.[973]

C. Conclusion on commercial risk brokerage for cyber for LMCs

(790) In light of the above, the Commission concludes that the Transaction will lead to the creation of a dominant position for the Merged Entity on the global market for commercial risk brokerage for cyber risk to LMCs and thus result in a significant impediment to effective competition. This is because, amongst other factors: (i) Aon's market share which is already [60-70%] will be further increased; (ii) the

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967 Replies to question 28 of questionnaire Q1 to Customers. Replies to question 37 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

968 Replies to question 170.1 of questionnaire Q1 to Customers.

969 Replies to question 170.1.1 of questionnaire Q1 to Customers.

970 Replies to question 38.1 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

971 Replies to question 171 of questionnaire Q1 to Customers.

972 Replies to question 47 of questionnaire Q10 to commercial risk brokerage Customers for cyber (Document ID 9380).

973 Replies to question 52.10.2 of questionnaire Q5 to Competitors. Replies to questions 62-64 of questionnaire Q16 to Competitors.

market investigation indicates that WTW is a close competitor and an important competitive constraint on Aon and the market – a constraint that will be lost following the Transaction; and (iii) absence of significant other suppliers or other competitive constraints. Moreover, the countervailing factors, such as buyer power (to the extent it exists), are not sufficient to counter the negative effects due to a reduction of choice.

6.3.5.6. Cyber for non-LMCs

(791) With regard to cyber risk brokerage to non-LMCs, for which the geographic market definition is national, the Transaction results in horizontally affected markets in Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom. The list of affected markets and respective market shares is set out in the Table below.

Table 13: Affected national markets for commercial risk brokerage for cyber to non-LMCs, 2019

Country	Aon	WTW	Combined
Denmark	[5-10]%	[20-30]%	[30-40]%
Germany	[10-20]%	[0-5]%	[20-30]%
Ireland	[20-30]%	[10-20]%	[30-40]%
Italy	[20-30]%	[5-10]%	[20-30]%
Luxembourg	[10-20]%	[10-20]%	[20-30]%
The Netherlands	[30-40]%	[0-5]%	[30-40]%
Spain	[20-30]%	[20-30]%	[50-60]%
Sweden	[0-5]%	[30-40]%	[30-40]%
The United Kingdom	[20-30]%	[10-20]%	[30-40]%

Source: Estimates by the Notifying Party, Form CO, Annex 61.18 (CR), for Spain, EC RFI 59 - Annex 1 - Response to Q. 2

A. The Notifying Party's view

(792) The Notifying Party argues that the Transaction will not give rise to any competition concerns in the distribution of commercial non-life insurance (including cyber) at either a global, EEA-wide level or national level and submits the following arguments: (i) multiple brokers, including global, regional, local and specialised brokers, will continue to act as an effective competitive constraint on the Merged Entity post-Transaction; (ii) the Parties are not particularly close competitors in Spain, as Marsh is the closest competitor of Aon and WTW;[974] (iii) the industry is characterised by aggressive entry and/or expansion by brokers in recent years (e.g. BGC, Howden and McGill & Partners) which will be unaffected (and likely even accelerated) by the Transaction; (iv) barriers to entry and/or expansion will remain low such that actual or potential competition from these and/or other new entrants and/or existing competitors seeking to expand their footprint is, and will always be, a significant competitive constraint on the Merged Entity; (v) insurers will continue seeking to win business directly from clients, thereby exercising additional competitive constraints on brokers post-Transaction in many segments; and (vi) the bargaining power of clients is strong and will continue to act as a significant competitive constraint on the Merged Entity post-Transaction.[975]

[974] Reply to the 6(1)(c) Decision, paragraphs 530 to 532.

[975] Form CO, paragraph 174.

(793) **Spain:** Apart from the arguments made with regard to the overall cyber risk brokerage market, the Notifying Party argues specifically with respect to Spain that (i) the market share of the Parties is expected to decrease as other competitors would enter the market; (ii) the Parties would have invested early in their cyber brokerage capacities and would therefore have a historically strong position; (iii) many customers, including medium-sized companies, are underinsured against cyber risks; (iv) other competitors have already entered the market; (v) other competitors will continue to act as a competitive force.[976]

(794) In the Reply to the 6(1)c Decision, the Notifying Party reiterates the arguments above and further argues that the parties combined market shares are not a meaningful indicator of competitive strength in this segment, as the cyber segment in Spain is small in size and it is expected to expand in the coming years, thus, attracting new entrants and expanding existing players. Further, the Parties' combined market shares will be further reduced with the sale of Miller and the recent departure of a number of senior leadership and brokers from WTW to the newly established Deasterra Partners and other competitors.[977]

B. The Commission's assessment

(795) In the 6(1)(c) Decision the Commission raised serious doubts regarding the compatibility of the Transaction with the internal market for the commercial risk brokerage for all other customers excluding LMCs for cyber in Spain. With respect to other affected national markets – Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK, based on the level of market shares and market feedback indicating sufficient number of competitors remaining in the market, the Commission's market investigation as described below did not raise any competition concerns.

(796) Nonetheless, the Commission notes that for the markets in Germany, the Netherlands, and Spain, the Parties have proposed Commitments a disposal of the entire country organisations (see Section 12.3), which also include a divestment of cyber businesses in these countries. Further, the Parties also proposed a divestment of WTW's cyber business in the UK which includes a range of customers (LMCs and non-LMCs). On this basis, to the extent any potential competition concerns could arise in these national markets for commercial risk brokerage for cyber to non-LMCs, they are addressed by the proposed divestment.

B.1 Market structure

(797) The Notifying Party argues that market shares are not a meaningful indicator of market strength with respect to fast-growing cyber risk, the Commission considers that the evidence of this is mixed as explained in Section 6.3.5.5 B.1 above. However, the Commission notes that market investigation did not reveal any feedback that would support Notifying Party's argument and in any event market investigation largely supported the market position of the Parties as indicated by the market shares provided and therefore the Commission considers market shares as provided to be a reliable indicator.

(798) **Denmark:** Based on the estimates provided by the Notifying Party for 2019, the combined market shares of the Parties in Denmark would be [30-40]%, with [5-10]% increment brought by Aon. The Merged Entity would face competition from the next

976 Form CO, paragraph 709.
977 Reply to the 6(1)(c) Decision, paragraphs 526 to 529.

largest competitor Söderberg & Partners ([10-20]% market share) and Marsh ([10-20]% market share).[978] The rest of market is shared by smaller competitors. The HHI levels are approximately [1,000-1,500] with a delta of approximately [0-500], a level at which further analysis is warranted in line with the Horizontal Merger Guidelines.[979] This market structure was confirmed by the large majority of non-LMCs that responded to the market investigation, namely the vast majority of customers consider that post Transaction there will be enough brokers to serve their needs for cyber commercial risk brokerage in Denmark.[980]

(799) **Germany**: The combined market shares of the Parties in Germany for commercial risk brokerage for cyber to non-LMCs are low, marginally above [20-30]% and the increment brought by WTW of [0-5]%. The next largest competitor, Marsh has [10-20]% market share. The rest of the market is shared by a large number of smaller competitors with market shares of 2% or less.[981] The HHI level post-merger is approximately below [1,000-1,500], a level at which the Commission is unlikely to identify horizontal competition concerns.[982] The market structure is confirmed by the market investigation as the large majority of customers consider that they will have sufficient choices of a broker for cyber risk in Germany.[983] As one customer responded: "*[w]ider range of broking services in Germany due to presence of national broker companies.*"[984] The Commission considers that taken together with the market investigation feedback, the market shares below 25% and the low HHI levels as described, indicate that it is unlikely that any competition concerns would arise as a result of the Transaction for commercial risk brokerage for cyber to non-LMCs in Germany.

(800) **Ireland**: The combined market shares of the Parties in Ireland for commercial risk brokerage for cyber to non-LMCs are around [30-40]%, with an increment of [5-10]% brought by WTW. The next largest competitor, Marsh has an estimated [20-30]% market share. The rest of the market is shared by a large number of smaller competitors, with at least three competitors with [5-10]% market share each – O'Learys, Campion, Robertson Low and numerous other brokers with market shares of 4% or less.[985] The HHI level post-merger is approximately below [1,500-2,000], with a delta of around [0-500], a level at which further analysis is warranted in line with the Horizontal Merger Guidelines.[986] The market structure is confirmed by the market investigation as the large majority of responding customers consider that they will have sufficient choices of a broker for commercial risk brokerage for cyber to non-LMCs in Ireland.[987]

(801) **Italy:** The combined market shares of the Parties in Italy for non-LMCs would be [20-30]%, with a small increment brought by WTW of [5-10]%. The next largest competitor, Marsh, has a similar market share of [20-30]%. The rest of the market is shared by a large number of smaller competitors, Assiteca with [5-10]%, Ital Brokers with [5-10]%, Mansutti and MAG JLT with [0-5]% each, and at least four other

978 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
979 Horizontal Merger Guidelines, paragraph 20.
980 Replies to question 171 of questionnaire Q1 to Customers.
981 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
982 Horizontal Merger Guidelines, paragraph 19.
983 Replies to question 171 of questionnaire Q1 to Customers.
984 Replies to question 171 of questionnaire Q1 to Customers (Document ID 9500).
985 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
986 Horizontal Merger Guidelines, paragraph 20.
987 Replies to question 171 of questionnaire Q1 to Customers.

brokers with [0-5]% each. The HHI level post-merger is between 1,000 and 2,000 with a delta below [0-500], a level which the Commission is unlikely to identify horizontal competition concerns.[988] The market structure is confirmed by the market investigation as the large majority of customers consider that they will have sufficient choices of a broker for cyber risk in Italy.[989] The Commission considers that taken together with the market investigation feedback and the HHI levels as described below the levels were concerns are likely, indicate that it is unlikely that any competition concerns would arise as a result of the Transaction in Italy with respect to commercial risk brokerage for cyber to non-LMCs.

(802) **Luxembourg:** The combined market shares of the Parties in Luxembourg for non-LMCs would be approximately [20-30]%, with an increment brought by WTW of around [10-20]%. The next two largest competitors follow closely, Marsh, with [20-30]% market share, followed by Allia with [10-20]%. VanBreda has a [5-10]% market share and the rest of the market is shared between brokers with market shares of [0-5]% or less (for example Paul Hauffels, Media Assurance or Assurances Consulting). The HHI level post-merger is would be approximately [1,000-1,500], with a delta of around [0-500].[990] The market structure is confirmed by the market investigation as the large majority of responding customers consider that they will have sufficient choices of brokers for cyber risk in Luxembourg.[991] The Commission considers that taken together with the market investigation feedback, the market shares of approximately [20-30]% indicate that it is unlikely that any competition concerns would arise as a result of the Transaction in Luxembourg with respect to commercial risk brokerage for cyber to non-LMCs.

(803) **The Netherlands:** The combined market shares of the Parties are [30-40]% for commercial risk brokerage for cyber to non-LMCs in the Netherlands, with a very small increment of just under [0-5]% brought by WTW. The next largest competitor Marsh has an estimated market share of [30-40]%. The next two largest competitors Leons and Meijers have market shares of [0-5]% each. The rest of the market is shared by a large number of smaller competitors, each having a market share of [0-5]% (for example, VanBreda, Zicht or Boval).[992] The HHI level post-merger is approximately [2,000-2,500] with a delta of around [0-500], a level at which analysis is warranted following the Horizontal Merger Guidelines.[993] While the Commission notes that some doubt may have been raised as to the level of the market shares as provided by the Notifying Party (see Section 6.3.5.2 B1), the market structure is largely confirmed by the market investigation as the majority of customers consider that they will have sufficient choices of a broker for cyber risk in the Netherlands.[994] The Commission notes that considering feedback only from the Dutch companies (a very small sample of under 10 companies responded to cyber questions), the market feedback still indicates that customers consider that they will have sufficient choice of cyber brokers post-Transaction in the Netherlands. The Commission therefore considers that taken together with the wider market investigation feedback and a very small increment brought by the Transaction, it is unlikely that any competition

988 Horizontal Merger Guidelines, paragraph 20.
989 Replies to question 171 of questionnaire Q1 to Customers.
990 Horizontal Merger Guidelines, paragraph 20.
991 Replies to question 171 of questionnaire Q1 to Customers.
992 Estimates by the Notifying Party, Form CO, Annex 61.18 (CR).
993 Horizontal Merger Guidelines, paragraph 20.
994 Replies to question 156 of questionnaire Q1 to Customers.

concerns would arise due to the Transaction in the Netherlands for commercial risk brokerage for cyber to non-LMCs.

(804) **Spain:** The market shares as provided by the Notifying Party are included in the Table below.

Table 14: Commercial risk brokerage market share for the brokered channel for Cyber for Spain, 2017-2019.

Company	Value (GWP – USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[30-40]%	[30-40]%	[20-30]%
WTW	[…]	[…]	[…]	[10-20]%	[20-30]%	[20-30]%
Combined	***[…]***	***[…]***	***[…]***	***[40-50]%***	***[60-70]%***	***[50-60]%***
Marsh	[…]	[…]	[…]	[10-20]%	[5-10]%	[10-20]%
Artai	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Marsh RS	-	[…]	[…]	-	[0-5]%	[0-5]%
Howden	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[20-30]%	[20-30]%	[10-20]%
TOTAL	***[…]***	***[…]***	***[…]***	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Estimates by the Notifying Party, EC RFI 59 - Annex 1 - Response to Q. 2

(805) As indicated, the Parties are already the clear market leaders in the overall Spanish market for cyber risk brokerage with a similar market share of [20-30]% and [20-30]% each. As such, the Transaction will result in a significant increment in the Merged Entity's market shares. The Merged Entity would have a very high combined market share of [50-60]%, which is in itself indicative of the Transaction resulting in the creation of a dominant position.[995] The Merged Entity would be a clear market leader with a significant gap to the third competitor Marsh [10-20]%. The next largest competitors, Artai, Howden and March R.S. have market shares of around [0-5]%. The post-Transaction HHI level is high, with [3,000-3,500] and delta of [1,000-1,500], indicating high levels of concentration in the market. The market investigation confirmed that for cyber a number of brokers in Spain is much lower than for FinPro.[996] The Commission also carried out desktop research based on public information to confirm that a number of brokers offering commercial risk brokerage services for cyber in Spain appears lower.[997] In particular market participants note that concentration ins this market is high and expressed some doubts as to the strength of Howden (generally named as number 4 in the market investigation) specific to cyber risk in Spain; as one respondent explained: "*[t]he*

995 Horizontal Merger Guidelines, paragraph 17.

996 Replies to question 20 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

997 Commission's desktop research has found that out of seven brokers offering commercial risk brokerage in Spain besides the Big Three (i.e., *Medicorazsse, Uniteco, Confide, Alkora, March Risk Solutions, Artai and Ferrer y Ojeda*), only three publicly state that they also provide commercial risk brokerage services for cyber in Spain (Medicorasse, March Risk Solutions and Artai), meanwhile Alkora provides commercial risk brokerage services for certain sectors only.

Spanish Cyber market is even more concentrated than the broader Spanish FinPro market due to the weakness of Howden."[998] March R.S. and Artai were named only by a very few respondents as suitable alternatives and appear to be small players as their market shares suggest.

(806) As already explained in Section 6.4.5.4. B1, the Commission notes that according to the Notifying Party, in Spain WTW has been seriously weakened by the recent loss of its executive team who have set up a new brokerage firm, Deasterra Partners, that will be a formidable new entrant and could threaten a significant portion of business over the next 3 years. To verify if the market share of WTW has indeed reduced since 2019, the Commission asked the Parties to provide total revenue lost. As at February 2021, WTW confirmed that it lost only [a very small percentage] GWP and [a very small percentage] (in the period between […]). [999] WTW also confirmed that […]. While the Commission recognises that the market shares of WTW and the Merged Entity may in fact be lower, it also notes that the departures appear to have affected other areas of commercial risk brokerage more and appear to have a more limited effect on WTW's cyber business in Spain. Moreover, market feedback in phase 2 investigation did not identify WTW as significantly weakened for cyber risk.

(807) **Sweden:** The combined market shares of the Parties would be [30-40]%, with an increment of [0-5]% brought by Aon. Post-Transaction the Merged Entity would still be smaller than the current market leader, Söderberg & Partners with [40-50]% market shares. The rest of the market is shared by other brokers, Marsh with [5-10]% and all other brokers with less than 5% market share. The HHI level post-merger is estimated as [3,000-3,500], with delta of around [0-500], a level at which analysis is warranted in line with the Horizontal Merger Guidelines.[1000] The market investigation indicated that customers consider that there would be a sufficient number of competitors remaining in the market post-Transaction in Sweden for cyber risk to service their needs.[1001] The Commission considers that, in light of the market feedback and the small increment of under 5% brought about by the Transaction, it is unlikely that any competition concerns would arise due to the Transaction in Sweden for commercial risk brokerage for cyber to non-LMCs.

(808) **The United Kingdom:** The combined market shares of the Parties would be around [30-40]% in the UK for commercial risk brokerage for cyber to non-LMCs, with an increment brought by WTW of just under [10-20]%. There is a large number of competitors on this market, including, Marsh ([10-20]%), Gallagher ([5-10]%), Lockton ([5-10]%), Howden ([0-5]%), with the rest of the market being made up of brokers with a market share of [0-5]% or less. The HHI level post-merger is estimated as below [1,500-2,000], with a delta of around [0-500], a level at which analysis is warranted in line with the Horizontal Merger Guidelines.[1002] The market investigation indicated that the majority of UK based customers who responded to the market investigation consider that there would be a sufficient number of competitors remaining in the market post-Transaction in the UK to service their needs.[1003] The Commission considers that taken together with the market

998 Replies to question 30(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9496).

999 RFI 44 reply, question 1.

1000 Horizontal Merger Guidelines, paragraph 19.

1001 Replies to question 156 of questionnaire Q1 to Customers.

1002 Horizontal Merger Guidelines, paragraph 19.

1003 Replies to question 171 of questionnaire Q1 to Customers.

investigation feedback and the fact that there is a large number of competitors in the market, it is unlikely that any competition concerns would arise due to the Transaction in the UK for commercial risk brokerage for cyber to non-LMCs.

B.2 Closeness of competition

(809) **Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK**: In the affected markets for commercial risk brokerage for cyber to non-LMCs in Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK, the market investigation indicates that the Parties compete closely with each other, but are not always closest competitor to each other and are competing closely with other market players. This is reflected by customer and competitor responses.[1004] Marsh is consistently named by customers as a closer competitor to each of the Parties, however, national competitors in these markets are also named as credible alternatives for non-LMCs by a number of customers.

(810) **Spain:** The market investigation provided further indications that on the Spanish cyber brokerage market to all customers except for large multi-national customers, the Parties are particularly close competitors compared to all other brokers with the exception of Marsh who is comparable to and equally close to Aon and WTW. Spanish-based companies consider Marsh and WTW to be the closest competitors to Aon in this market, followed by Howden. In turn, Aon and Marsh are considered to be the closest competitors to WTW, with Howden and March R.S. being named as other close competitors.[1005] Qualitative feedback indicates that Aon, WTW and Marsh are considered as the closest competitors in Spain for commercial risk brokerage for cyber for non-LMCs. As one customer stated: "*[w]e consider Marsh Spain's Cyber unit as the strongest competitor both for AON and WTW*"; with another customer confirming: "*[t]hey are the main brokers for this line of business in Spain.*"[1006] This is also confirmed by competitors in Spain. One competitor stated: "*Aon, WTW, and Marsh are the closest competitors and clear market leaders in the Spanish Cyber market. Howden is a distant fourth competitor that does not represent a credible competitive threat to the Big Three [...].*"[1007]

(811) The customers indicated that the Parties are particularly close to each other in terms of expertise of cyber commercial risk brokerage. In the market investigation, a number of responding customers stated that they could only use one of the largest three brokers for their cyber risks, for a number of reasons, but primarily because of the complexity and technical expertise associated with this risk, which only the three largest brokers have. One customer stated: "*[o]nly Aon, WTW and Marsh can provide a quality service as they have the resources and knowledge for such specific risks (...) Daesterra has just been created and Alcora or Adartia are local companies with not enough resources to serve a large company in Spain*".[1008] Other customers

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1004 Replies to question 171 of questionnaire Q1 to Customers and replies to questions 47 and 48 of questionnaire Q5 to Competitors.

1005 Replies to question 169 of questionnaire Q1 to Customers.

1006 Replies to question 23(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

1007 Replies to question 23(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9496).

1008 Replies to question 23(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 7868).

agreed that Cyber risks are complex risks that not all brokers in the Spanish market are able to provide brokerage service for this risk.[1009]

(812) Moreover, for the overall rating of a broker, responding customers rated the Merging Parties and Marsh very highly (all exceeding a mean of 4 out of 5, 5 being the highest), and the rest of the brokers at a very significant distance (no other competitor was rated above 3 and were generally rated below 2.5).[1010] In qualitative feedback, one customer explained that the Parties and Marsh all compete closely: "*We think there are not any significant differences in terms of the quality, price, scale or ability in the type of service provided by Marsh, AON and WTW*".[1011]

(813) Lastly, Howden, which was mentioned as a number four provider for cyber by a number of respondents, appears to have limited cyber expertise and in this respect market feedback confirms the market shares as set out in Table 14 above. One respondent stated: "*In terms of service, technical quality, and advisory and analytics capabilities, Aon, Marsh and WTW are the leading brokers in Spain by a distance. In the case of Cyber, Howden is a less relevant actor compared than in the broader FinPro market (where they are only a limited competitor to the Big Three)*."[1012] As such, the Commission does not believe that it competes closely with the merging Parties.

B.3 Switching

(814) **<u>Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK</u>**: With respect to cyber risk, for all affected markets except for Spain, the majority of responding non-LMCs indicated that switching to a different broker from your incumbent broker is either very easy, easy or neutral.[1013] This is distinguished from the responses by the LMCs with complicated and sizeable insurance covers, which indicate that knowledge of their company by a broker is a limiting factor to switching broker.

(815) **<u>Spain:</u>** In light of the competition concerns identified in phase 1, the Commission assessed switching specific to the non-LMC commercial risk brokerage market in Spain for cyber. The majority of customers and competitors responding indicated that they consider there to be no particular barriers to switching a broker for non-LMCs in Spain.[1014] However, respondents also noted that cyber risk is more complex and more difficult to place than for example FinPro risk in Spain, which may make some customers more reluctant to switch their broker for cyber risk. One competitor explained: "*cyber insurance is a complex, evolving market, and clients are generally less inclined to disrupt their broker relationships absent good cause. They are also even more dependent on broker analytics to make informed decisions*."[1015]

1009 Replies to question 23(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9377).

1010 Replies to question 22 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

1011 Replies to question 22(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 8573).

1012 Replies to question 22(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9496).

1013 Replies to question 34 of questionnaire Q1 to Customers.

1014 Replies to question 25 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

1015 Replies to question 25(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9496).

B.4 Likely reaction from competitors

(816) **<u>Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK</u>**: As set out above, for Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK, the Parties' competitors appear to have the ability to counteract the loss of competition deriving from the Transaction in the markets for commercial risk brokerage for cyber to non-LMCs. The majority of customers and competitors who responded to the market investigation confirmed that the markets would remain sufficiently competitive post-Transaction, with a sufficient number of competitors capable of competing sufficiently closely with the Parties. Given that in these markets there appear to be sufficient competition from national and regional brokers that cater for small and mid-sized clients and clearly have the ability to provide commercial risk brokerage service for cyber the Commission received no evidence that their incentives to compete would be lower following the Transaction. The Commission therefore considers that it is likely that brokers other than Marsh would be able to service non-LMCs, particularly mid-market customers, and would therefore continue to compete for those clients post-Transaction.

(817) **<u>Spain:</u>** The market investigation did not provide any evidence that the reaction of actual or potential competitors would prevent the Transaction from giving rise to impediment to effective competition as a result of the creation of a dominant position for a Merged Entity. As indicated in Section B.1 above, the next largest competitor, Marsh, will be at a significant gap from the Parties at a mere [10-20]%, followed by even smaller competitors which were deemed suitable only by a minority of responding customers for their commercial risk brokerage for cyber needs. Therefore the Commission considers that the ability and incentives of other brokers to compete effectively with a dominant Merged Entity may be impeded.

(818) Specifically with respect to Marsh's incentives to compete in this market, the Commission considers that due to lack of credible alternatives for cyber in particular, the incentives to compete may be reduced post-Transaction (for the same reasons as set out in detail in Section 6.3.5.5 B.4). In line with economic theory, it may be expected that in oligopolistic markets, competitive pressure and incentives to compete for non-merging firms will be reduced.[1016] One customer specific to this market stated: "*the outcome will be negative, just Marsh can compete with Aon/WTW so both will relax*."[1017] On the basis of a very small number of credible alternatives and the very high combined market share of the Merged Entity, the Commission therefore considers that the ability and incentives of the remaining brokers to compete effectively in the market for commercial risk brokerage for cyber to non-LMCs in Spain will likely be impeded.

B.5 Countervailing factors

(819) **<u>Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK</u>**: The Commission did not identify competition concerns in the affected national markets for cyber risk (with the exception of Spain), therefore it was not necessary to consider the countervailing factors in detail. In terms of buyer power, the Commission notes that this market includes small and medium-sized companies, which can be distinguished from LMCs in terms of their negotiating strength with respect to a broker, as by definition they would have smaller risks to insure compared

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1016 Horizontal Merger Guidelines, paragraphs 24-25.

1017 Replies to question 25(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9105).

to LMCs. The Commission considers that this holds true for non-LMCs regardless of the national market, because during the course of its investigation the Commission has not received any evidence that would indicate that this varies depending on location. Moreover, as explained in Section 6.3.5.2 B.4 above, non-LMCs do not generally use tender processes, which are commonly used by the LMCs and allow them to play brokers off against each other. A significant share of non-LMCs even source services after negotiating only with one broker,[1018] which is not indicative of a strong negotiating position.

(820) The negotiating power a customer has also depends on the number of credible alternatives that the company can choose from. As explained in Section 6.3.5.6 B.1, for the markets in **Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK,** customers confirmed that they consider that there are sufficient alternatives to the Merged Entity from whom they could source their requirements. The Commission acknowledges that these findings likely indicate that non-LMCs in these countries have at least some leverage when negotiating with potential brokers.

(821) **Spain:** The Commission considers that the buyer power of non-LMCs is limited vis-à-vis the Parties and would be even further diminished post-Transaction. This is primarily because the market of commercial risk brokerage for cyber to non-LMCs does not concern particularly large and sophisticated companies that can leverage a strong negotiating position, for example due to the significant size of the risk they need insuring. In addition, as explained in Section 6.3.5.6 B.3 above, non-LMCs tend to use tender processes less frequently than the LMCs, which would not allow them to play the brokers off against each other. Lastly, the Commission found that in addition to the Parties, the number of credible competitors in Spain for commercial risk brokerage for cyber to non-LMCs is very limited, which in itself reduces the ability of customers to have a strong negotiating position. It therefore concludes that the clients would not be able to discipline the Merged Entity to counter any potential price increases and would not be able to reduce the potential impact on the reduced quality of services. Market investigation indicates that non-LMCs are price sensitive with respect to procurement of cyber risk commercial risk brokerage and also do not tend to use tenders (contrary to the majority of LMCs, which are less price sensitive concerning commercial risk brokerage for cyber services) to procure such services, which means that disciplining and negotiating power is more limited.[1019]

B.6 Barriers to entry and expansion

(822) **Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK**: As explained in Section 6.3.5.4 B.6, the Commission considers that barriers to entry and expansion with respect to commercial risk brokerage markets to non-LMCs at national levels may exist. Some market feedback indicated that for commercial risk brokerage for cyber in particular, such barriers would be specific to technical expertise and modelling capabilities of brokers which require specific investment. However, the Commission also notes that as explained in Sections 6.3.5.6 B.1 and B.3, the markets in Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK appear to have a sufficient number of competing brokers deemed capable by the responding customers for their needs for commercial risk brokerage for cyber to non-LMCs.

1018 Response to question 35 of questionnaire Q1 to Customers.

1019 Replies to question 21 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

(823) **<u>Spain:</u>** Barriers to entry and expansion specific to the cyber risk class would exist. As explained in the previous Section, cyber risk is highly complex and difficult to place, which requires high level of expertise and brokers would need to attract specialised talent to build the necessary expertise demanded by customers. Further, data analytics and benchmarking is particularly important for cyber risk. The majority of responding customers indicate that it would be difficult to expand into cyber risk from other risk areas as it requires expertise and access to complex insurance markets.[1020]

(824) Barriers to entry in the market for commercial risk brokerage in Spain for cyber to non-LMCs is further illustrated by the lack of evidence of recent effective entrants specific to this market. While the Commission acknowledges that Howden may be a strong entrant in the Spanish market in general for commercial risk brokerage, it does not appear to be the case specific to cyber risk. Howden appears to be named as a distant number four in this market (raking significantly behind the Parties for cyber).[1021] One respondent explained the reasons why Howden has not expanded in cyber risk prominently in Spain: "*Howden is a distant fourth competitor that does not represent a credible competitive threat to the Big Three due to a lack of Specialty resources, advisory and analytics capabilities, and experience handling large and complex client risks.*"[1022] The market investigation confirmed that from the new entrants mentioned by the Notifying Party, BGC and McGill & Partners are not active in Spain.

(825) Deasterra was mentioned as a new entrant in the Spanish market by a only a small number of customers as a suitable option. Further, some customers doubted long term viability of Deasterra and expressed an opinion that it may in fact be acquired by Marsh in the near future given the 40% ownership by Marsh already.[1023] Moreover, Deasterra explained to the Commission that it intends to focus its business strategy on the LMCs segment.[1024]

(826) In view of the above, the Commission considers that in Spain in particular in relation to cyber, barriers to entry and expansion likely exist due to the expertise required for this complex risk type and no significant new entrants have emerged in the past three years in this market. The Commission therefore concludes that other brokers would not be in a position to grow quickly and effectively to compete against the Merged Entity and thereby make up for the loss of competition between the Parties or counteract the reduction in competitive pressure caused by the Transaction.

B.7 Results of the market investigation on likely impact of the Transaction

(827) **<u>Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK</u>**: The majority of customers (approximately three quarters) indicated that for all affected national markets, Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands,[1025] Sweden and the UK, there will be sufficient competitors left in the

1020 Reply to RFI 44, Question 11.
1021 Replies to question 22 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).
1022 Replies to question 30(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9496).
1023 Replies to questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).
1024 Minutes of the call (Document ID 10772).
1025 The Commission notes that qualitative feedback received specific to cyber in the Netherlands is limited, however, Commission notes that no specific negative feedback was included, in contrast to other areas where concerns were identified, namely property and casualty in the Netherlands.

market for cyber risk brokerage to serve their needs.[1026] Qualitative feedback from customers from these countries also indicates that customers consider there to be a sufficient number of national brokers, as well as EEA brokers operating in their national markets.[1027]

(828) The majority of responding customers consider that there would be no a negative impact of the Transaction on cyber risk brokerage on price of service, level of premiums, quality of service, choice of brokers and innovation. A majority of customers also considered that there would be no negative impact on the incentive of the merged entity to negotiate favourable terms and conditions suitable for their company.[1028] The qualitative feedback also indicates that customers from all these affected national markets expect the impact of the Transaction to be either neutral or limited for their company.[1029]

(829) The majority of responding competitors also do not foresee negative impact resulting from the Transaction for the market of commercial risk brokerage for cyber to non-LMCs, in terms of price of services (remuneration of brokers and commission), level of premiums, quality of service or innovation.[1030] While half of responding competitors indicate that they expect the choice to be reduced, they do not expect customers' ability to negotiate favourable terms and conditions with the Merged Entity to be impacted in a negative way.

(830) **Spain:** The Commission received concerned feedback from Spanish-based companies, excluding LMCs, regarding the Transaction. A very significant share of such customers consider that there would not be sufficient competitors left in the market post-Transaction.[1031] Further, a small majority of customers excluding LMCs consider that the Transaction would have a negative impact on prices.[1032] The market investigation further shows that non-LMCs are very price sensitive. Responding customers indicated specifically for cyber risk in Spain that the price of broker fees and broker's ability to negotiate best premiums are the most important factors when choosing a broker.[1033]

(831) This negative view with respect to lack of cyber expertise by brokers in Spain is generally shared by competitors. A very significant share of competitors consider that the Transaction would limit the choice of service for non-multinational cyber risk brokerage customers.[1034] One competitor explained specifically with respect to cyber capabilities in Spain: "*[t]he Cyber market is in a state of development, so clients are particularly dependent on broker's developing strong, innovative solutions. The only brokers with the requisite expertise to do so are Aon, WTW, and Marsh, and the transaction would eliminate one of these sources of innovation from the market. This will increase the impact of the transaction on the quality of client service. Furthermore, Howden is a less credible competitor in the market, even*

1026 Replies to question 171 of questionnaire Q1 to Customers.

1027 Replies to question 171(1) of questionnaire Q1 to Customers. The Commission however notes that qualitative feedback was only provided by a limited number of market participants.

1028 Replies to question 172 of questionnaire Q1 to Customers.

1029 Replies to question 172(1) of questionnaire Q1 to Customers. The Commission however notes that qualitative feedback was only provided by a limited number of market participants.

1030 Replies to question 52(7)(1) of questionnaire Q5 to Competitors.

1031 Replies to question 171 of questionnaire Q1 to Customers.

1032 Replies to question 172 of questionnaire Q1 to Customers. The Commission acknowledges that customers provided limited qualitative feedback to substantiate concerns.

1033 Replies to question 21 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

1034 Replies to question 31 of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs).

looking forward, so the impact of WTW's elimination will be more significant."[1035] The Commission therefore considers that the negative effects of the Transaction for the market of commercial risk brokerage for cyber to non-LMCs are particularly pronounced due to the lack of credible alternatives remaining in the market, and in particular the likelihood of a negative impact on prices as a result of further concentration in the market.

C. Conclusion on commercial risk brokerage for cyber for non-LMCs

(832) **Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK**: As explained above, the Commission considers that the Transaction would not raise any anticompetitive effects in the markets for commercial risk brokerage for cyber to non-LMCs in Denmark, Germany, Ireland, Italy, Luxembourg, the Netherlands, Sweden and the UK. In particular the Commission notes that in Germany the combined market shares of below 25% and low levels of HHI alone indicate that competition concerns are unlikely. More specifically for all these national markets, while some market feedback indicates that the Parties compete closely with each other and with Marsh, the Parties also compete with a number of national and regional brokers active in each of these markets. More specifically, the large majority of customers and competitors who responded to the market investigation submitted that the markets would remain sufficiently competitive and that sufficient number of national insurance brokers are suitable for their needs. The majority of respondents indicated that the Transaction would have a neutral impact on the main parameters of competition, i.e., price, quality, and innovation.

(833) **Spain:** For the reasons set out above, the Commission concludes that the Transaction will result in the creation of a dominant position of the Merged Entity in the market for commercial risk brokerage for cyber to non-LMCs in Spain and thus result in a significant impediment to effective competition. In particular, the Transaction will result in high combined market shares at a level which indicates dominance and high levels of HHI indicating high level of concentration in this market. The market investigation revealed that there would be only a limited number of competitors specific for cyber risk in Spain, and the next largest competitor to the Merged Entity would be Marsh, with a significantly smaller market share of only [10-20]%. In addition, the market investigation indicates the existence of certain barriers to entry and expansion, which could hinder market entry in a timely fashion to counteract potential price increase by the Merged Entity.

(834) The Commission notes that for the markets in Germany, the Netherlands and Spain, the Parties have proposed Commitments as part of the entire country organisations in these countries (see Section 12.3), which also include a divestment of cyber businesses in these countries. To the extent any competition concerns could potentially arise from the Transaction, they are fully remedied by the divestment of a full overlap for these two markets. In addition, as explained in Section 12.3 the Commitments proposed by the Parties also remedy the concerns raised with respect to LMCs. Therefore, to the extent any national customers that do not meet the criteria of an LMC, but would have some global operations, the remedy proposed for cyber LMCs would also benefits such customers. Any potential competition concerns that may arise in the UK are also remedied by a divestment of cyber business in the UK which includes a range of customers (LMCs and non-LMCs).

1035 Replies to question 31(1) of questionnaire Q11 to Customers and Competitors in Spain (non-LMCs) (Document ID 9496).

6.3.5.7. Credit & political risk

A. The Notifying Party's view

(835) The Notifying Party considers that the Transaction will not give rise to any non-coordinated effect concerns in the distribution of commercial non-life insurance in relation to credit & political insurance brokerage,[1036] for the following reasons.

(836) Firstly, the Notifying Party argues that the Merged Entity's market share, which would not exceed [20-30]% at EEA level is below the level that could give rise to a competition concern, and the increment from the combination of the Aon and WTW businesses is only modest.[1037]

(837) Secondly, according to the Notifying Party, multiple brokers, including global, regional and local brokers, will continue to act as a significant competitive constraint on the Merged Entity post-Transaction.[1038]

(838) Thirdly, the Notifying Party argues that direct insurers and alternative capital will continue to exert competitive pressure on brokers in this segment. Regarding direct insurers, the Notifying Party considers that a number of global insurers have market-leading teams providing credit & political risk cover directly to clients.[1039] With respect to alternative capital, the Notifying Party argues that governments have public-private programs with the insurance industry within which brokers do not play a central role; they may separately approach the same clients, offering to cover their risk but the government's capacity as a key (re)insurer leaves brokers with little leverage and scope for negotiation in this space.[1040]

(839) The Notifying Party also considers that the Transaction will not give rise to any coordinated effects concerns in the distribution of commercial non-life insurance at an EEA-wide level, including in relation to credit & political risk insurance brokerage.[1041]

(840) Finally, the Notifying Party argues that the Transaction will not give rise to any vertically affected markets in the distribution of commercial credit & political risk insurance brokerage (or any sub-segment thereof) at an EEA-wide level or national level.[1042]

B. The Commission's assessment

(841) In the following the Commission presents the findings from its investigations. In particular, the phase 2 market investigation focused on the impact of the Transaction on LMCs. As explained in Section 6.1.5.4 above, based on its market investigation, the Commission considers for the purposes of this Decision that it is not warranted to define a separate market for credit & political risk brokerage services for LMCs and that there is only one market for customers regardless of their size for credit & political risk brokerage services. However, as LMCs are part of a wider market for credit & political risk brokerage services, findings for LMCs are also presented in the following sections where these are explicitly relevant for credit & political risk brokerage.

1036 Form CO, paragraph 465.
1037 Form CO, paragraph 468.
1038 Form CO, paragraph 469.
1039 Form CO, paragraph 470.
1040 Form CO, paragraph 470.
1041 Form CO, paragraph 480.
1042 Form CO, paragraph 482.

B.1 Market structure

(842) The markets shares provided by the Notifying Party at global and EEA level are presented in the following tables 15 to 19 below.[1043]

Table 15: Commercial risk brokerage market shares for the brokered channel for Credit & Political risk, worldwide level, 2017 to 2019.

Company	Value GWP (USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
WTW	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Combined	***[…]***	***[…]***	***[…]***	***[10-20]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
BPL	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Howden	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Gallagher	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Ecclesia	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
NCI	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Assurance Universelle	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Diot	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Texel	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Lockton	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[30-40]%	[20-30]%	[20-30]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: The Notifying Party, Response to RFI 71.

(843) According to the market shares provided by the Notifying Party, the Merged Entity would have a combined market share of [20-30]% in the market for commercial risk brokerage for credit & political risk at global level in 2019. Pre-Transaction, the market is characterised by two large players: Aon and Marsh with market shares of [10-20]% and [10-20]% respectively. The next biggest competitors are WTW and BPL, with market shares of [5-10]% and [5-10]% respectively. All other competitors have a market share below [5-10]%. The Merged Entity will thus become the market leader, with Marsh coming second post-Transaction and with a significant gap to the remainder of competitors. This is consistent with the Commission's assessment as set out below.

(844) The concentration level is modest. Post-Transaction, a global market for commercial risk brokerage for credit & political risk has an HHI of approximately [500-1,000] and an HHI delta of approximately [0-500]. The Commission is therefore unlikely to identify horizontal competition concerns on an overall market for the brokerage of

[1043] Concerning market shares on the global level the Notifying Party explained that it was difficult to provide exact estimates. However, taking into account that the market investigation did not come to the conclusion that the Transaction will result in a significant impediment of effective competition with respect to the market of commercial risk brokerage for credit & political risk on the global level the Commission considered that there is no need to further investigate the precise market shares. Reply to RFI 71.

credit & political risk at global level, since post-merger the HHI is below [1,000-1,500] and the delta below [0-500].[1044]

(845) Among the four credit & political risk segments, trade credit, structured credit/political risk, political violence/terrorism, and kidnap and ransom, only trade credit and political violence/terrorism are affected markets on a global level, according to the Notifying Party's estimates. The Parties' combined market shares in the other segments are below 20 % on a global level in 2019. The Parties reach a combined market share of [10-20] % in the segment of structured credit/political risk, and of [5-10] % in the segment of kidnap and ransom.

(846) The Parties' combined market shares in the segment of Trade Credit on a global level are presented in the following Table 16.

Table 16: Commercial risk brokerage market shares for the brokered channel for the trade credit segment, worldwide level, 2017 to 2019.

Company	Value GWP (USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[10-20]%	[10-20]%	[20-30]%
WTW	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Combined	***[…]***	***[…]***	***[…]***	***[10-20]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Ecclesia	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Howden	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
NCI	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Assurance Universelle	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Diot	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Gallagher	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Siaci	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Xenia	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
BPL	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Other	[…]	[…]	[…]	[20-30]%	[10-20]%	[10-20]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: The Notifying Party, Response to RFI 71.

(847) According to the market shares provided by the Notifying Party, the Merged Entity will have a combined market share of [20-30]% in the segment of trade credits at global level in 2019. Pre-Transaction, the market is characterised by two large players: Aon and Marsh with market shares of [20-30]% and [10-20]% respectively. The next biggest competitors is WTW with a market share of [5-10]%, followed closely by Ecclesia, Howden and NCI with market shares of [5-10]% each. All other competitors have a market share below [5-10]%. The Merged Entity will thus become the market leader, with Marsh coming second post-Transaction and with a significant gap to the remainder of competitors. This is consistent with the Commission's assessment as set out below.

1044 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, paragraphs 19 and 20.

(848) The concentration level is modest. Post-Transaction, a global market for commercial risk brokerage for credit & political risk has an HHI of approximately [1,000-1,500] and an HHI delta of approximately [0-500].

(849) The Parties' combined market shares in the segment political violence/terrorism on a global level are presented in the following Table 17.

Table 17: Commercial risk brokerage market shares for the brokered channel for the political violence/terrorism segment, worldwide level, 2017 to 2019.

Company	Value GWP (USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[20-30]%	[20-30]%	[20-30]%
WTW	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[20-30]%	[20-30]%	[20-30]%
Gallagher	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Howden	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Lockton	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
NASCO	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[30-40]%	[30-40]%	[30-40]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: The Notifying Party, Response to RFI 71.

(850) According to the market shares provided by the Notifying Party, the Merged Entity will have a combined market share of [20-30]% in the segment of political violence/terrorism at global level in 2019. Pre-Transaction, the market is characterised by two large players: Aon and Marsh with market shares of [20-30]% and [20-30]% respectively. The next biggest competitors is WTW with a market share of [5-10]%, followed closely by Gallagher with a market share of [5-10]%, followed by Howden with a market share of [5-10]%. All other competitors have a market share below [5-10]%. The Merged Entity will thus become the market leader, with Marsh coming second post-Transaction and with a significant gap to the remainder of competitors. This is consistent with the Commission's assessment as set out below.

(851) The concentration level is modest. Post-Transaction, a global market for commercial risk brokerage for credit & political risk has an HHI of approximately [1,000-1,500] and an HHI delta of approximately [0-500].

(852) The Parties combined market shares for credit & political risk on the EEA level are presented in the following Table 18.

Table 18: Commercial risk brokerage market shares for the brokered channel for Credit & Political risk, EEA level, 2017 to 2019.

Company	Value GWP (USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[10-20]	[10-20]	[10-20]
WTW	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Combined	***[…]***	***[…]***	***[…]***	***[20-30]***	***[20-30]***	***[20-30]***
Marsh	[…]	[…]	[…]	[20-30]	[20-30]	[20-30]
BPL	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Assurance Universelle	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Diot	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Howden	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
BGC	[…]	[…]	[…]	[0-5]	[5-10]	[0-5]
Gallagher	[…]	[…]	[…]	[0-5]	[5-10]	[0-5]
Lockton	[…]	[…]	[…]	[0-5]	[5-10]	[0-5]
SIACI	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Texel	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Finance & Insurance	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Funk	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Others	[…]	[…]	[…]	[10-20]	[10-20]	[10-20]
TOTAL	**[…]**	**[…]**	**[…]**	**[90-100]**	**[90-100]**	**[90-100]**

Source: The Notifying Party, Response to the Commission's Decision of 21 December 2020 pursuant to Article 6(1)(c), Annex 8..

(853) According to the market shares provided by the Notifying Party, the Merged Entity will have a combined market share of [20-30]% in the market for commercial risk brokerage for credit & political risk at EEA-level in 2019. Pre-Transaction, the market is characterised by two large players: Aon and Marsh with market shares of [10-20]% and [20-30]% respectively. The next biggest competitors are WTW and BPL, with market shares of [5-10]% and [5-10]% respectively. All other competitors have a market share below [5-10]%. The Merged Entity will thus become the market leader, with Marsh coming second post-Transaction and with a significant gap to the remainder of competitors. This is consistent with the Commission's assessment as set out below.

(854) The concentration level is also modest. Post-Transaction, an EEA-wide market for commercial risk brokerage for credit & political risk has an HHI of approximately [1,000-1,500] and an HHI delta of approximately [0-500]. The Commission is therefore unlikely to identify horizontal competition concerns on an overall market for the brokerage of credit & political risk at EEA level, since post-merger the HHI is between 1 000 and 2 000 and the delta below [0-500].[1045]

(855) Among the four credit & political risk segments, trade credit, structured credit/political risk, political violence/terrorism, and kidnap and ransom, only trade credit is an affected market in the EEA, according to the Notifying Party's estimates.

[1045] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, paragraph 20.

The Parties' combined market shares in this segment are presented in the following Table 19. The Parties' combined market shares in the other segments are below 20 % in the EEA in 2019. The Parties reach a combined market share of [10-20] % in the segment of structured credit/political risk, of [10-20] % in the segment of terrorism & political violence and of [10-20] % in the segment of kidnap and ransom.

Table 19: Commercial risk brokerage market shares for the trade credit segment, EEA level, 2017 to 2019.

Company	Value GWP (USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[20-30]	[20-30]	[20-30]
WTW	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Combined	***[…]***	***[…]***	***[…]***	***[20-30]***	***[20-30]***	***[20-30]***
Marsh	[…]	[…]	[…]	[20-30]	[20-30]	[20-30]
Assurance Universelle	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Diot	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Howden	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Xenia	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Siaci	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Others	[…]	[…]	[…]	[30-40]	[30-40]	[30-40]
Total	**[…]**	**[…]**	**[…]**	**[90-100]**	**[90-100]**	**[90-100]**

Source: The Notifying Party, Response to the Commission's Decision of 21 December 2020 pursuant to Article 6(1)(c), Annex 8.

(856) As can be seen in Table 19 above in the segment of trade credit pre-Transaction, Aon is the market leader with a market share of [20-30] % in 2019, that will increase by [5-10] % to [20-30] % post-Transaction. This position is followed by Marsh with a market share of [20-30] %. Number three in the market is Assurance Universelle with a market share of [5-10] % and number four is Diot with a market share of [5-10] %. Other competitors have market shares of [0-5] % or lower.

(857) The concentration level is modest post-Transaction. The segment of trade credit has a HHI of approximately [1,000-1,500] post-Transaction. However, the HHI delta of approximately [0-500] is above 250, the Commission's threshold to consider it unlikely to identify horizontal competition concerns post-merger in cases with a HHI between 1 000 and 2 000.[1046]

B.2 Closeness of competition and competitive constraints exercised by competing brokers post-Transaction

(858) The results of the phase 1 market investigation among customers showed that the closest competitor to each of the Parties is Marsh, followed by the Parties.[1047] The phase 1 market investigation among competitors revealed a slightly different picture,

[1046] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, paragraph 20.

[1047] Replies to question 186.1 and 186.2 of questionnaire Q1 to Customers. The Commission has also carried out a tender data analysis in the course of the phase 1 market investigation, which supported its 6(1)(c) Decision. However, the phase 2 market investigation revealed that tenders are not the dominant procurement form among LMCs. Therefore, for the purposes of this Decision this analysis and its outcome are not further explained here. Replies to question 10 of questionnaire Q13 to LMCs.

but still with Aon, WTW and Marsh as close competitors.[1048] This applies to the market for commercial risk brokerage for credit & political risk overall but replying competitors predominantly also state that their assessment does not change when differentiating between the four credit & political segments.[1049] Competitors also rated the brokers' strength in the phase 1 market investigation, Aon has been identified as the strongest competitor, followed by Marsh and WTW in the EEA.[1050] Again, this applies both to the overall market for commercial risk brokerage for credit & political risk and to the four credit & political segments.[1051]

(859) The results of the phase 1 market investigation also showed that the Parties, together with Marsh are perceived as strong competitors overall, notably due to their wide industry knowledge, international network, staff qualification and resources. Marsh, Aon and WTW were rated similarly high by customers, with ratings between 4.28 and 4.33 out of 5.[1052] Other competitors were also identified, such as Gallagher, Lockton and BPL, but only follow at some distance, with ratings of between 2.73 and 3.28 out of 5.[1053] This observation also applies to the overall market for commercial risk brokerage for credit & political risk, but is not significantly different for the four credit & political segments.[1054]

(860) The Commission further investigated the Parties' closeness of competition and competitive constraints exercised by competing brokers in its phase 2 market investigation. In this investigation, carried out among LMCs, the picture changed.[1055] Aon, Marsh and WTW were still rated as strong competitors. But other, Tier two or specialized brokers, were perceived as equally strong or even stronger. Aon, BPL and Marsh received equally strong ratings. BPL was therefore perceived as being stronger than WTW. Next came Texel, also stronger than WTW. Only then came WTW, followed closely by Gallagher. All of which received a rating of or above four.

(861) With respect to serving LMCs, LMCs also rated the competitive strength of broker networks in the phase 2 market investigation. But although Aon, WTW and Marsh received the highest ratings for their networks,[1056] a significant number of other brokers that operate through networks were identified to be able to compete effectively with the Merged Entity post-transaction. In this regard, LMCs named a variety of different service providers, notably Marsh, Gallagher, Lockton, Howden and McGill, but also specialized or local Brokers like BPL, Texel, Siaci and Van Breda.[1057]

(862) That brokers with smaller networks than the Big Three will still be able to exercise competitive constraints on the Merged Entity post-Transaction is further supported by qualitative evidence which explains why customers do not consider global networks to be an important factor for this risk, whereby a local specialist team is more important. One respondent replied: *"that the quality of the service mainly*

1048 Replies to question 47.1 and 47.2 of questionnaire Q5 to Competitors.
1049 Replies to question 47.4 of questionnaire Q5 to Competitors.
1050 Replies to question 48 of questionnaire Q5 to Competitors.
1051 Replies to question 48.3 of questionnaire Q5 to Competitors.
1052 Replies to question 187.1 of questionnaire Q1 to Customers.
1053 Replies to question 187.1 of questionnaire Q1 to Customers.
1054 Replies to question 187.2 to 187.5 of questionnaire Q1 to Customers.
1055 Replies to question 25 of questionnaire Q13 to LMCs.
1056 Replies to question 24 of questionnaire Q13 to LMCs.
1057 Replies to question 23 of questionnaire Q13 to LMCs.

depends on the local team and actually, brokers are not so integrated internationally. Each desk is relatively independent from one another" and another one replied that "*the size does not matter if the elected broker has excellent relationships with insurers based on expertise and track record in this class. For example BPL, […]'s broker, is a relatively small broker but n°1 in credit and political risk insurance"*.[1058] The role of BPL and therefore of specialized brokers was also mentioned by another respondent, commenting that "*the only markets where the Big Three are not uniformly the strongest brokers across the EEA are in […] and (2) [due to] the weakness of Aon and strength of BPL in Credit and Political Risk"*.[1059]

(863) In the same vein, when asked a SSNIP-type question, to identify alternative providers or approaches that would be suitable for credit & political risks if following the Transaction there was an increase of 5-10% in brokers' remuneration or a reduction of quality, LMCs named a variety of alternatives.[1060] Again, these were Marsh, Gallagher, Lockton, Howden and McGill, but also specialized or local brokers like BPL, Texel, Siaci, Van Breda and Finance & Insurance. Additionally, LMCs named direct placements and risk retention (captives) as alternatives.[1061] Of those LMCs that considered direct placements as alternative, the majority stated to be able to switch a moderate share of risk currently placed via a broker to direct placement. But some respondents also replied to be able to move a sizeable share or even the entire risk to direct placements.[1062] Concerning risk retention, the majority of respondents replied to be able to switch a very small, small or moderate share and a minority replied to be able to switch a sizeable share or even the entire risk.[1063]

(864) These findings are also in line with the replies of customers regardless of their size, competitors and insurance companies, that confirmed that there will be sufficient alternative brokers available post-Transaction as will be further explained in Section 6.3.5.7B.6 below.

(865) Similarly, with respect to the multinational customer track record, LMCs rate Aon, Marsh and WTW in close proximity of BPL, Texel and Gruppo Assiteca as all received ratings between 4 and 4.6 out of 5.[1064]

(866) In view of the above, the Commission considers that post-Transaction customers will find a variety of suitable and capable alternatives for commercial risk brokerage services for credit & political risks including Marsh, Tier two brokers and specialized brokers that will also constrain Aon, which is also reflected in the market shares of these competitors in Tables 15 to 19.

B.3 Switching

(867) The phase 1 market investigation revealed, that the majority of customers of brokerage services considers switching to a different broker from an incumbent broker as very easy, easy or neutral, and only a minority considers it difficult or very difficult.[1065] According to one sceptical customer, "*switching a broker is generally*

[1058] Replies to question 28.1 of questionnaire Q13 to LMCs.
[1059] Replies to question 48.1 of questionnaire Q5 to Competitors.
[1060] Replies to question 27 of questionnaire Q13 to LMCs.
[1061] Replies to question 27 of questionnaire Q13 to LMCs.
[1062] Replies to question 27.2 of questionnaire Q13 to LMCs.
[1063] Replies to question 27.3 of questionnaire Q13 to LMCs.
[1064] Replies to question 26 of questionnaire Q13 to LMCs.
[1065] Replies to question 34 of questionnaire Q1 to Customers.

not easy, because of the deeply entrenched relationship with a broker. The broker needs to have a thorough understanding of its client's business. Therefore, a small reduction in the fee would not make […] consider switching its broker".[1066] However, others explained that "*historically knowledge of deals coupled with experience of claims within our company makes a change of Broker more complicated (but still doable)*"[1067] and that "*broker knowledge of my company is desirable but not critical*."[1068] Speaking from experience, one LMC recalled to have changed its "*broker in 2021, with no particular issues*,"[1069] and a sizeable number of respondents explained that switching is possible at very low costs in terms of time and money spent.[1070]

(868) In the phase 2 market investigation among LMCs, the Commission further asked LMCs to identify certain market features that could make switching brokers difficult, like an incumbent's ownership of company specific proprietary data, its company specific knowledge or claims handling experience. While only a minority replied that there are no barriers to switching, the fact remains that each feature individually was also only selected by a minority of respondents (i.e. no single feature like *company specific knowledge* was identified by a majority of respondent, for each single feature only a minority was of the opinion, that it makes switching difficult.[1071] Thus, none of these market features was considered to make switching difficult by a majority of respondents.

(869) It results from the above that although there are barriers to switch brokers, customers can switch their incumbents and do not consider it prohibitively costly.

B.4 Countervailing factors

(870) Concerning countervailing factors, the Commission found in its first market investigation, that the majority of competitors that provided an opinion replied that for customers of all sizes, they expect a positive or neutral effect of the Transaction on *the ability of customers to negotiate favorable terms and conditions* with the merged entity and on the *incentive of the merged entity to negotiate favorable terms and conditions*.[1072] One competitor commented in that regard, that "*Credit and political risk are an ancillary product line that can be separated from main programs with relative ease. Number of risk class focused brokers (e.g. Berry Palmer and Lyle, Texel) who can provide additional choice to clients*."[1073]

(871) This was confirmed among LMCs in the phase 2 market investigation. In this market investigation, the majority replied that they have strong negotiating power vis-à-vis insurance brokers as a customer of credit & political risk insurance brokerage services,[1074] and that they expect that buyer power will not decrease post-transaction.[1075] One customer replied in that regard, that "*the insurer is more*

1066 Non-confidential minutes of conference call with a customer, 24 September 2020, ID 679.
1067 Replies to question 31.1 of questionnaire Q13 to LMCs.
1068 Replies to question 31.1 of questionnaire Q13 to LMCs.
1069 Replies to question 31.1 of questionnaire Q13 to LMCs.
1070 Replies to question 34.1 of questionnaire Q1 to Customers.
1071 Replies to question 31 of questionnaire Q13 to LMCs.
1072 Replies to question 52.8.1 of questionnaire Q5 to Competitors.
1073 Replies to question 52.8.1.1 of questionnaire Q5 to Competitors.
1074 Reply to question 35 of questionnaire Q13 to LMCs.
1075 Reply to question 35 of questionnaire Q13 to LMCs.

important than the broker",[1076] and another one simply stated: "*We are the customer and brokers know there is lots of competition*".[1077]

B.5 Barriers to entry and expansion

(872) In the phase 1 market investigation the majority of customers of brokerage services generally expressed the view, that entering the insurance brokerage market or expanding is difficult or very difficult. However, a sizeable number of respondents also expressed a neutral view on this or stated, that entering the market is easy or very easy.[1078] In the context of geographic barriers to enter the market for credit & political risk brokerage services, customers identified several factors which they consider to constitute a barrier to purchase these services, such as knowledge and expertise of brokers, language and regulatory requirements.[1079] For instance, one customer specified that "*regulatory requirements do play an important role when deciding to purchase insurance on a global level as we expect to have coverages in place that address all of the country and local laws and regulations, and we expect our broker to be able to assist with the negotiations to ensure that all of our risks by geographic location are addressed through the insurance carrier selected*".[1080] Another LMC indicated the presence of "*high entrance barrier in general to start a broker for all lines with a global footprint*".[1081] This is consistent with the fact that the majority of customers is of the opinion, that a broker needs to have specific expertise for each country (e.g. of national regulation or market dynamics) in which credit & political risks need to be covered.[1082]

(873) The majority of customers also indicated that they are not aware of new entrants in the market for commercial risk brokerage for credit & political risk in the last three years.[1083] The only named company is McGill (in the UK/US).[1084] Moreover, the majority of the customers that were able to name new entrants (when leaving aside the respondents that could not provide an answer) considered that these entrants are not credible alternatives to the Parties.[1085]

(874) However, one customer also replied that there are "*multiple smaller players, both new entrants and established (but still small) brokers*", but provided no names.[1086] Furthermore, in the phase 2 market investigation, the majority of replying LMCs stated that brokers that currently do not meet their expectations are able and have a likely incentive to expand their abilities within a period of maximum 3 years sufficiently to become a viable competitor to the merged entity.[1087] In addition, concerning the relevance of access to data, the majority of replying LMCs in the phase 2 market investigation replied that the merged entity's datasets do not provide a competitive advantage for serving LMCs.[1088] In the same vein, the majority of LMCs replied, that post-Transaction the Parties' competitors will have the ability to

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1076 Reply to question 33.1 of questionnaire Q13 to LMCs.
1077 Reply to question 33.1 of questionnaire Q13 to LMCs.
1078 Reply to question 32 of questionnaire Q1 to Customers.
1079 Reply to question 184 of questionnaire Q1 to Customers.
1080 Replies to question 184 of questionnaire Q1 to Customers.
1081 Replies to question 184 of questionnaire Q1 to Customers.
1082 Replies to question 185 of questionnaire Q1 to Customers.
1083 Replies to question 188 of questionnaire Q1 to Customers.
1084 Replies to question 188 of questionnaire Q1 to Customers.
1085 Replies to question 188.1 of questionnaire Q1 to Customers.
1086 Replies to question 188 of questionnaire Q1 to Customers.
1087 Replies to question 38 of questionnaire Q13 to LMCs.
1088 Replies to question 42 of questionnaire Q13 to LMCs.

match Aon/WTW with respect to data analytics.[1089] One customer replied in that respect, that "*many brokers' data services are already better*".[1090]

(875) Consequently, even if entering the market might be difficult and only a few or one new competitors entered the market in the last three years, the Parties might face new competitors in the short- to mid-term, post-Transaction.

B.6 Results of the market investigation on likely impact of the Transaction

(876) The market investigation revealed, that post-Transaction there will be sufficient alternative brokers for credit & political risk. In the phase 1 market investigation the majority of customers that provided an answer replied, that there will be sufficient alternative brokers available to serve their needs post-Transaction on the global level and in the EEA.[1091] This assessment also holds true for the four credit & political risk segments and when assessing the replies of LMCs only.[1092]

(877) This assessment was confirmed by responding competitors in the phase 1 market investigation, of which a majority replied that a sufficient number of commercial risk brokers in credit and political risks will remain available post-Transaction.[1093] Again, this also holds true for available alternatives for LMCs,[1094] and for the four credit & political risk segments.[1095]

(878) This is further supported by insurance companies that provided a response in the phase 1 market investigation, that also confirmed that post-Transaction sufficient commercial risk brokers in credit & political risk will remain available.[1096] This is also in line with the Parties' and their competitors' market shares, as presented in Tables 15 to 19 above. In the phase 2 market investigation one competitor explained, that they "*estimate there to be some 30-40 potential brokers in London, for instance*".[1097]

(879) Concerning the different competition parameters *price*, *quality of services*, *choice of service* and *innovation for services*, the majority of customers that provided a response in the phase 1 market investigation also expected a positive or neutral effect of the Transaction.[1098] This assessment also holds true for the four credit & political risk segments, and when assessing the replies of LMCs in the phase 1 market investigation only.[1099]

(880) The phase 2 market investigation among LMCs confirmed this outcome. The majority of LMCs expects a positive or neutral impact on *brokerage fees and commissions* and on *quality of services* regarding LMCs.[1100] On the parameter *choice of services*, the views are balanced, with half of respondents expecting a neutral effect and half of respondents a negative effect.[1101] Asked for the overall effect of the

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1089 Replies to question 43 of questionnaire Q13 to LMCs.
1090 Replies to question 43.1 of questionnaire Q13 to LMCs.
1091 Replies to question 190 of questionnaire Q1 to Customers.
1092 Replies to question 190 and 190.1 of questionnaire Q1 to Customers.
1093 Replies to question 51.1 of questionnaire Q5 to Competitors.
1094 Replies to question 51.2 of questionnaire Q5 to Competitors.
1095 Replies to question 51.1.2 of questionnaire Q5 to Competitors.
1096 Replies to question 23 of questionnaire Q4 to Insurance Companies.
1097 Replies to question 28.1 of questionnaire Q13 to LMCs.
1098 Replies to question 191 of questionnaire Q1 to Customers.
1099 Replies to question 191 and 191.1 of questionnaire Q1 to Customers.
1100 Replies to question 44 and 45 of questionnaire Q13 to LMCs.
1101 Replies to question 46 of questionnaire Q13 to LMCs.

Transaction, a majority of LMCs expect a positive or neutral impact in the phase 2 market investigation.[1102]

(881) Among competitors, the phase 1 market investigation revealed a similar assessment when asked for their expectations for individual competition parameters. The majority of competitors that provided an opinion replied that they expect a positive or neutral effect of the Transaction on *price of service* (remuneration and commission of brokers), *level of premiums*, *quality of service*, *innovation for services*, on *the ability of customers to negotiate favorable terms and conditions* with the merged entity and on the *incentive of the merged entity to negotiate favorable terms and conditions*.[1103] Only with respect to the competition parameter *choice of services* did competitors provide a mixed view, with almost half of them expecting a negative effect and a slight majority a neutral or positive effect of the Transaction.[1104] This assessment also holds true for competitors' assessment for LMCs, but in this case a clear majority of competitors expects a positive or neutral effect also on the *choice of services*.[1105]

(882) In the phase 2 market investigation among competitors regarding LMCs the Commission also asked for the overall impact of the Transaction. In this regard the feedback revealed more negative expectations. When asked for the overall impact of the Transaction, the majority of competitors that provided a response expected a negative effect for LMCs.[1106] Qualitative feedback in that regard shows, that this is mainly based on the expectation, that the choice of service providers will be reduced post-Transaction.[1107] However, the market investigation revealed repeatedly for the market of brokerage services for credit & political risk and even concerning LMCs in particular that sufficient alternative service providers will be available post-Transaction. Moreover, as presented above a negative impact on other competition parameters than choice is not expected.

C. Conclusion on commercial risk brokerage for credit & political risk

(883) In view of the above, the Commission considers that the proposed Transaction does not lead to a significant impediment of effective competition with respect to commercial risk brokerage for credit & political risk in a global or EEA-wide market or the four segments, trade credit, structured credit/political risk, political violence/terrorism, and kidnap and ransom.

6.3.5.8. Sureties

A. The Notifying Party's view

(884) The Notifying Party notes that the Transaction will not give rise to any non-coordinated effects, in relation to sureties at the EEA level or at the national level.[1108]

(885) For the EEA-level the Notifying Party puts forward the following arguments to support its view:[1109]

1102 Replies to question 47 of questionnaire Q13 to LMCs.

1103 Replies to question 52.8.1 of questionnaire Q5 to Competitors.

1104 Replies to question 52.8.1 of questionnaire Q5 to Competitors.

1105 Replies to question 52.8.2 of questionnaire Q5 to LMCs.

1106 Replies to question 67 of questionnaire Q16 to Competitors.

1107 Replies to question 65 and 66 of questionnaire Q16 to Competitors.

1108 Form CO, paragraph 862 et seq.

1109 Form CO, paragraph 862.

(886) Firstly, the Combined Entity's share is very low [5-10]%, with a very low increment [0-5]%, which is below the level that could give rise to any competition concern in this segment.

(887) Secondly, multiple brokers, including global, regional, local and specialised brokers, provide sureties; for example, Marsh and Howden are active across the EEA in sureties, with local brokers such as Funk in Germany, Siaci in France, Assiteca in Italy and Van Breda in Belgium also competing with the Parties. This competitive landscape will continue to impose effective competitive constraints on the Combined Entity post-Transaction.

(888) Thirdly, the segment is characterised by a sizeable percentage of insurance carriers providing surety bonds and advice directly to clients ([a significant percentage]), which will continue to constitute a notable constraint on the Parties post-Transaction.

(889) For the national markets the Notifying Party puts forward arguments for Spain and Sweden, the two markets where the Parties combined market shares and reach market share levels above 20 % post-Transaction.

(890) For Spain, the Notifying Party argues as follows:[1110] The Parties' combined market share in Spain is [30-40]%, with an increment of [10-20]%. The Parties will continue to face strong competition post-Transaction, characterised by the strong presence of both global and local brokers providing and advising on surety bonds. In particular, clients are currently served by a wide array of competing brokers, led by Marsh ([30-40]%), in addition to Howden and a number of local brokers highly experienced in surety. Finally, clients may obtain surety bonds directly from established insurers with decades of experience in surety.

(891) For Sweden, the Notifying Party argues as follows:[1111] WTW has very limited activities in sureties in Sweden with a market share below [0-5]%, whilst Aon's share in surety is [20-30]%. Therefore, there is no increment resulting from a combination of the Parties in a hypothetical Swedish market for sureties, and consequently no prospect of the Transaction resulting in a significant impediment to competition in Sweden. Nevertheless, the Parties note that there is strong competition from Söderberg & Partners ([10-20]%), with the remainder of surety risk providers being quite fragmented, including competitors such as Marsh, Howden and local broker Sakra. Moreover, the competitive landscape is characterised by a significant amount of surety bonds being provided directly by insurers ([a significant percentage]), which will continue to constrain the Parties and all other brokers post-Transaction.

B. The Commission's assessment

B.1 Market structure

(892) The Parties have a combined market shares of [5-10] % on a global market and of [5-10] % on an EEA-wide market, which is thus below 20 %, according to the Notifying Party's estimates.[1112] A worldwide market or an EEA-wide market would therefore not be affected markets. In particular on a worldwide market, the Commission also notes that the combined market share of the Parties of [5-10] %, makes them the number two after Marsh with [10-20] % and putting them only slightly ahead of

1110 Form CO, paragraph 863.
1111 Form CO, paragraph 863.
1112 Form CO, paragraph 862 and Notifying Party, reply to RFI 71.

credible Tier two brokers Howden with [5-10] %, and Gallagher and Lockton with [0-5] % each. Horizontally affected markets on the national level within the EEA are Sweden and Spain,[1113] according to the Notifying Party's estimates, as presented in the following Tables 20 and 21.

Table 20: Commercial risk brokerage for sureties for the brokered channel, Sweden, 2017-2019.

	Value (GWP – USDm)			**Share (%)**		
Company	**2017**	**2018**	**2019**	**2017**	**2018**	**2019**
Aon	[…]	[…]	[…]	[20-30]	[20-30]	[20-30]
WTW	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Combined	***[…]***	***[…]***	***[…]***	***[20-30]***	***[20-30]***	***[20-30]***
Söderberg & Partners	[…]	[…]	[…]	[10-20]	[10-20]	[10-20]
Marsh	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Howden	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Sakra	[…]	[…]	[…]	[0-5]	[0-5]	[0-5]
Others	[…]	[…]	[…]	[60-70]	[60-70]	[60-70]
Total	**[…]**	**[…]**	**[…]**	**[90-100]**	**[90-100]**	**[90-100]**

Source: The Notifying Party, Response to the Commission's Decision of 21 December 2020 pursuant to Article 6(1)(c), Annex 8.

(893) In Sweden, there is only a limited market share increment of [0-5] % resulting in a combined market share of [20-30]% post-Transaction in 2019, as displayed in Table 20 above. The market volume in Sweden in 2019 was EUR […], measured in GWP. The market for brokerage services for sureties in Sweden is furthermore rather fragmented with Söderberg & Partners following the Parties post-Transaction, having a market share of [10-20] % in 2019. Next come Marsh with a market share of [0-5] % and Howden with a market share of [0-5]%. The remainder of the market is divided among many different smaller brokers. These include inter alia Brim, Osseen, Hjerta, Bolander, Nordic, Provins, and Gotrich.[1114]

(894) These limited combined market shares in Sweden, not exceeding 25 % post-Transaction, may be an indication that the Transaction is not liable to impede effective competition and may be presumed to be compatible with the common market.[1115] Furthermore the Transaction leads to a HHI-Delta of [0-500] is thus below [0-500] and therefore unlikely to lead to horizontal competition concerns.

1113 Form CO, paragraph 860.

1114 Notifying Party, reply to RFI 71.

1115 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, paragraph 219 et seq.

Table 21: Commercial risk brokerage for sureties for the brokered channel, Spain, 2017-2019.

	Value (GWP – USDm)			Share (%)		
Company	**2017**	**2018**	**2019**	**2017**	**2018**	**2019**
Aon	[…]	[…]	[…]	[10-20]	[10-20]	[20-30]
WTW	[…]	[…]	[…]	[0-5]	[5-10]	[10-20]
Combined	***[…]***	***[…]***	***[…]***	***[10-20]***	***[20-30]***	***[30-40]***
Marsh	[…]	[…]	[…]	[30-40]	[30-40]	[30-40]
Howden	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Rasher	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Avales Ores y Bryan	[…]	[…]	[…]	[5-10]	[5-10]	[5-10]
Others	[…]	[…]	[…]	[20-30]	[20-30]	[5-10]
Total	**[…]**	**[…]**	**[…]**	**[90-100]**	**[90-100]**	**[90-100]**

Source: The Notifying Party, Response to the Commission's Decision of 21 December 2020 pursuant to Article 6(1)(c), Annex 8.

(895) In Spain, the market volume in 2019 was EUR […], measured in GWP, as displayed in Table 21 above. In the Spanish market there is a market share increment of [10-20] % added by WTW to the existing market share of [20-30] % of Aon, resulting in a combined market share of [30-40] % post-Transaction in 2019.[1116] Next in line comes Marsh with a market share of a similar magnitude of [30-40] %. The remaining market shares for brokerage services for sureties in Spain are significantly lower with Howden as the third biggest competitor and a market share of [5-10] % followed by two local brokers Rasher and Avales Ores y Bryan with [5-10] % market shares each.

(896) The concentration level is high post-Transaction. The market for commercial risk brokerage for sureties in Spain has a HHI of approximately [3,000-3,500] post-Transaction with an HHI delta of over [500-1,000]. These values are above the thresholds below which the Commission's considers it unlikely to identify horizontal competition concerns post-merger.[1117]

B.2 Closeness of competition

(897) In the course of the phase 1 market investigation, customers, competitors and insurance companies consistently identified Aon, Marsh and WTW as close competitors in the market for sureties, across the EEA.

(898) Concerning Aon, among customers Marsh is clearly identified as Aon's closest competitor, followed with some distance by WTW.[1118] The same holds true among competitors.[1119] Again Marsh is identified as Aon's closest competitor, followed in some distance by WTW. In the same vein, insurance companies identified Marsh clearly as closest competitor to Aon.[1120] WTW is considered at some distance to the position of Marsh.

1116 WTW's changes in market shares over the period 2017 to 2019 are due to […] in market developments in the […]. Notifying Party, reply to RFI 71.

1117 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, paragraph 219 et seq.

1118 Replies to question 199 of questionnaire Q1 to Customers.

1119 Replies to question 47 of questionnaire Q5 to Competitors.

1120 Replies to question 19.1 of questionnaire Q4 to Insurance Companies.

(899) For WTW, customers again consider Marsh as the closest competitor, followed by Aon. Similarly, insurance companies consider Marsh as WTW's closest competitor, although closely followed by Aon.[1121] Competitors consider Aon as WTW's closest competitor followed in some distance by Marsh.

(900) Specific regional or national differences in this regard were not reported by customers.[1122] These results are in line with the perceived competitive strength of Aon, WTW and Marsh as the phase 1 market investigation showed, albeit based on a very limited number of respondents. However, a small number of insurance companies identified Aon, Marsh and WTW as the strongest competitors.[1123]

B.3 Results of the market investigation on likely impact of the Transaction

(901) The phase 1 market investigation revealed that the Transaction's impact on the market for sureties will be very limited.

(902) Customers replied in their majority that post-Transaction, there will be sufficient competitors left in the markets for brokerage services for sureties to serve their needs. This view was in particular taken by a large majority of customers with respect to the EEA, a large majority of customers with respect to Sweden and a large majority of customers with respect to Spain,[1124] and is moreover in line with the combined market share estimates, displayed in Tables 20 and 21 above.

(903) Customers critical towards the transaction mainly generally replied that the Transaction will reduce the number of competitors. Positive replies pointed out inter alia that "*it will bring more expertise for local & regional markets and global markets*".[1125]

(904) When asked explicitly about the Transaction's impact, the clear majority of all customers across the EEA that provided an answer took a positive or neutral stance.[1126] Again, negative views mainly generally criticized that the number of service providers will be reduced post-Transaction.[1127] In some positive replies respondents declared that they expect better services post-Transaction. Customers stated inter alia, that "*it does not affect [them] in any way negatively. Rather it brings extra surety providers to [their] table*", and "*that with this operation our broker will be in a better condition to present better geographic coverage, be more innovative and bring additional competitive solutions*" and that post-Transaction it will be possible to "*source brokerage [services] saving more time and more efficiently*".[1128]

(905) Also among Spanish customers the clear majority had a neutral or positive view of the transaction.[1129] One respondent from Spain stated that "*the united knowledge of both companies will have a positive impact*" on their interests.[1130] Customers from Sweden did not provide specific views on the Transactions' impact.

1121 Replies to question 19.2 of questionnaire Q4 to Insurance Companies.
1122 Replies to question 199.1 of questionnaire Q1 to Customers.
1123 Replies to question 20 of questionnaire Q4 to Insurance Companies.
1124 Replies to question 200 of questionnaire Q1 to Customers.
1125 Replies to questions 200.1 of questionnaire Q1 to Customers.
1126 Replies to questions 201 of questionnaire Q1 to Customers.
1127 Replies to questions 201 of questionnaire Q1 to Customers.
1128 Replies to questions 201 of questionnaire Q1 to Customers.
1129 Replies to questions 201 of questionnaire Q1 to Customers.
1130 Replies to questions 201 of questionnaire Q1 to Customers.

(906) These views are supported by competitors. The majority of competitors across the EEA also does not expect an impact of the transaction.[1131] Respondents critical towards the Transaction mainly referred generally to a higher market share or better market position of the Parties post-Transaction.

(907) However, of the competitors, that provided a reply, the majority declared that sufficient commercial risk brokers remain post-Transaction.[1132] This also holds true when asked whether sufficient commercial risk brokers remain post-Transaction for LMCs.[1133] Specific replies for Spain or Sweden were not provided.

(908) In the same vein, responding insurance companies across the EEA also expect in their majority that sufficient commercial risk brokers for sureties remain available post-Transaction.[1134] Specific replies for Spain and Sweden were not provided.

C. Conclusion on commercial risk brokerage for sureties

(909) From the above it follows, that Aon and WTW are perceived as two close competitors, but with Marsh as the closest competitor for both. However, market participants do not expect, that this closeness will translate into negative effects on competition and expect that sufficient alternative service providers will remain. For Sweden this also becomes evident with respect to the limited combined market shares of the Parties. In Spain, Marsh will hold a market share of similar magnitude as that of the Merged Entity, and Howden, a credible Tier two service provider with [5-10] % market share, comes as number three, albeit with some distance to the leading two players post-Transaction in terms of market shares. Rasher and Avales Ores y Bryan two local brokers are also available with market shares of [5-10] % each. Additionally, the Merged Entity will face out of market competitive constraints from international competitors. Although the phase 1 market investigation provided strong evidence that the relevant geographic market for the provision brokerage services for sureties is national in scope, a significant minority of customers also indicated that competition in this market takes place at a global level. This in particular holds true for Spanish customers. On a global market the Parties have a combined market share of [5-10] %, making them the number two after Marsh with [10-20] % and putting them only slightly ahead of credible Tier two brokers Howden with [5-10] %, and Gallagher and Lockton with [0-5] % each. Therefore, in particular for Spain, there are significant out of market competitive constraints from competitors on the global level. In view of the above, the Commission considers that the proposed Transaction does not lead to a significant impediment of effective competition with respect to the markets for brokerage services for sureties in an EEA-wide market, in Sweden and in Spain.

6.3.5.9. Energy

A. The Notifying Party's view

(910) The Notifying Party submits that the Transaction does not give rise to a significant impediment to effective competition in relation to commercial risk brokerage for energy risk.[1135]

1131 Replies to questions 53 of questionnaire Q5 to Competitors.
1132 Replies to questions 51.1 of questionnaire Q5 to Competitors.
1133 Replies to questions 51.2 of questionnaire Q5 to Competitors.
1134 Replies to questions 23 of questionnaire Q4 to Insurance Companies.
1135 Form CO, paragraph 544.

(911) Firstly, the Notifying Party considers that the market for commercial risk brokerage for energy risk is highly fragmented with multiple brokers, including global, regional, local and specialised brokers, which will continue to effectively constrain the Merged Entity post-Transaction.[1136]

(912) Secondly, the Notifying Party submits that the market for commercial risk brokerage for energy risk is characterised by aggressive expansion of competing brokers, such as Howden, as well as new entrants, such as BGC and McGill & Partners.[1137]

(913) Thirdly, the Notifying Party submits that insurers will continue seeking to win business directly from clients in the market for commercial risk brokerage for energy risk. The Notifying Party additionally explains that much of the direct distribution for energy risk takes place via energy-specific mutual insurance companies such as FM Mutual Global and Oil Insurance Limited.[1138]

(914) Fourthly, the Notifying Party explains that clients in the market for commercial risk brokerage for energy risk have considerable bargaining power. The Notifying Party explains that switching is easy in this market, and that clients use tactics such as using more than one broker, switching brokers, playing brokers off against each other, using highly sophisticated internal risk managers, and obtaining insurance through alternative channels.[1139]

(915) Finally, the Notifying Party submits that clients also exert competitive pressure on brokers through the use of captive insurance entities, and will continue to do so post-Transaction.[1140]

B. The Commission's assessment

B.1 Market structure

(916) The market shares provided by the Notifying Party for the market for commercial risk brokerage for energy risk on global and on EEA-wide level are provided in the tables below.

[1136] Form CO, paragraphs 599-602
[1137] Form CO, paragraphs 603-604.
[1138] Form CO, paragraphs 605-607.
[1139] Form CO, paragraphs 608-610.
[1140] Form CO, paragraphs 611-617.

Table 22: Commercial risk brokerage for energy risk market shares for the brokered channel, global level, 2017-2019.

Company	Value (GWP – USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[20-30]%	[20-30]%	[20-30]%
WTW	[…]	[…]	[…]	[5-10]%	[5-10]%	[0-5]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[30-40]%	[30-40]%	[30-40]%
Lockton	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Gallagher	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Howden	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
McGriff	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[30-40]%	[30-40]%	[20-30]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Table 6A.67 (CR)

Table 23: Commercial risk brokerage for energy risk market shares for the brokered channel, EEA level, 2017-2019.

Company	Value (GWP – USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
WTW	[…]	[…]	[…]	[10-20]%	[5-10]%	[10-20]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[40-50]%	[40-50]%	[40-50]%
Gallagher	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Howden	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
BMS	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Lockton	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Price Forbes	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
UIB	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
BGC	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Parisco AS	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Table 6A.69 (CR)

(917) The market for commercial risk brokerage for energy risk has an HHI in excess of [1,500-2,000] at global level, and of [2,000-2,500] at EEA level in 2019. The delta HHI caused by the Transaction is [0-500] at global level and around [0-500] at EEA level. As such, at global level, the increase at concentration is below the level at which the Commission is likely to identify competition concerns.[1141]

(918) The Transaction will strengthen Aon's position as the second largest player in the market at global and EEA level, but Marsh will remain the market leader both at global and EEA level. WTW is the third largest player at EEA level, but at global

1141 Horizontal Merger Guidelines, paragraph 20.

level several competitors have a larger market share in 2019, namely Lockton, Gallagher and Howden.

B.2 Competitive assessment

(919) The Commission notes that the combined market shares of the Parties remain modest at both global level ([20-30]%) and EEA level ([20-30]%) post-Transaction. Furthermore, at global level, the HHI levels and delta remain within the levels where the Commission is unlikely to identify competition concerns.[1142] Furthermore, players beyond the Big Three with meaningful market shares (similar to WTW's market share pre-Transaction) remain. In that respect, the market structure post-Transaction is unlikely to be congruent with the Transaction causing a significant impediment to effective competition.

(920) Furthermore, WTW does not appear to be a very strong player in the market for commercial risk brokerage for energy risk. This is visible in internal documents. An Aon internal document titled *US Risk & Health Executive Committee Meeting* labels WTW as "*Close to a non-entity for Energy. Some legacy clients but no new business*".[1143] Although not identified as a relevant market for commercial risk brokerage for energy risk, WTW's limited market position was also apparent in the Commission's market reconstruction for LMCs that source their needs worldwide from the EEA in the phase 1 investigation. The Commission's market reconstruction showed a modest market share for WTW and showed multiple competitors (besides Aon) with a higher market share than WTW.

(921) Customers that responded to the Commission's market investigation do frequently identify Aon and WTW as close competitors within the commercial risk brokerage market for energy risk, and other players were frequently named as well, including Marsh, Gallagher, Howden and Lockton.[1144] A majority of customers that provided an informative response to the market investigation considered that brokers other than the Big Three, including Gallagher, Lockton, McGill and McGriff would be able to meet their requirements for commercial risk brokerage for energy risk.[1145] This includes multinational energy companies, of which some indicated several suppliers besides the Big Three as suitable and current suppliers of commercial risk brokerage services for energy risk.[1146]

(922) In line with the above, the large majority of customers that responded to the Commission's market investigation consider that sufficient competitors would remain in the commercial risk brokerage market for energy risk post-Transaction to meet their needs.[1147] Additionally, the large majority did not expect the Transaction to lead to a negative impact on prices, quality, choice, innovation, premiums, or ability and incentive of the Merged Entity to negotiate favourable terms on their clients' behalf.[1148] Similarly, the majority of competitors that responded to the

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1142 Horizontal Merger Guidelines, paragraph 20.

1143 Aon internal document *US Risk & Health Executive Committee Meeting* dated 8 August 2018. Document ID 6403.

1144 Replies to question 136 of questionnaire Q1 to commercial risk brokerage customers.

1145 Replies to question 138 of questionnaire Q1 to commercial risk brokerage customers.

1146 Replies to question 138 of questionnaire Q1 to commercial risk brokerage customers.

1147 Replies to question 140 of questionnaire Q1 to commercial risk brokerage customers.

1148 Replies to question 141 of questionnaire Q1 to commercial risk brokerage customers.

Commission's market investigation did not anticipate a negative impact on any of these dimensions either.[1149]

C. **Conclusion on commercial risk brokerage for energy**

(923) Based on the above, the Commission considers that the Transaction does not lead to a significant impediment to effective competition in the market for commercial risk brokerage for energy risk due to non-coordinated horizontal effects. This conclusion applies regardless of whether the applicable geographical market definition is global or EEA-wide.

6.3.5.10. Aircraft operators

A. **The Notifying Party's view**

(924) The Notifying Party considers that the Transaction will not give rise to a significant impediment to effective competition in the market for commercial risk brokerage for aircraft operator risk for the reasons set out below.[1150]

(925) Firstly, the Notifying Party submits that Aon has been weakened in this segment in recent years. The Notifying Party explains that the bulk of Aon's aviation team moved to competing brokerage company JLT in 2009, and that […].[1151]

(926) Secondly, the Notifying Party explains that Marsh is the market leader in the market for commercial risk brokerage for aircraft operator risk and that the Transaction will not change this situation.[1152]

(927) Thirdly, the Notifying Party submits that Gallagher has been expanding its business since its acquisition of JLT's aircraft operators business, and will remain an effective competitor to the Merged Entity.[1153]

(928) Fourthly, the Notifying Party considers that the market for commercial risk brokerage for aircraft operator risk is characterised by the emergence of aggressive new and recent entrants, such as Piiq and McGill & Partners.[1154]

(929) Finally, the Notifying Party explains that smaller brokers can and do exercise a constraint on larger brokers in the market for commercial risk brokerage for aircraft operator risk, both individually and collectively. To illustrate this, the Notifying Party provides examples of business lost to smaller brokers.[1155]

B. **The Commission's assessment**

B.1 **Market structure**

(930) The market shares provided by the Notifying Party for the market for commercial risk brokerage for energy risk on global and on EEA-wide level are provided in the tables below.

1149 Replies to question 52.5 of questionnaire Q3 to competitors.
1150 Form CO, paragraph 323.
1151 Form CO, paragraphs 365-367.
1152 Form CO, paragraphs 368-370.
1153 Form CO, paragraphs 371-372.
1154 Form CO, paragraphs 373-384.
1155 Form CO, paragraphs 385-387.

Table 24: Commercial risk brokerage for aircraft operator risk market shares for the brokered channel, global level, 2017-2019.

Company	Value (GWP – USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[10-20]%	[10-20]%	[5-10]%
WTW	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[30-40]%	[30-40]%	[30-40]%
Gallagher	[…]	[…]	[…]	[10-20]%	[10-20]%	[20-30]%
Howden	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
K.M. Dastur	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Lockton	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Table 6A.39 (CR)

Table 25: Commercial risk brokerage for aircraft operator risk market shares for the brokered channel, EEA level, 2017-2019.

Company	Value (GWP – USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[5-10]%	[5-10]%	[10-20]%
WTW	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Marsh	[…]	[…]	[…]	[30-40]%	[30-40]%	[30-40]%
Gallagher	[…]	[…]	[…]	[10-20]%	[10-20]%	[20-30]%
Albatros	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Aelia	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
K.M. Dastur	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
UIB	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Howden	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[5-10]%	[5-10]%	[5-10]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Table 6A.41 (CR)

(931) The market for commercial risk brokerage for aircraft operator risk has an HHI in excess of [1,500-2,000] at global level and of [1,500-2,000] at EEA level in 2019. The delta HHI caused by the Transaction is [0-500] at global level and around [0-500] at EEA level.

(932) The Merged Entity will be the second largest player in the market both at global and EEA level, overtaking Gallagher. Marsh remains the market leader both at global and EEA level. The fifth largest competitor pre-Transaction, Albatros, is the in-house broker of Lufthansa and as such only performs limited business with external customers.

B.2 Competitive assessment

(933) The Commission notes that the combined market shares of the Parties remain modest at both global level ([20-30]%) and EEA level ([20-30]%) post-Transaction, and that two other players with similar market shares remain in the market post-Transaction.

In that respect, the market structure post-Transaction is unlikely to be congruent with the Transaction causing a significant impediment to effective competition.

(934) While customers responding to the Commission's market investigation identified Aon and WTW as close competitors, other brokers were also identified as close, namely Marsh and Gallagher.[1156] The same four were also considered by customers to be the strongest competitors in the market, with Aon, WTW and Marsh receiving the highest ratings by customers responding to the market investigation, closely followed by Gallagher.[1157] This is roughly in line with the market positions of these companies as estimated by the Notifying Party, which show that these four companies are the competitors with the biggest market share. Gallagher obtained its market position recently by buying the aerospace division that Marsh divested to remedy concerns identified by the Commission in its review of Marsh / JLT acquisition.[1158] This may contribute to its rating in the market investigation not entirely representing its market share.

(935) Since this acquisition, the market share data provided by the Notifying Party shows that Gallagher grew its market share in commercial risk brokerage for aircraft operator risk further by winning accounts such as Aeroflot Airlines, Interjet, Neos and Uzbekistan Airlines.[1159]

(936) While some customers responding to the Commission's market investigation were able to identify new entrants to the market, primarily Piiq and McGill, the majority did not (yet) consider them as credible competitors to the Parties in commercial risk brokerage for aircraft operator risk.[1160] However, the Commission does note that these entrants have won aircraft operator opportunities from the Parties, such as […].[1161]

(937) The vast majority of customers responding to the Commission's market investigation considered that sufficient brokers would remain in the market for commercial risk brokerage for aircraft operator risk to serve their needs. In line with this, the large majority did not expect the Transaction to lead to a negative impact on prices, quality, choice, innovation, premiums, or ability and incentive of the Merged Entity to negotiate favourable terms on their clients' behalf.[1162] Similarly, the large majority of competitors that responded to the Commission's market investigation did not anticipate a negative impact on any of these dimensions either.[1163] A competitor of the Parties explains: "*Aircraft operator market has a relatively healthy level of competition which will limit potential negative impacts of Aon-WTW combination. Divestiture of JLT Specialty team as part of the Marsh-JLT acquisition to Gallagher helped maintain wider range of client choice. Entry by PIIQ, BGC and McGill and Partners gives clients greater ability to drive competitive tension. Strength of in-house brokers / risks managers in this segment helps maintain a healthy market. Aon position pre-transaction more limited than in other risk classes. Limited client need for global service makes the risk class easier to enter.*"[1164]

1156 Replies to question 81 of questionnaire Q1 to commercial risk brokerage customers.

1157 Replies to question 82 of questionnaire Q1 to commercial risk brokerage customers.

1158 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*.

1159 Form CO, paragraph 372.

1160 Replies to question 84 of questionnaire Q1 to commercial risk brokerage customers.

1161 Form CO, paragraph 375.

1162 Replies to questions 85 and 86 of questionnaire Q1 to commercial risk brokerage customers.

1163 Replies to question 52.3 of questionnaire Q3 to competitors.

1164 Reply to question 52.3 of questionnaire Q3 to competitors (Document ID 4838).

C. Conclusion on commercial risk brokerage for aircraft operators

(938) Based on the above, the Commission considers that the Transaction does not cause a significant impediment to effective competition in the market for commercial risk brokerage for aircraft operator risk due to non-coordinated horizontal effects. This conclusion applies regardless of whether the applicable geographical market definition is global or EEA-wide.

6.3.5.11. Aerospace manufacturing

A. The Notifying Party's view

(939) The Notifying Party submits that the Transaction will not give rise to a significant impediment to effective competition for commercial risk brokerage for aerospace manufacturing risk, for the reasons set out below.

(940) *Firstly*, the Notifying Party indicates that there are a high number of strong competitors in the market for commercial risk brokerage for aerospace manufacturing risks, such as Marsh, Gallagher, Lockton, Howden Group Holdings and UIB.[1165]

(941) In its Reply to the 6(1)(c) Decision, the Notifying Party reiterates that competing brokers remain a credible constraint to the Merged entity post-Transaction, both individually and in the aggregate. The Notifying Party considers that a viable range of options remains post-Transaction.[1166]

(942) *Secondly*, the Notifying Party submits that Marsh is the global leader in this segment and that this will not change post-Transaction.[1167]

(943) In its Reply to the 6(1)(c) Decision, the Notifying Party stresses that the Parties' combined market share are below the level that should give rise to any concern. The Notifying Party considers that market structure would not significantly change post-Transaction, as Marsh remains market leader. Additionally, the Notifying Party explains that Gallagher has a similar market share to Aon.[1168]

(944) Moreover, the Notifying Party considers that the Parties are not particularly close competitors, and that Marsh is the closest competitor to both Aon and WTW.[1169] The Notifying Party submits that Marsh will continue to have at least the same strong incentives to compete with the Merged Entity post-Transaction.[1170]

(945) *Thirdly,* the Notifying Party indicates that Gallagher has been expanding its business since its acquisition of JLT's aerospace business and will remain an effective competitor to the Merged Entity.[1171]

(946) In its Reply to the 6(1)(c) Decision, the Notifying Party explains that Gallagher's aerospace manufacturing business has expanded rapidly in recent years with the acquisition of the JLT aerospace manufacturing business divested by Marsh to remedy concerns identified by the Commission in its review of Marsh / JLT acquisition and with hiring of brokers since. The Notifying Party submits that the

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[1165] Form CO, paragraphs 397-417.
[1166] Form CO, paragraphs 638-642.
[1167] Form CO, paragraphs 442-443.
[1168] Reply to the 6(1)(c) Decision, paragraphs 624-626.
[1169] Reply to the 6(1)(c) Decision, paragraphs 627-629.
[1170] Reply to the 6(1)(c) Decision, paragraphs 631-632.
[1171] Form CO, paragraph 444.

Commission considered Gallagher as a credible competitor when approving it as a buyer for the JLT divestment.[1172]

(947) *Fourthly*, the Notifying Party submits that Aon's presence in this segment has weakened in recent years as a result of a part of Aon's aviation team moving to competing broker JLT in 2009.[1173]

(948) *Fifthly*, the Notifying Party explains that brokers McGill & Partners and Piiq have recently entered this market and are competing aggressively and gaining customers rapidly. The Notifying Party submits that Piiq has won clients including Continental Aerospace Technologies, Dassault Aviation and Teledyne Technologies. The Notifying Party therefore consider that these entrants will act as a significant competitive constraint on the Merged Entity.[1174]

(949) In its Reply to the 6(1)(c) Decision, the Notifying Party further explains the competitive constraint posed by recent examples of entry and expansion, with Piiq and McGill being invited to Airbus' tender, and Piiq winning the Rolls Royce account. Both entrants also continue to hire insurance brokerage talent.[1175]

(950) *Sixthly*, the Notifying Party considers that barriers to entry are low. The Notifying Party explains that the landscape in commercial risk brokerage for aerospace manufacturing risks is highly competitive, characterised by a highly mobile workforce, and has seen strong examples of entry and innovation in the past years. As a result, broker mobility is high, and new entrants can hire talent from rivals, attracting customers rapidly.[1176]

(951) In its Reply to the 6(1)(c) Decision, the Notifying Party submits that the entry of Piiq (2020) and McGill (2019) and the expansion of Gallagher evidence that barriers to entry are low.[1177]

(952) *Seventhly*, the Notifying Party submits that the bargaining power of aerospace manufacturing clients is strong and will continue to act as a significant competitive constraint on the Merged Entity post-Transaction. The Notifying Party explains that clients in this risk type are large and sophisticated companies, and that they exercise bargaining power through methods such as co-broking arrangements and competitive tenders.[1178]

(953) In the Reply to the 6(1)(c) Decision, the Notifying Party submits that the strong buyer power of customers is demonstrated by the fact that many customers are very large original equipment manufacturers (OEMs) and that customers can and do frequently tender.[1179]

(954) *Finally*, the Notifying Party explains that in addition to larger competitors, smaller brokers can and do exercise a competitive constraint on larger brokers in this market, as broker expertise is more important than size of a team for this highly specialised risk type.[1180]

[1172] Form CO, paragraphs 633-637.
[1173] Form CO, paragraph 445.
[1174] Form CO, paragraphs 432-441.
[1175] Reply to the 6(1)(c) Decision, paragraphs 643-662.
[1176] Form CO, paragraphs 432, 437-438 and 450.
[1177] Reply to the 6(1)(c) Decision, paragraphs 659-662.
[1178] Form CO, paragraphs 446-448.
[1179] Reply to the 6(1)(c) Decision, paragraph 663-665.
[1180] Form CO, paragraphs 449-451.

B. The Commission's assessment

B.1 Market structure

(955) The market shares provided by the Notifying Party for commercial risk brokerage for aerospace manufacturing risk at global level are presented below.

Table 26: Commercial risk brokerage for aerospace manufacturing risk to all customers market shares for the brokered channel, global level, 2017-2019.

Company	Value (GWP – USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
WTW	[…]	[…]	[…]	[10-20]%	[20-30]%	[10-20]%
Combined	***[…]***	***[…]***	***[…]***	***[20-30]%***	***[30-40]%***	***[30-40]%***
Marsh	[…]	[…]	[…]	[50-60]%	[50-60]%	[50-60]%
Gallagher	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Lockton	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
BGC (Piiq)	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Howden	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[5-10]%	[0-5]%	[0-5]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Table 6A.43 (CR)

(956) The market for commercial risk brokerage for aerospace manufacturing risk is concentrated, with an HHI of around [3,000-3,500] in 2019 at global level. The Transaction leads to a considerable HHI increment, in excess of [500-1,000].

(957) Pursuant to the Notifying Party's market shares estimates, the Transaction would combine the second and third largest global competitors, and lead to a combined global market share of [30-40]% based on 2019 data, with an increment of [10-20]%. Marsh would remain the global market leader post-Transaction, with a market share of [50-60]%. The next largest competitor, Gallagher, is significantly behind with only [10-20]% market share at global level. All other competitors have market shares of [0-5]% or lower.

(958) The Transaction would leave a considerable gap between the market shares of the Merged Entity and Marsh on the one side, and the market shares of all other brokers on the other side.

(959) In light of the fact that qualitative feedback from the market suggested that Gallagher is a far weaker competitor for aerospace risk brokerage than suggested by the Notifying Party's market share estimate,[1181] the Commission reached out to the main competitor outside of the Big Three, Gallagher, to confirm its market share.[1182] Based on the information provided by Gallagher, its market share is far lower in the risk type aerospace manufacturing than estimated by the Parties. On global level, Gallagher's 2019 GWP was USD […]. Gallagher therefore has a far lower market share than Aon, contrary to what the Notifying Party submits. The merger therefore is a combination between the second and third largest players globally.

[1181] Replies to question 93.1 of questionnaire Q1 to commercial risk brokerage customers.

[1182] Non-confidential version of Gallagher RFI reply dated 29 March 2021 (Document ID 13 431).

B.2 Closeness of competition

(960) This Section will set out why the Commission considers that Aon and WTW are particularly close competitors, as well as strong competitors in the market for commercial risk brokerage for aerospace manufacturing risk.

(961) The customers responding to the Commission's market investigation gave clear feedback that Aon and WTW are close competitors in the market for commercial risk brokerage for aerospace manufacturing risks, and that only Marsh is similarly close. Other competitors were rated at a significant distance on closeness.[1183] One customer explained: "*Only 3 brokers on the market (AON, Willis, Marsh) have the network and the size to compete at this level. The others can be good, but not the same level.*"[1184] Another explained: "*only Marsh, Aon, and Willis have the capabilities to service its business needs. All other insurance brokers are significantly smaller (half or less the size of the top-tier firms) and have a significantly reduced ability to provide global services.*"[1185]

(962) According to customers that responded to the Commission's market investigation, the next closest competitors were first Piiq, then Gallagher and McGill in fifth place. However, those follow only at a large distance from Marsh and the Parties. Piiq was rated closer to the Parties than Gallagher, despite its recent entry and small market position when compared to Gallagher. This is in line with the fact that Gallagher's market share is far lower than estimated by the Parties. The credibility of each of these players is discussed in more detail in the below Section on *barriers to entry and expansion* (Section 6.3.5.11 B.6).

(963) Moreover, the Commission analysed the tender data submitted by Aon (see Annex B for further details on the Commission's framework for the analysis of tender data). This Section sets out the results of the Commission's analysis of tender data for commercial risk brokerage for aviation risk. As mentioned by the Notifying Party, aviation in Aon's tender data corresponds to the aircraft operators and aerospace manufacturing markets combined. The Commission notes that, even though Aon's tender data includes both the aircraft operators and aerospace manufacturing markets, the results are consistent with the qualitative findings in the market investigation that the Parties are particularly close competitors for commercial risk brokerage for aerospace manufacturing risk.

(964) The Commission carried out an analysis of tender data for all customers in aviation, with a participation analysis and a loss analysis.[1186,1187]

(965) In term of methodology, the Commission implemented four adjustments compared to the Notifying Party's submissions (see Annex B for further details), by: (i)

1183 Replies to questions 14 and 15 of questionnaire Q15 to aerospace manufacturing and space Customers.

1184 Replies to question 14.1 of questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 7421).

1185 Replies to question 14.1 of questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 9555).

1186 A participation analysis considers which brokers participate in tenders against Aon, and therefore allows to assess the degree of competitive interactions between the merging Parties relative to third-parties.

1187 A loss analysis considers to which brokers Aon loses tenders. The Commission considers the participation and loss analyses jointly to assess the competitive interactions between the Parties and their competitors. This is because participation in tenders is particularly credible if it also results in wins; the participation analysis therefore needs to be seen in conjunction with the analysis of win rates (i.e. the loss analysis).

considering tenders in terms of value, instead of count, due to the significant heterogeneity in tender values, (ii) excluding non-competitive tenders (i.e. tenders without any competitive interactions between suppliers), (iii) considering the period 2017-2019 instead of 2019 only, in order to increase the sample size and therefore mitigates the uncertainty related to samples with a small number of tenders (the analysis for 2019 is reported only as a sensitivity analysis), and (iv) excluding tenders with unknown participants or unknown winners.

(966) As regards the exclusion of tenders with unknown participants or unknown winners, this is based on the assumption that the distribution of winners/participants in the set of tenders with unknown winners or unknown participants is similar to the distribution of winners/participants in the set of tenders with known winners or known participants. The Commission considers that, for aviation, excluding tenders with unknown winners/participants is reliable, since, in particular (see Annex B for further details):

(a) When entering the names of winners, Aon's account executives have the choice among more than 1,000 brokers in the pick list. Given how comprehensive the pick list is, the Commission considers that: (i) it is unlikely that Tier two brokers would be missed[1188] and (ii) that the main local brokers would be well represented.

(b) Moreover, in aviation, the missing brokers identified by the Notifying Party are essentially local brokers, which do not appear as alternatives to the Big-Three brokers for LMCs in the market investigation. It is therefore unlikely that the Commission's analysis misses an important competitive constraint to Aon when "unknowns" tenders are excluded.

(c) In addition, the Commission undertook a manual review of tenders with unknown winners, and compared the corresponding clients with WTW customer data provided in the Reply to RFI33. For the period 2017-2019, among the tenders for aviation with unknown winners, WTW's customers represent a proportion ([a significant percentage], in term of value) which is similar than in the sample of tenders with known winners ([a significant percentage] by value, see recital (967)(b))[1189,1190] This indicates that the Commission's assumption is valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(d) The Commission considers that the argument on missing brokers in the pick-list of Aon tender data is mainly applicable to the loss analysis.[1191] In contrast, as regards the participation analysis, it is possible for Aon's account executives to enter as free text the name of other participants.[1192] The Commission therefore considers that, while Aon's account executive did not enter the full

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1188 The only exception is McGill, who has entered in 2019 (Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. The Notifying Party did not mention any other recent entrant as Tier-2 broker.

1189 Given the smaller number of tenders for all customers in aviation ([…] tenders for the period 2017-2019), the Commission was able to carry out the manual matching exercise for all tenders.

1190 For 2019, the Commission notes that the tender analysis is subject to a significant uncertainty due to the small number of tenders (with […] tenders in loss analysis where the winner is known).

1191 Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. This is because the internal system of Aon prevents the account executives from manually entering as free text in the winner field the names of winners not present in the default pick list.

1192 Reply to RFI37, paragraph 1.9: […]

list of participants in a tender (that is, not all participants are listed for a given tender), there is no reason to believe that the participation rates of WTW relative to their competitors would be biased when tenders with missing information on participants are excluded.

(967) The analysis of Aon's tender data for all customers in EEA in aviation shows […] (see Annex B for a detailed description of the Commission's analysis of tender data). This is based on the following:

(a) The participation analysis, which shows that, for the period 2017-2019:

– Aon encounters […] the most frequently ([a significant percentage] by value), and there is a significant gap to other brokers ([…]). […].

– […].[1193][…].

– Overall, […].

(b) The loss analysis, for the period 2017-2019, which shows that […]:[1194]

– […] has the highest win rate against Aon, [a significant percentage] in term of the value lost by Aon ([a significant percentage] by count). […].

– By contrast, […].

– […].

(c) The sensitivity analysis for 2019 confirms the findings of the baseline analysis based on the period 2017-2019 for both the participation analysis and the loss analysis.[1195]

(968) Notwithstanding the exclusion of the direct channel from the relevant product market, Aon tender data also shows […]:[1196, 1197]

(a) The participation analysis shows […].

(b) Similarly, the loss analysis shows that […].

(969) Lastly, as regards the competitive constraints faced by WTW, the tender data provided by WTW does not allow to carry out a participation analysis and a loss analysis to assess the competitive constraints faced by WTW (see Annex B for further details). As an alternative, the Commission has used Aon tender data to

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1193 Non-confidential minutes of conference call with a competitor/customer, 4 November 2020, Document ID 6422.

1194 Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Annex B for further details), the Commission reports the results of the switching analysis in Annex B. However, The Commission considers that the switching analysis proposed by the Notifying Party is not interpretable given the small number of tenders ([…] tenders for the period 2017-2019).

1195 For 2019 only, the Commission notes the smaller number of tenders considered ([…] tenders for the participation analysis compared to […] tenders for 2017-2019, and […] tenders for the loss analysis compared to […] tenders for 2017-2019).

1196 While the Commission defined a product market limited to the provision of brokerage services, excluding direct distribution as per Section 6.1.3 above, considering the Notifying Party's arguments that the direct channel exerts a competitive constraint on brokers, the Commission assesses the direct channel as a potential 'out of market' competitive constraint.

1197 These findings are also confirmed when only 2019 is considered, even though the Commission notes the greater uncertainty due to the smaller number of observations available.

perform a targeted incumbent analysis to assess the competitive constraint faced by WTW, for the period 2017-2019.[1198]

(a) Among the opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), […].

(b) Other incumbents, after excluding […].

(c) This analysis of Aon tender data shows […].

(970) Based on the above, the Commission considers that the analysis of tender data for all customers in EEA in Aviation shows that Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon and WTW.

(971) Customers that responded to the Commission's market investigation also consider WTW a very strong competitor. Only Aon and Marsh are rated similarly strong, and other competitors only follow at great distance.[1199] Additionally, and as explained in the previous Section, WTW is a very close competitor to Aon.[1200]

(972) Furthermore, the market structure and the Parties internal documents indicate that WTW competes particularly aggressively in this market. Over the past three years, WTW has increased its market share from [10-20]% to [10-20]% globally. This represents an increase of [a significant percentage]. In absolute terms, WTW's aggressive growth is even more striking: WTW grew from a GWP of USD […] in 2017 to a GWP of USD […] in 2019 – an increase of [a high percentage] over the course of three years. No other competitor has been able to achieve such absolute growth. The Notifying Party partly explains this growth by indicating that […], a large WTW client, placed large policies in 2018 and 2019, worth USD […] and USD […] respectively, and only placed USD […] in 2017. Therefore, the Notifying Party argues, WTW did not capture market share of other players.[1201] However, this only explains approximately half of WTW's USD […] growth, still leaving an impressive amount of growth from other sources.

(973) Further evidence of WTW's aggressive competition can be found in its recruiting behaviour. Despite losing talent to recent entrant over the last year, WTW was able to hire significantly more new staff than it lost. A September 2020 article in trade publication Insurance Insider reporting on an interview with the WTW aerospace division CEO indicates that WTW have been able to hire no less than 33 new people in its aerospace division that year, comfortably outnumbering departures.[1202] In an email by the CEO of WTW's aerospace division explaining the rationale for one of these hires, he states: "*[…]*"[1203]

(974) As to the Notifying Party's argument that Aon has lost competitive strength following departure of part of its team, this was not supported by the market investigation. The large majority of customers that responded to the Commission's market investigation in fact indicate that they were not aware of the departure of part of Aon's team or have not noticed any impact.[1204] In line with this, the Commission

1198 The Commission notes that there […] for 2019 only where the incumbent is known.
1199 Replies to question 93.1 of questionnaire Q1 to Customers.
1200 Replies to questions 14 and 15 of questionnaire Q15 to aerospace manufacturing and space Customers.
1201 Form CO, footnote 497.
1202 WTW internal document dated 16 September 2020 (Document ID 10688-20577).
1203 WTW internal document dated 8 October 2019 (Document ID 10688-20889).
1204 Replies to question 16 of questionnaire Q15 to aerospace manufacturing and space Customers.

notes that while Aon's market share has decreased a little between 2017 and 2019 according to the Notifying Party's estimate, its absolute GWP has remained more or less stable. This further supports that Aon has not lost a significant amount of business over the last years.

(975) The Notifying Party's argument that Aon has lost competitive strength […]."

Figure 18: [Internal document]

[Internal document]

Source: Aon internal document Document ID 010268-046057

(976) The Transaction leads to the combination of the number 2 (WTW) and number 3 (Aon) in the market in terms of market shares. The resulting market structure is one where the Merged Entity and Marsh dominate the market, and all other players follow only at great distance.

(977) Based on the above, the Commission considers that (i) Aon and WTW are particularly close competitors and only Marsh is similarly close, and (ii) the Transaction deprives the market of a particularly important competitor in a market that is concentrated and does not have many competitors to begin with, by combining WTW and Aon, which pose an important competitive constraint on each other pre-Transaction.

B.3 Switching

(978) While switching suppliers in the market for commercial risk brokerage for aerospace manufacturing is possible, it has its challenges. Customers that responded to the Commission's market investigation most commonly characterised the difficulty of switching ranging from neutral to difficult. Only a small minority considered it easy and no one respondent considered it very easy. Challenges mainly consist of a new broker having to become familiar with the intricacies of a client's insurance structure. The incumbent is at the advantage, as it will have developed an intimate knowledge of the client's organisation over the years. One customer explains "*The knowledge of the company and its risks, the competence of the team in charge of our account would make a switch challenging.*"[1205] Another customer indicates "*We have a complex insurance coverage structure which would take some time to get a new broker familiar with*"[1206]

(979) In conclusion, while switching suppliers for commercial risk brokerage for aerospace manufacturing is a challenging but feasible undertaking today, the Transaction will severely limit the switching options available to customers.

B.4 Likely reaction from competitors

(980) In its assessment of likely reactions from competitors towards the Merged Entity, the Commission distinguishes between Marsh on the one hand and Tier two brokers and other smaller brokers individually and in aggregate. This assessment covers the likely ability and incentive of the competing brokers to constrain the Merged Entity post-Transaction.

1205 Replies to questions 13 of questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 7975).

1206 Replies to questions 13 of questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 8148).

(981) As regards **Marsh,** the Commission acknowledges that Marsh, one of the Big Three brokers, will likely remain a credible broker in the market for commercial risk brokerage for aerospace manufacturing risk. However, the Commission considers it likely that Marsh will likely benefit from any prices increases by the Merged Entity and therefore have a reduced incentive to compete compared to the situation pre-Transaction.

(982) The Commission firstly notes that in accordance with its Horizontal Merger Guidelines competitive pressure and incentives to compete for non-merging firms can be reduced.[1207]

(983) This is further supported by the findings set out in Section 6.3.5.11 B.2 above, which sets out the Commission's findings that the Parties and Marsh are particularly close competitors, with other brokers not considered as suitable by many customers. Thus, in the event of a price increase by the Merged Entity, Marsh would be the most likely alternative for most customers and directly benefit from the significant loss of competition between the Parties. Against this background, the Commission considers that Marsh is likely to have less incentive to compete post-Transaction compared to the situation absent the proposed Transaction.

(984) The Commission's assessment of Marsh's incentive to compete is also supported by its responses to the market investigation. In response to the Commission's market investigation, Marsh has indicated that while it does not see any positive impact on the market as a whole, it "*acknowledges that the transaction will likely have a positive impact on us by substantially reducing competition for such clients.*"[1208] The Commission considers it likely that in line with this response, elimination of one of Marsh' main two competitors in this market will significantly decrease Marsh' incentive to compete aggressively.

(985) Moreover, this is supported by reported statements made by Marsh's CEO Daniel Glaser with respect to the Transaction. In a call with investors, Glaser said: "*And on a personal comment, as somebody who's had almost 40 years in this business, I don't think the Aon Willis combination is good for clients or good for the market. But I do think it's good for Marsh & McLennan. I mean, come on, the big three becomes the big two, how could that not be a benefit to us?*"[1209] In this respect the Notifying Party criticised in its Reply to the 6(1)(c) Decision the fact that the Commission relies on a single informal statement, which in the Notifying Party's opinion is clearly an inadequate basis for such a wide-ranging provisional conclusion.[1210] Nevertheless, the Commission considers that this statement by Marsh's CEO is in line with the theory of harm identified in the Horizontal Merger Guidelines.

(986) In any event, in line with paragraph 31 of the Horizontal Meger Guidelines, the Commission considers that Marsh alone as a credible alternative to the Merged Entity would not be enough to counter the negative effects from the significant loss of competition as a result of the Transaction. In particular, since the most common method of sourcing identified by customers responding to the Commission's phase 2 market investigation is tenders, and nearly all customers invite at least three brokers

1207 See Horizontal Merger Guidelines, paragraphs 24-25.
1208 Replies to question 49 of questionnaire Q16 to Competitors (Document ID 9055).
1209 Marsh & McLennan Companies, Inc. (MMC) CEO Dan Glaser on Q2 2020 Results - Earnings Call Transcript, Seeking Alpha, dated 30 July 2020, Document ID 6465.
1210 Reply to 6(1)(c) Decision, paragraphs 16 and 17.

in tenders, and the vast majority invite either four or five.[1211] The majority of responding customers also indicate that only three brokers currently meet their criteria.[1212] In addition, a large proportion of responding customers indicate that they expect competition to decrease in future tenders if the Transaction were to go ahead.[1213]

(987) As for other competitors than Marsh, the Commission considers that these do not pose a credible competitive constraint on Aon and WTW, as will be explained below.

(988) To the Parties' awareness, McGill has so far not won any major aerospace manufacturing accounts. Piiq has won four noteworthy accounts: Continental Aerospace Technologies, Dassault Aviation, Teledyne Technologies and Rolls Royce. […].[1214] The only example that the Commission has been presented with concerns […][1215] […]. Therefore, it remains an open question where the client will move to in the next tender.

(989) While the Parties' internal documents confirm that McGill and Piiq are aggressively pursuing talent, so far the number of personnel lost to them for aerospace manufacturing remains limited. Moreover, WTW's hiring in its aerospace organisation in 2020 have comfortably outnumbered the lost personnel. Insurance publication Insurance Insider interviewed the CEO of WTW's aerospace organisation in September 2020, resulting in an article titled "*Willis winning battle for aviation talent: Rooley*". The article explains that "*Willis Towers Watson has augmented its aviation team by 33 in the past year, with appointments comfortably eclipsing departures*". The interview continues saying that: "*When some talent has left fortunately there hasn't been an immediate flight of business. The business has largely stayed because we already have a deep talent pool to draw resource from…*"[1216]

(990) Concerning specifically Piiq, several documents of the Parties cast doubt on whether the Parties consider Piiq a credible competitor:

(a) In an email exchange from July 2020, […][1217]

(b) A WTW internal email correspondence from November 2020 casts further doubt on Piiq's viability. […][1218]

(991) Similarly, the Parties' internal documents cast doubt on McGill's credibility in the field of aerospace manufacturing:

(a) In an email exchange from May 2020, […][1219]

(992) In line with the above, only a minority of customers responding to the Commission's market investigation considered either McGill or Piiq as a credible alternative to the Parties.[1220] The Commission also considers that, with the current market position of [0-5]%, even a growth to [5-10]% would be very ambitious in the next three years;

1211 Replies to question 15 of questionnaire Q15 to aerospace manufacturing and space Customers.
1212 Replies to question 17 of questionnaire Q15 to aerospace manufacturing and space Customers.
1213 Replies to questions 26 and 27 of questionnaire Q15 to aerospace manufacturing and space Customers.
1214 Form CO, paragraph 435.
1215 WTW internal document dated 31 July 2020 (Document ID 10688-7128).
1216 WTW internal document dated 16 September 2020. Document ID 10688-20577.
1217 WTW internal document dated 7 July 2020. Document ID 10688-33877.
1218 WTW internal document dated 11 November 2020. Document ID 10682-79587.
1219 WTW internal document dated 7 May 2020 (Document ID 10682-15750).
1220 Replies to question 17 of questionnaire Q15 to aerospace manufacturing and space Customers.

and a market position of [5-10]% would still put these entrants significantly behind the Parties. Therefore, it cannot be expected that these new entrants will reach a similar level of competitive constraint as the Parties currently exercise on each other in a sufficiently short amount of time.

(993) Based on the above, the Commission considers there is insufficient certainty as to whether new entrants McGill and Piiq are sufficiently credible to take up the place of WTW or Aon post-Transaction.

(994) In addition to recent entrants, Gallagher has expanded its market position significantly in recent years, primarily by buying the aerospace division that Marsh divested to remedy concerns identified by the Commission in its review of Marsh / JLT acquisition. However, the Notifying Party has not been able to present the Commission with examples of Gallagher winning aerospace manufacturing business from the Parties. In fact, most of the examples presented by the Notifying Party concern Gallagher winning aircraft operator business, which is a market where the Commission did not raise concerns. This suggests that the focus of Gallagher's aviation business lies with aircraft operator clients, rather than aerospace manufacturing clients. This is in line with market share estimates provided by the Notifying Party. While Gallagher's market share in commercial risk brokerage for aerospace manufacturing has remained stable over the last three years, and thus does not support the argument that Gallagher has been expanding, Gallagher's market share in commercial risk brokerage for aircraft operators has expanded from [10-20]% to [20-30]% in 2017 to 2019.

(995) In line with the above, only a minority of customers responding to the Commission's market investigation considered Gallagher as a credible alternative to the Parties for commercial risk brokerage for aerospace manufacturers.[1221] Interestingly, Gallagher was considered as credible by even fewer respondents than both McGill and Piiq, despite the latter two having only entered the market recently and that Gallagher has a larger market position according to the Notifying Party's market share estimates. This can be explained by the fact that Gallagher's market share on the market for commercial risk brokerage for aerospace manufacturing is far lower than estimated by the Parties (as discussed above). This is congruent with the market investigation feedback, which does not identify Gallagher as a strong competitor in the market.

(996) Based on the above, the Commission considers that there are likely to be only two remaining credible competitors on the market for commercial risk brokerage for aerospace manufacturing risk post-Transaction. This is not likely to be enough, as customers are concerned that there will remain insufficient alternatives for customers to switch to post-Transaction. Large part of the customers that replied to the Commission's market investigation, consider that post-Transaction, the market structure will not allow them to obtain satisfactory procurement outcomes.[1222] This is in line with the fact that, today, the majority of customers that responded to the Commission's market investigation invite three brokers to tender.[1223] As the majority of the market only considers Marsh and the Parties as credible options,[1224] the Transaction will no longer allow this group to invite three competitors that they consider credible to tenders.

1221 Replies to question 17 of questionnaire Q15 to aerospace manufacturing and space Customers.
1222 Replies to questions 26 of questionnaire Q15 to aerospace manufacturing and space Customers.
1223 Replies to questions 9 of questionnaire Q15 to aerospace manufacturing and space Customers.
1224 Replies to question 17 of questionnaire Q15 to aerospace manufacturing and space Customers.

(997) Therefore, the Commission considers it likely that the Transaction may make market conditions harder for new entrants, while consolidating market power with the Big Three, which post-Transaction would be reduced to just two.

B.5 Countervailing factors

(998) The Commission's market investigation did not provide evidence of any countervailing factors meaningfully constraining the Merged Entity post-Transaction.

(999) The large majority of customers responding to the market investigation considered that they do not have strong buyer power in this market. While, as the Notifying Party puts forward, the commercial risk brokerage market for aerospace manufacturing is characterised by a large amount of large and sophisticated companies, this does not apply to all customers. Several customers indicated that the aerospace-related products they manufacture only comprise small part of their overall product portfolio. They therefore did not consider that they source a sufficient volume of insurance brokerage services to exercise meaningful buyer power.[1225] Moreover, the market includes customers that are small and medium enterprises and consider that they have only limited negotiating power.[1226]

(1000) While larger buyers which are focused on aerospace manufacturing typically considered their negotiating power as more significant, even among those several explained that the amount of available brokers is severely limited, restricting their negotiation power.[1227]

(1001) Even more so than for other risk types, direct placement with insurers is not a feasible option in this market, as it requires a large amount of risk-specific expertise from the brokers. Only a very small minority of customers responding to the market investigation considered direct placement an option.[1228] The Notifying Party admits as much itself, indicating that "*in the aerospace manufacturing segment the share of the non-brokered channel is limited.*"[1229] The Notifying Party estimates that approximately [a very high percentage] of aerospace manufacturing risk is placed through brokers, both globally and in the EEA.[1230]

(1002) As for other out-of-market constraints, not a single customer responding to the Commission's market investigation considered a captive insurance organisation a credible alternative to broker services. Customers explain that if anything, captive insurance organisation are a complement to external insurance capacity, and should therefore be compared to insurance rather than insurance brokerage. Furthermore, captive insurance organisations cannot fully replace the external insurance market. Customers that have a captive insurance organisation still need brokers; either to transfer the residual risk to the insurance market, manage the captive, and/or to reinsure risk assumed by the captive insurance organisation.[1231]

(1003) Based on the above, the Commission has not found any countervailing factors that would credibly constrain the Merged Entity post-Transaction.

1225 Replies to question 18 of questionnaire Q15 to aerospace manufacturing and space Customers.
1226 Non-confidential reply by customer. Email dated 22.2.2021 (Document ID 10789).
1227 Replies to question 18 of questionnaire Q15 to aerospace manufacturing and space Customers.
1228 Replies to question 17 of questionnaire Q15 to aerospace manufacturing and space Customers.
1229 Form CO, paragraph 421.
1230 Annex 6A.5 to the Form CO, paragraph 61.
1231 Replies to question 17.2 of questionnaire Q15 to aerospace manufacturing and space Customers.

B.6 Barriers to entry and expansion

(1004) In line with the Notifying Party's submission, there are two recent entrants in commercial risk brokerage for aerospace manufacturing risk: McGill and Piiq. Both pursue a growth strategy based on hiring of brokerage talent from other industry participants. Additionally, Gallagher has recently expanded through the acquisition of JLT's aerospace manufacturing business.

(1005) However, as discussed in the Section on *likely reaction from competitors* (Section 6.3.5.11 B.4), these entrants do not pose credible competitive constraints to the Parties.

(1006) Furthermore, the recent entry of McGill and Piiq and expansion by Gallagher by themselves are by no means evidence that the barriers to entry or expansion in commercial risk brokerage for aerospace manufacturing are low. Both entrants are in the position where they have considerable financing (McGill is backed by private equity firm Warburg Pincus and Piiq is owned by financial services company BGC Partners, Inc.). Furthermore, McGill was founded by Steven McGill, who was formerly group president of Aon. Other firms can therefore not necessarily easily replicate the entry strategy of these two firms, which was based on considerable investment in broker talent. As for Gallagher, its expansion is largely the result of it buying the aerospace division that Marsh divested to remedy concerns identified by the Commission in its review of the Marsh / JLT acquisition. As a one-off event, this does not evidence low barriers to expansion.

(1007) In fact, feedback by the market demonstrates that both entry and expansion in the commercial risk brokerage market for aerospace manufacturing is considered difficult. The majority of competitors that responded to the Commission's market investigation indicated that entering the commercial risk markets in general is either difficult or very difficult.[1232] One of the main barriers named by competitors is developing the required expertise. This is particularly pertinent for a risk type such as aerospace manufacturing, which is highly complex and requires highly specialised knowledge. For commercial risk brokerage in aerospace manufacturing risk, customers rated risk-specific expertise among the most important criteria when selecting a broker.[1233]

(1008) Contrary to the Notifying Party's argument, talent mobility does not significantly lower these barriers to entry and expansion. A large majority of competitors that responded to the Commission's market investigation indicate that hiring talent from competing brokers is very difficult and costly. Competitors mention that contractual clauses such a non-compete clauses and meaningful upfront investment form barriers.[1234]

(1009) The Commission received feedback from competitors that the Transaction may heighten barriers to entry and expansion for new entrants in the market. One competitor explains that: "*This reduction in competition will materially reduce their [customers'] ability to secure effective service and pricing. Scale of the combined Aon-WTW will make it challenging for relatively new Aviation competitors (e.g. PIIQ, BCG, Gallagher) to expand into Aerospace and offer replacement*

[1232] Replies to question 45 and 46 of questionnaire Q5 to Competitors.

[1233] Replies to question 12 of questionnaire Q15 to aerospace manufacturing and space Customers.

[1234] Replies to question 43 of questionnaire Q5 to Competitors.

competition."[1235] Considering that the Parties' competition on the commercial risk brokerage market for aerospace manufacturing risk today consists of one large competitor (Marsh) and several recent entrants (Piiq, McGill and Gallagher), the Commission considers this potential impact particularly important. Any heightening of barriers to entry and expansion, which are already high today (see Section 6.3.5.11 B.6), is likely to materially affect new entrants' ability to expand. This would further consolidate market power with the Big Three.

B.7 Results of the market investigation on likely impact of the Transaction

(1010) In response to its market investigation, the Commission received a large amount of concerns on the likely impact of the Transaction on the market for commercial risk brokerage services for aerospace manufacturing risk.

(1011) Around half the customers responding to the Commission's market investigation expect a negative impact on the market for commercial risk brokerage for aerospace manufacturing risk.[1236] Customers indicate that they are concerned that insufficient credible competitors remain post-Transaction to obtain satisfactory outcomes with respect to procurement of commercial risk brokerage for aerospace manufacturing risk.[1237] In line with this, many customers are concerned that post-Transaction, the merged entity would have the ability to significantly (>5-10%) increase prices for commercial risk brokerage for aerospace manufacturing risk.[1238]

(1012) The Commission has been made aware of cases where customers exclude one of the Big Three as a supplier for reasons such as disputes or confidentiality concerns. For example, one competitor explains that "*Major players in this sector often require brokers to be security cleared and have confidentiality concerns in respect of their product innovation. These clients may value the ability to use a broker that is not employed by their competitors which may make choice reduction more profound.*"[1239] For customers that only consider the Big Three as suitable choices that find themselves in such situation, there would be no alternative source of supply to turn to post-Transaction. In case such situation is public knowledge, their incumbent supplier would furthermore be aware of their market power vis-à-vis the customer in question.[1240]

(1013) A large majority of competitors that responded to the Commission's market investigation indicated that they expect a negative impact on the market for commercial risk brokerage for aerospace manufacturing risks as a result of the Transaction. Competitors comment on the lack of choice and the resulting impact on competition in the market as a result of the Transaction. One competitor explains: "*This transaction would have a negative impact, as it would consolidate and then restrict the competitive services available for clients in the short to medium term. Currently the limitation of insurance capacity available for clients would be compounded by a limitation of brokerage services, creating pricing inflation and consolidation of service.*"[1241] Another competitor explains that: "*We feel that there will be a negative effect because the client will not have the choice of brokers with*

1235 Replies to question 50 of questionnaire Q16 to Competitors (Document ID 8961).
1236 Replies to question 29 of questionnaire Q15 to aerospace manufacturing and space Customers.
1237 Replies to question 26 of questionnaire Q15 to aerospace manufacturing and space Customers.
1238 Replies to question 27 of questionnaire Q15 to aerospace manufacturing and space Customers.
1239 Reply to question 50 of questionnaire Q16 to Competitors (Document ID 8961).
1240 Replies to question 26 of questionnaire Q15 to aerospace manufacturing and space Customers.
1241 Reply to question 51 of questionnaire Q16 to Competitors (Document ID 8802).

which to work thus reducing the alternative quoting power of approaching several markets"[1242]

(1014) Additionally, the Commission received feedback that the Transaction may hinder the entry and expansion of new entrants in the market. One competitor explains: "*This reduction in competition will materially reduce their ability to secure effective service and pricing. Scale of the combined Aon-WTW will make it challenging for relatively new Aviation competitors (e.g. PIIQ, BCG, Gallagher) to expand into Aerospace and offer replacement competition.*"[1243] Considering that the market today is mostly concentrated among few big players and barriers to entry and expansion are already high, the Commission considers that any heightening of those barriers may materially affect the ability of the few new entrants in the market, such as Piiq and McGill, to expand.

C. Conclusion on commercial risk brokerage for aerospace manufacturing risk

(1015) Taking into account the evidence set out above, and in view of the level of the combined market shares, the closeness of competition between the Parties and the resulting loss of the important competitive constraint that WTW exercised on Aon pre-Transaction, the lack of other credible competitive constraints on the Parties (other than Marsh), the limited countervailing factors, the high barriers to entry and expansion and the negative feedback received from market participants, the Commission concludes that it is likely, and there is even a strong probability, that the Transaction will significantly impede effective competition on the market for commercial risk brokerage for aerospace manufacturing to all customers at the global level.

6.3.5.12. Space

A. The Notifying Party's view

(1016) The Notifying Party disputes that there is a credible basis on which the Transaction could give rise to a significant impediment to effective competition for commercial insurance brokerage services for space risks for all customers and submits the following arguments:[1244]

(1017) *Firstly,* the Parties' combined market share is not a meaningful indicator of competitive strength in this segment, because of the specific characteristics of the space segment whereby significant part of the premiums on policies relate to satellite launches which are infrequent events.[1245]

(1018) *Secondly,* the Parties are not particularly close competitors – Marsh, a global market leader, is the closest competitor of each Aon and WTW.[1246]

(1019) *Thirdly,* the Merged Entity will continue to face a significant competitive constraint from Marsh, Gallagher and other brokers, such as Piiq (recent entrant), Price Forbes and UIB.[1247]

(1020) *Fourthly*, the Commission failed to take into account the strong examples of entry and expansion specific for this market which shows that barriers to entry and/or

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1242 Reply to question 50 of questionnaire Q16 to Competitors (Document ID 8645).
1243 Reply to question 50 of questionnaire Q16 to Competitors (Document ID 8961).
1244 Reply to 6(1)(c) Decision, paragraphs 669-699.
1245 Reply to 6(1)(c) Decision, paragraphs 672 to 673.
1246 Reply to 6(1)(c) Decision, paragraphs, paragraph 675.
1247 Reply to 6(1)(c) Decision, paragraphs 676 to 685.

expansion are low.[1248] The Parties argue that the Commission made no attempt to reconcile the recent example of entry from Piiq with its conclusion that barriers to entry in this segment are "very significant". First the Parties argue that Piiq publicly announced that it invested in satellite specific expertise. Second, Piiq's low market shares are explained by a recent entry and a limited number of opportunities in the space segment. The Parties nonetheless submit that Piiq is *"already on the radar of both customers and competitors"*.[1249] The Parties further argue that there is little evidence that barriers to entry are very significant in the market of commercial risk brokerage for space.

(1021) *Fifthly*, the Notifying Party argues that the Commission failed to take into account the strong buyer power of customers in this segment.[1250] With respect to buyer power, the Notifying Party submits that customers are sophisticated, significant in size, have a very high level of expertise, are highly price sensitive and structure very competitive bidding processes in a way to discipline (or reward) brokers and play brokers off against each other to obtain the most favourable terms (partly due to a low number of large space projects). Moreover, Parties argue that customers have the ability to switch between brokers and can credibly threaten to do so through the competitive bidding processes they run.

(1022) *Lastly*, the Parties submit that the Commission did not take into account the use of captives by the space customers, which is a prevalent feature in this segment and exerts competitive constraint.

B. The Commission's assessment

B.1 Market structure

(1023) The market shares provided by the Notifying Party for commercial risk brokerage for space risk at global level are presented in the table below.

Table 27: Commercial risk brokerage for space risk to all customers market shares for the brokered channel, global level, 2017-2019.

Company	Value (USDm)			Share (%)		
	2017	2018	2019	2017	2018	2019
Aon	[…]	[…]	[…]	[20-30]%	[30-40]%	[20-30]%
WTW	[…]	[…]	[…]	[10-20]%	[10-20]%	[10-20]%
Combined	***[…]***	***[…]***	***[…]***	***[30-40]%***	***[40-50]%***	***[30-40]%***
Marsh	[…]	[…]	[…]	[50-60]%	[40-50]%	[50-60]%
Malakut	[…]	[…]	[…]	[0-5]%	[5-10]%	[5-10]%
Gallagher	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
UIB	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%
Others	[…]	[…]	[…]	[5-10]%	[0-5]%	[0-5]%
Total	**[…]**	**[…]**	**[…]**	**[90-100]%**	**[90-100]%**	**[90-100]%**

Source: Form CO, Table 6A.89 (CR); Notifying Party's reply to Decision 6(1)(c) Annex 8(CR)

(1024) According to the market shares provided by the Notifying Party, the combined market shares of the Parties in the market of commercial risk brokerage for space at the global level are high. The Transaction would combine the second and third

1248 Reply to 6(1)(c) Decision, paragraphs 686 to694.
1249 Reply to 6(1)(c) Decision, paragraph 688.
1250 Reply to 6(1)(c) Decision, paragraphs 695 to 698.

largest global competitors, and result in a combined market share of around [40-50]% based on 2019 data, with a considerable increment of [20-30]%. Marsh would remain the global market leader post-Transaction, with a market share of [50-60]%. At a global level, the next largest competitor, Malakut, is significantly behind with only [5-10]% market share. All other competitors have market shares below [5-10]]%.

(1025) Malakut appears to focus its operation primarily on Russian-based or Russian-orientated projects.[1251] Moreover, Malakut does not appear to be mentioned as actual or potential supplier to any of the EEA-based customers that responded to the market investigation.[1252]

(1026) Gallagher, although increasing its market share annually, is far behind each of the Parties with a market share of mere [0-5]%. UIB, is a very small global player with a market share not reaching [0-5]%. UIB further explained in their response to the market investigation that they only handle space risks in certain specific territories.[1253]

(1027) As such, the market shares indicate that the market is dominated by the three sizeable providers, the Parties and Marsh. Based on the market shares provided by the Notifying Party, the market structure post-Transaction would have only two global providers, with Marsh and the Merged Entity as leading players, and the few other competitors far behind with markets shares not exceeding [5-10]%.

(1028) The Notifying Party argues that market shares are not a suitable indicator of market power in this market. Primarily because of the project-based market dynamics, in which few large placements (i.e. satellite launches) produce a large amount of the GWP, which fluctuates annually. While it is true that the Notifying Party's market share estimates show year-on-year fluctuation in market shares, the Commission notes that the Parties (and Marsh) have strong positions in all three years provided. Moreover, other competitors have very small (and stable) market shares across all three years. In addition, such market structure as indicated by the market shares is also confirmed by the internal documents of the Parties as explained in Section 6.3.5.12 B.2. More specifically, the Parties themselves appear to show rather stable market shares over the period of nearly 10 years as shown in Figure 19 below, which shows a much higher combined market share for the Merged Entity taking into account only satellite launches (broker share of satellite launches).

(1029) The market investigation results also do not support a highly fluctuating market. Responses show that customers require space insurance to cover one-off events, i.e. satellite launches, as well as ongoing in-orbit damage risks.[1254] One customer explained that space insurance "*[c]overs in-orbit, launch (every 3 to 4 years) and third party liability.*"[1255] This would therefore indicate that at least a portion of insurance cover required for the space risk relates to on-going risks, and would be reflected in a more steady annual figures (compared to the significant spikes related to satelites launches). In any evet, as explained in the preceding recital, the Parties

1251 Malakut website refers to a presentation that lists the largest projects, mc2019_eng.pdf (malakut.com), accessed on 13 May 2021, at 14:54.
1252 Replies to questionnaire Q15 to aerospace manufacturing and space Customers.
1253 Replies to question 52.1 of questionnaire Q16 to Competitors (Document ID 8802).
1254 Replies to questions 36 and 37 of questionnaire Q15 to aerospace manufacturing and space Customers.
1255 Replies to question 37(1) of questionnaire Q15 to aerospace manufacturing and space Customers.

appear to estimate a much higher combined market share taking into account only satellite launches.

(1030) The market for commercial risk brokerage for space risk is concentrated, with an HHI of around [3,000-3,500] in 2019 at global level. The Transaction leads to a considerable HHI delta, in excess of approximately [500-1,000], which is well above the level where competition concerns are unlikely to be identified.[1256]

(1031) In line with the Horizontal Merger Guidelines and established case law,[1257] the Commission therefore considers that the market shares provide sufficient evidence of the strong market position of the Parties and Marsh, and reflect the limited presence of alternative competitors, which is confirmed by the qualitative feedback received to the market investigation as explained in the following Sections.

B.2 Closeness of competition

(1032) Customers indicate that they select their broker based on a range of criteria. For this risk, the most important five criteria ranked by customers are: (i) quality of service; (ii) expertise in the space risk; (iii) ability to negotiate best premiums; (iv) experience with large and complex risks; and (v) network with insurers (broker's knowledge of customer company had the same mean ranking).[1258]

(1033) Customers responding to the Commission's market investigation ranked each Aon and WTW as closest to each other.[1259] Only Marsh is ranked as high as each of the Parties. The next distant competitor, Gallagher, is ranked much lower on the overall criteria (below 3 out of 5). Other competitors and brokers indicated by the Parties are not considered by customers that responded to the market investigation as close competitors to the Parties. One Customer explained: "*[o]nly Marsh and Aon have the skills and global reach of WTW*".[1260] Another customer explains: "*[…] that only Marsh, Aon, and Willis have the capabilities to service [its] business needs. All other insurance brokers are significantly smaller (half or less the size of the top-tier firms) and have a significantly reduced ability to provide global services*."[1261] Another customer explains: "*[w]e are only familiar with Marsh, AON, Gallagher, Willis. We were approached by one insurance broker some years ago, but it was clearly a start-up with respect to space expertise.*"[1262]

(1034) The Parties and Marsh are the only brokers that have comparable global networks. The majority of responding customers consider that only Marsh will have a global network to match the Merged Entity, with Gallagher considered to match the Merged

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1256 Horizontal Merger Guidelines, paragraph 19.

1257 Paragraph 17 of the Horizontal Merger Guidelines: *"According to well-established case law, very large market shares - 50 % or more - may in themselves be evidence of the existence of a dominant market position […] A merger involving a firm whose market share will remain below 50 % after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes. The Commission has thus in several cases considered mergers resulting in firms holding market shares between 40 % and 50 %, and in some cases below 40 %, to lead to the creation or the strengthening of a dominant position."* See also Case T-221/95, *Endemol v Commission,* [1999] ECR II-1299, paragraph 134, and Case T-102/96, *Gencor v Commission*, [1999] ECR II-753, paragraph 205; M.1221 - *Rewe/Meinl*, paragraphs 98-114 and M.2337 - *Nestlé/Ralston Purina*, paragraphs 44-50.

1258 Replies to question 42 of questionnaire Q15 to aerospace manufacturing and space Customers

1259 Replies to questions 44 and 46 of questionnaire Q15 to aerospace manufacturing and space Customers.

1260 Reply to questionnaire 15 to aerospace manufacturing and space Customers (Document ID 8733).

1261 Reply to questionnaire 15 to aerospace manufacturing and space Customers (Document ID 10129).

1262 Reply to questionnaire 15 to aerospace manufacturing and space Customers (Document ID 7889).

Entity only by a small number of customers, while other brokers are considered suitable only by couple of customers each.[1263]

(1035) Aon and WTW also compete closely in terms of their network, which customer view as comparable to each other and only matched by Marsh.[1264] The majority of responding customers indicate that their main broker operates through an owned network, i.e. a network mainly relying on offices owned by the broker (proprietary network).[1265] Majority of those customers indicated that ownership of proprietary network influenced their choice of a broker.[1266] One customer explained: "*We wanted to make sure our brokers had direct relationships with underwriters in significant centres*."[1267] Another customer stated: "*The know-how and the quality of the broker network are essentials*."[1268]

(1036) Internal documents submitted by the Parties do not show […].[1269]

(1037) In addition, internal documents show that Parties present the market for space risk insurance brokerage to their customers as dominated by […] (specifically for space launches), and indicate respective market shares as: Aon ([40-50]%), Marsh ([30-40]%) and WTW ([20-30]%) (as set out in Figure 19).

Figure 19: [business secrets]

[Internal document]

Source: Aon's internal documents, Document ID 10268-37976. [internal document].

(1038) This shows that the Parties do not consider other alternative providers as credible. It is noted that during this period (2009-2018), JLT was active in the Space segment and has since been acquired by Gallagher. Gallagher (JLT) current market position is below [5-10]%.

(1039) The market investigation revealed that the Transaction leads to the removal of an important competitive constraint exercised by WTW, not only due to the closeness of competition between the Merging Parties, but due to its market performance with respect to the main parameters of competition of Aon and WTW. As a result of the Transaction, such important competitive constraint would be eliminated. When looking at the parameters of competition, customers note expertise and global reach (network capabilities) as particularly important for a broker with respect to space risk.[1270] Further, responding customers clearly identified that only the Parties and Marsh are able to compete strongly on these parameters.[1271] The vast majority of customers indicated that their current broker operates via an owned global network, that this factor determined the choice of a broker and that only the Merging Parties and Marsh have such capabilities.[1272]

1263 Reply to question 53 of questionnaire 15 to aerospace manufacturing and space Customers.
1264 Reply to question 53 of questionnaire 15 to aerospace manufacturing and space Customers.
1265 Reply to question 50 of questionnaire 15 to aerospace manufacturing and space Customers.
1266 Reply to question 50(1) of questionnaire 15 to aerospace manufacturing and space Customers.
1267 Reply to question 50(2) of questionnaire 15 to aerospace manufacturing and space Customers (Document ID 7889).
1268 Reply to question 50(2) of questionnaire 15 to aerospace manufacturing and space Customers (Document ID 8740).
1269 Reply to RFI 48 and Annexes.
1270 Replies to questions 44 and 45 of questionnaire Q15 to aerospace manufacturing and space Customers.
1271 Replies to questions 44 and 45 of questionnaire Q15 to aerospace manufacturing and space Customers.
1272 Replies to question 50 of questionnaire Q15 to aerospace manufacturing and space Customers.

(1040) On the basis of the above, the Commission considers that Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to Aon and WTW, other brokers are considered by customers at a significant distance.

B.3 Switching

(1041) While switching suppliers in the market for commercial risk brokerage for space risks is possible, it has its challenges. On the one hand, nearly half of the respondents considered the difficulty of switching broker as neutral, on the other hand, the same number of customers note that switching a broker is either very difficult or difficult.[1273] Only a small minority considered it easy and no one respondent considered it very easy. Responding customers note that switching requires a new tender process as well as on-boarding of the new broker, and, because switching a broker results in a potential loss of company-specific knowledge, switching needs to be outweighed by significant benefits provided by the new broker. One customer explained: "*[i]t is very difficult to transition the built-up knowledge of the risks and the history of the underwriting information related to specific satellites*."[1274] Another explained: "*[s]witching brokers requires to launch a request for proposal, then a selection process, then a deployment process.*"[1275]

(1042) The majority of customers are concerned that there will remain insufficient alternatives for customers to switch to post-Transaction.[1276] In addition, the majority of customers that replied to the Commission's market investigation, consider that post-Transaction, the market structure will not allow them to obtain satisfactory procurement outcomes.[1277] This is in line with the fact that, the majority of responding customers that responded to the Commission's market investigation invite three or four brokers to a tender.[1278] As the majority of customers only consider Marsh and the Parties as credible options, the Transaction will no longer allow this group to invite three competitors that they consider credible to tenders.

(1043) In conclusion, while switching suppliers for commercial risk brokerage for space is a challenging but feasible undertaking, the Transaction will severely limit the switching options available to customers.

B.4 Likely reaction from competitors

(1044) The Commission considers that, pre-transaction, the Parties and Marsh are close competitors, and they are the only players capable of exerting a credible competitive constraint on each other, as evidenced by the market investigation results and internal documents (see Sections 6.3.5.12 B2 and B3 above).

(1045) In its assessment of likely reactions from competitors towards the Merged Entity, the Commission distinguishes between Marsh on the one hand and Tier two brokers and other smaller brokers individually and in aggregate. This assessment covers the likely ability and incentive of the competing brokers to constrain the Merged Entity post-Transaction.

1273 Replies to question 43 of questionnaire Q15 to aerospace manufacturing and space Customers.
1274 Reply to questionnaire 15 to aerospace manufacturing and space Customers (Document ID 7889).
1275 Reply to questionnaire 15 to aerospace manufacturing and space Customers (Document ID 9560).
1276 Replies to question 107 of questionnaire Q1 to Customers.
1277 Replies to question 55 of questionnaire Q15 to aerospace manufacturing and space Customers.
1278 Replies to question 39 of questionnaire Q15 to aerospace manufacturing and space Customers.

(1046) The Commission firstly notes that in accordance with its Horizontal Merger Guidelines competitive pressure and incentives to compete for non-merging firms can be reduced. This is further supported by the findings set out in Section 6.3.5.12 B.2 above, which sets out the Commission's findings that the Parties and Marsh are particularly close competitors, with other brokers not considered as suitable by many responding customers. Thus, in the event of a price increase by the Merged Entity, Marsh would be the most likely alternative for most customers and directly benefit from the significant loss of competition between the Parties. Against this background, the Commission considers that Marsh is likely to have less incentive to compete post-Transaction compared to the situation absent the proposed Transaction. Marsh' incentives are dicussed in more detail in Section 6.3.5.11 B.4.

(1047) In any event, in line with paragraph 31 of the Horizontal Meger Guidelines, the Commission considers that Marsh alone as a credible alternative to the Merged Entity would not be enough to counter the negative effects from the significant loss of competition as a result of the Transaction. In particular, since the most common method of sourcing identified by customers responding to the Commission's phase 2 market investigation is tenders, and nearly all customers invite at least three brokers in tenders, and the vast majority invite either four or five. The majority of responding customers also indicate that only three brokers currently meet their criteria. One customer responding to the market investigation also specified that due to their specific circumstances, they may not be able to invite the Merged Entity to their tenders, leaving only Marsh as the only credible alternative.[1279] In addition, a large proportion of responding customers indicate that they expect competition to decrease in future tenders if the Transaction were to go ahead.

(1048) As for other brokers, the Commission refers to the findings in Section 6.3.6.11 above. The Commission market investigation found no consistent evidence that Gallagher is a credible competitor exerting significant competitive pressure on the Parties in the market for commercial risk brokerage for space at the global level, with customers indicating that it may be growing in the market of commercial risk brokerage for space, but still far behind the Parties and Marsh. Price Forbes and Piiq are even further behind, with very low market shares and low customer ratings. The potential of these suppliers to grow in the short or medium term is restricted by high barriers to entry and expansion (discussed in Section 6.3.5.12 B.7). Therefore, it is unlikely that brokers other than Marsh will be able to gain sufficient market share, ability and market strength to compete fiercely with the Parties.

(1049) As explained in Section 6.3.5.12 B.4 above, the majority of customers consider that post-Transaction there will be insufficient number of suitable alternatives for customers to switch to[1280] and they do not consider that they will be able to obtain optimal procurement outcomes.[1281]

B.5 Countervailing factors

(1050) The Commission's market investigation did not provide evidence of any countervailing factors meaningfully constraining the Merged Entity post-Transaction.

1279 Reply to question 13.1 of questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 9555).

1280 Replies to question 107 of questionnaire Q1 to Customers.

1281 Replies to question 55 of questionnaire Q15 to aerospace manufacturing and space Customers.

(1051) *Firstly,* with respect to buyer power. The large majority of customers responding to the market investigation considered that they do not have strong buyer power in this market.[1282] While, as the Notifying Party puts forward, the commercial risk brokerage market for space risks is characterised by large and sophisticated companies, this does not apply to all customers. A number of respondents noted that they are a small player in the space sector or may have a small risk exposure with respect to space operations, which do not translate to a strong negotiating position. At the same time, customers also mention 'recent hard insurance market' conditions for space risks in particular,[1283] which generally means that negotiating power with respect to obtaining insurance cover, if any, is diminished. Customers also explained that a number of brokers in the market available for tenders is limited and therefore switching is not always a credible option (as discussed in the Section 6.3.5.12 B.4.).

(1052) As to the Notifying Party's argument that customers are price sensitive, which enhances their buyer power in playing the brokers against each other, this is not supported by the market investigation. In fact, customers that responded indicated that they value quality of service, expertise and ability to negotiate the best premiums over and above the price of brokers' service (i.e. the price element that could potentially be raised by brokers following the Transaction).[1284]

(1053) *Secondly*, with regard to other out-of-market constraints, only a small minority of responding customers indicated that direct placement with insurers, captive insurance or other capital solutions are credible alternatives for their space risk insurance needs.[1285] The market investigation results show that direct placement with insurers is not a feasible option in this market, as customers rely on brokers for their risk-specific expertise, as well as ability to place large and complex risks in global insurance markets. Only one customer responding to the market investigation considered direct placement an option for commercial risk brokerage for space risks insurance needs. One customer explained: "*[d]irect placement is difficult in many [sic] markets for regulatory reasons*".[1286] The Notifying Party admits as much itself, and estimates that the market shares are exactly the same of the Parties, both globally and in the EEA, if direct and brokered channels are considered.[1287]

(1054) Customers explain that captive insurance option is a complement to external insurance capacity, and should therefore be compared to insurance rather than insurance brokerage. Furthermore, captive insurance organisations cannot fully replace the external insurance market and also requires in-house expertise, which not all customers would have. Customers that have a captive insurance organisation still need brokers; either to transfer the residual risk to the insurance market, manage the captive, and/or to reinsure risk assumed by the captive insurance organisation.

(1055) Based on the above, the Commission has not found any countervailing factors that would credibly constrain the Merged Entity post-Transaction.

1282 Replies to question 47 of questionnaire Q15 to aerospace manufacturing and space Customers.

1283 A hard insurance market is characterized by a high demand for insurance coverage and a reduced supply.

1284 Replies to question 42 of questionnaire Q15 to aerospace manufacturing and space Customers. (Document ID 8150).

1285 Replies to question 46 of questionnaire Q15 to aerospace manufacturing and space Customers.

1286 Replies to question 46 of questionnaire Q15 to aerospace manufacturing and space Customers.

1287 Form CO, Annex 6A.18 (CR).

B.6 Barriers to entry and expansion

(1056) The Commission considers, on the basis of the market investigation and internal documents of the Parties, that contrary to the Notifying Party's submission, there are considerable barriers to entry and expansion in the market for commercial risk brokerage for space risks. The market investigation indicates that risk specific expertise, capabilities to place large and complex risks and global reach (by way of a broker network) are necessary for a broker to be able to successfully bid in tenders. Barriers to entry and expansion are further increased by the switching costs and barriers indicated by the customers (see Section 6.3.5.12 B.4 on above). Contrary to the Notifying Party's argument that customers may follow individual brokers if they are hired by competitors, the majority of responding customers indicate that they would not follow an individual broker if he / she moves to another brokerage firm, largely because of switching costs and a need to run a new tender process.[1288] Competitors also indicate that approaching and hiring from brokers with high level of expertise in this market is difficult and costly.[1289]

(1057) In addition, it is noted that Parties' internal documents show that […]. There is some indication that this would be a barrier to expansion for a new entrant. Aon's Space CEO, in an internal discussion specific to space risk notes:[1290] "*[…]*."

(1058) Specifically with respect to the two new recent entrants mentioned by the Parties, Piiq and McGill,[1291] the market investigation raised some doubts as to their capabilities to compete with the Parties. Only a very small number of customers considered Piiq and McGill as capable competitors in this market and rated these two brokers significantly lower than the Parties.[1292]

(1059) With respect to the recent hiring from WTW that is referenced by the Parties,[1293] in one internal document, in relation to space market, WTW senior management note: "*[…]*."[1294]

(1060) In their response to the market investigation, McGill confirmed that they are not present in space risk.[1295] Piiq has market shares below [0-5]% and is not considered as a suitable supplier by majority of responding customers.

(1061) In view of the above, barriers to entry or expansion in this market are significant, so that other brokers would not be in a position to grow quickly and effectively to compete against the Merged Entity.

B.7 Results of the market investigation on likely impact of the Transaction

(1062) The majority of customers do not consider that post-Transaction market structure will be sufficiently competitive to allow for satisfactory outcomes with respect to procurement of space insurance cover.[1296] Equal number of customers that responded consider the effects of the Transaction to be either neutral or negative, no customer considers the Transaction to have positive or beneficial outcome.[1297] The majority of

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1288 Replies to question 28 of questionnaire Q1 to Customers.
1289 Replies to question 43 of questionnaire Q5 to Competitors.
1290 Aon's internal email dated 16 January 2021 (Document ID10268-5965).
1291 Response to Commission 6(1)(c) Decision of 21 December 2020, paragraph 688.
1292 Replies to question 32 of questionnaire Q15 to aerospace manufacturing and space Customers.
1293 Reply to 6(1)(c) Decision, paragraph 688.
1294 WTW's internal email correspondence dated 5 November 2020 (Document ID 10688-51686).
1295 Replies to question 52.1 of questionnaire Q16 to Competitors (Document ID 8961).
1296 Replies to question 55 of questionnaire Q15 to aerospace manufacturing and space Customers.
1297 Replies to question 58 of questionnaire Q15 to aerospace manufacturing and space Customers.

customers expect that post-Transaction there will be either an increase in brokers' remuneration,[1298] decrease in quality in broker services and/or loss of choice to cover risk.[1299] Whilst some customers have said that they will continue to have a choice, others referred to a lack of choice post-Transaction: for example one customer stated: "*A duopoly on space risks will definitely put brokers in a much stronger position*."[1300] Competitors express a negative view of the Transaction similar to that of customers.[1301]

C. Conclusion on commercial risk brokerage for space risk

(1063) Taking into account the evidence set out above, and in view of the level of the combined market shares, the closeness of competition between the Parties and the resulting loss of the important competitive constraint that WTW exercised on Aon pre-Transaction, the lack of other credible competitive constraints on the Parties (other than Marsh), the limited countervailing factors, the high barriers to entry and expansion and the negative feedback received from market participants, the Commission concludes that it is likely, and there is even a strong probability, that the Transaction will significantly impede effective competition on the market for commercial risk brokerage for space to all customers at the global level.

6.3.6. Potential market for captive-related services

6.3.6.1. Market structure

(1064) The Parties' market shares for captive-related services at global level,[1302] in terms of number of captives, are set out in the table below.

Table 28: Market shares for the supply of captive-related services, global level, 2019.

Company	Number of captives (incl. captives managed in-house)	2019 Market shares
Aon	[…]	[10-20]%
WTW	[…]	[5-10]%
Combined	***[…]***	***[20-30]%***
Marsh	[…]	[20-30]%
Gallagher (Artex Risk Solutions Inc.)	[…]	[10-20]%
Strategic Risk Solutions, Inc.	[…]	[5-10]%
Davies Captive Management	[…]	[0-5]%
USA Risk Group	[…]	[0-5]%
Innovative Captive Strategies	[…]	[0-5]%
Atlas Insurance Management	[…]	[0-5]%
Beecher Carlson Insurance Services LLC	[…]	[0-5]%
AIG	[…]	[0-5]%
Risk Services	[…]	[0-5]%
Kensington Management	[…]	[0-5]%

1298 Replies to question 56 of questionnaire Q15 to aerospace manufacturing and space Customers.

1299 Replies to question 57 of questionnaire Q15 to aerospace manufacturing and space Customers.

1300 Replies to question 57(1) of questionnaire Q15 to aerospace manufacturing and space Customers (Document ID 8150).

1301 Replies to question 53 and 54 of questionnaire Q16 to Competitors.

1302 The Parties submit that they are not aware of any available data that would allow for the calculation of market shares at EEA-level or at national level based on customer location, and put forward that, in any event, the scope of this possible is global.

Company	Number of captives (incl. captives managed in-house)	2019 Market shares
Risk Partners	[…]	[0-5]%
Thomas Miller	[…]	[0-5]%
Liberty Mutual	[…]	[0-5]%
Bee Insurance	[…]	[0-5]%
Riggs	[…]	[0-5]%
Equiom	[…]	[0-5]%
CT Insurance	[…]	[…]
Pro Group	[…]	[…]
Others (in-house captives)	~[…]	~[20-30]%
Total	**[…]**	**[90-100]%**

Source: Form CO, paragraph 874.

(1065) On the basis of the information provided by the Notifying Party, the Transaction would lead to a combined market share of [20-30]% globally.[1303] Other competitors of a bigger size, such as Marsh, or an equivalent size, such as Gallagher, to Aon are also active on the market, as well as a significant number of smaller players. The estimated HHI post-Transaction is just under [1,000-1,500], with a delta of approximately [0-500], a level at which the Commission is unlikely to find any competition concerns.[1304] This market structure was broadly confirmed by market participants, which indicated that there are at least ten credible global suppliers.[1305]

(1066) While the Notifying Party was not able to provide market shares for the EEA market, the Commission notes that based on the market investigation feedback, it believes that the number of competitors at the EEA level would be sufficient noting that a large number of competitors operating at global level also have presence in the EEA (including the main competitors – Marsh, Gallagher, Strategic Risk Solutions and Davies Captive Management) and that market feedback indicated that smaller providers in the EEA are able to exert price-driven competition.[1306]

6.3.6.2. The Notifying Party's view

(1067) The Notifying Party submits that even if the Commission were to identify a separate market for the provision of captive-related services globally, the Transaction would not raise any competition concerns because: (i) the combined market share of the Parties is limited; (ii) the competitive landscape is diverse, intense and there are many other players (including dedicated captive managers and insurers) who offer such services; (iii) there is a significant competitive constraint from in-house captive management; and (iv) clients who use external captive management services tend to be large and highly sophisticated operators who are adept at negotiating the best deal

1303 The Commission has carried out a check of the market shares figures provided and has found that these figures are in line with the estimates provided by another third party, which relies on a recent industry report (by businessinsurance.com, available at the following link: https://www.businessinsurance.com/article/20190103/NEWS06/912325932/Business-Insurance-2019-Data-Rankings-Largest-captive-managers, last accessed 4 June 2021, at 8:06) confirming the approximate number of handled captives and its place as number 3 with respect to captive-related services. The list of other players provided by the Parties is also in line with that displayed in the report.

1304 Horizontal Merger Guidelines, paragraph 20.

1305 Non-confidential reply to Captive Insurance RFI to Competitors, question 3; Non-confidential replies to Captive Insurance RFI to Customers, question 4.

1306 Non-confidential reply to Captive Insurance RFI to Competitors, question 3.

for captive management services such that there is considerable price competition in this potential market.[1307]

6.3.6.3. The Commission's assessment

(1068) On the basis of the feedback received in the market investigation, the Commission considers that the Transaction is not likely to result in a significant impediment of effective competition on these markets, for the reasons listed below.

(1069) *Firstly*, the Commission notes that this potential market is only marginally affected, in that the Parties' combined market shares are low at [20-30]% in 2019, and that only a minor increment is brought by WTW ([0-5]% at most).

(1070) *Secondly*, the results of the market investigation highlighted that there would be a sufficient number of players providing captive-related services post-Transaction, which includes numerous insurance brokers, but also other specialised captive management service providers.[1308]

(1071) Furthermore, this wide number of players is not affected by the fact that the results of the market investigation indicated that insurance brokers tend to have a competitive advantage in the provision of this type of services.

(1072) Indeed, by contrast with the competitive landscape in some commercial risk brokerage risk types, on this market Gallagher holds a strong market position and exert a significant competitive constraint on the Parties. The results of the market investigation confirmed in this respect that customers view Gallagher as a strong competitor.[1309] Moreover, as illustrated in the most recent published annual accounts, Gallagher sees itself as a strong player for captive management services as it expects "*that the risk management segment's most significant growth prospects through the next several years will come from [amongst other areas] captives.*"[1310]

(1073) *Thirdly*, in the course of the market investigation, customers did not voice significant competitive concerns for this specific market.[1311] In this regard, the Commission notes that while some customers formulated some concerns, these customers reiterated concerns with respect to the insurance or reinsurance brokerage market, rather than actually linking their concerns to captive-related services.[1312] As such, the concerns related to commercial risk insurance brokerage raised in by customers with captives are addressed as part of wider commercial risk competitive assessment.

(1074) The Commission finds that the Merged Entity will continue to face competition from a number of competitors, and notably from large competitors benefiting from the same competitive advantage as the Parties of being active in insurance brokerage, such as Marsh and Gallagher.

(1075) In view of the above elements, the Commission considers that the Transaction is not likely to give rise to any competitive concerns on the potential market for the supply of captive related services.

1307 Form CO, paragraph 876.

1308 Non-confidential replies to Captive Insurance RFI to Customers, question 4.

1309 Non-confidential replies to Captive Insurance RFI to Customers, question 2.

1310 Gallagher Annual Report 2020, available at: https://s28.q4cdn.com/872121257/files/doc_financials/2020/ar/AJG-2020-Annual-Report.PDF; last accessed on 02 June 2021, at 20:36.

1311 Non-confidential replies to Captive Insurance RFI to Customers, questions 2 and 3.

1312 Non-confidential replies to Captive Insurance RFI to Customers, questions 2 and 3.

6.3.7. Conclusion on the commercial risk brokerage markets

(1076) For the reasons laid out above, the Commission finds that the Transaction will likely result in a significant impediment of competition through non-coordinated effects on the following markets:

(a) Commercial risk brokerage for property & casualty (i) for LMCs at global level and (ii) non-LMCs in the Netherlands;

(b) Commercial risk brokerage for FinPro for LMCs at global level;

(c) Commercial risk brokerage cyber (i) for LMCs at global level and (ii) non-LMCs in Spain;

(d) Commercial risk brokerage for aerospace manufacturing to all customers at global level;

(e) Commercial risk brokerage for space to all customers at global level.

7. REINSURANCE BROKERAGE

(1077) Whereas insurance refers to the transfer of risk from a business to an insurer, reinsurance refers to the transfer of risk from an insurer, i.e. the primary insurer, to a reinsurer, the secondary insurer. As such, reinsurance is insurance for insurance carriers.

(1078) When transferring a given risk to a reinsurer, insurance carriers decrease their risk exposure and reduce the amount of capital that they must maintain to meet potential liabilities, allowing them to increase their capacity to write more insurance. Additionally, reinsurance can also be used to protect insurers against large-scale catastrophe.

(1079) In this context, brokers support insurance carriers with the placement of reinsurance with reinsurers. Services provided by brokers include (i) advice on risk management strategy, (ii) finding suitable reinsurance coverage options, (iii) arranging for reinsurers to price reinsurance, (iv) negotiating terms of reinsurance coverage, and (v) assisting with claim resolution.

(1080) Aon and WTW both provide reinsurance brokerage services globally, to insurance and reinsurance companies. As a result, the Parties' activities overlap in the supply reinsurance brokerage services, at a worldwide level.

7.1. Relevant product markets

7.1.1. Commission's previous decisional practice

(1081) In its past decisional practice, the Commission has considered that reinsurance is a separate market from insurance[1313] and that reinsurance distribution[1314] should be assessed separately from insurance distribution.[1315]

(1082) Commission decisions have only dealt with reinsurance brokerage cases to a very limited extent and no further segmentations of the market have been defined.[1316]

1313 M.6053 – *CVC/Apollo/Brit Insurance*, paragraph 24; M.5083 – *Groupama/OTP Garancia*, paragraph 14; M.4284 – *AXA/Winterthur*, paragraph 7; M.4701 – *Generali/PPF Insurance Business*, paragraph 17.

1314 As explained below, reinsurance distribution may be arranged either by direct dealing between the primary insurer and the reinsurer, or through a reinsurance broker.

1315 M.9196 – *Marsh & McLennan Companies/Jardine Lloyd Thompson Group*, paragraph 9. See also M.1307 – *Marsh & McLennan/Sedgwick*, paragraphs 19 and 22.

(1083) With respect to the market for reinsurance, the Commission considered a potential segmentation between life and non-life reinsurance, and within non-life reinsurance, a further sub-segmentation depending on the risk type (e.g. liability, motor, casualty, fire, marine, aviation and others). The Commission ultimately left open whether these segmentations would be appropriate.[1317]

(1084) An overview and assessment of the plausible markets and segmentations in relation to reinsurance, and reinsurance brokerage, are set out below.

7.1.2. Reinsurance distribution and insurance distribution

(1085) An insurance contract transfers to an insurer the original risk to which a person or business is exposed, whereas a reinsurance contract transfers risk assumed by an insurer under pre-existing or contemplated insurance contracts. In both cases, the transfer of such risk occurs through its own "distribution".

7.1.2.1. The Notifying Party's view

(1086) The Parties agree with the Commission's decisional practice, insofar as it distinguishes a market for reinsurance distribution separate from insurance distribution.[1318]

7.1.2.2. The Commission's assessment

(1087) In the present case, the market investigation did not provide any elements which would justify departing from the Commission's previous practice.

(1088) The Commission therefore considers that it is appropriate to distinguish insurance distribution from reinsurance distribution, as they constitute distinct activities with players and competitive dynamics that are different.

7.1.3. Treaty reinsurance and facultative reinsurance

(1089) Reinsurance generally take one of two basic forms, either treaty or facultative agreements. Under a treaty reinsurance agreement, reinsurers typically take certain portfolio of risks within one or several risk types, covering all policies that fall within that scope. Therefore, a reinsurance treaty agreement generally results in an automatic cession by an insurer (and the undertaking of all risks within that group) to reinsurers. Facultative reinsurance agreements on the other hand, allow the parties to reinsure specific underlying risks on a policy-by-policy basis. Insurers choose which specific risks they want to reinsure and reinsurers reinsure these policies separately.

7.1.3.1. The Notifying Party's view

(1090) The Notifying Party originally submitted that it would not be appropriate to distinguish between treaty and facultative reinsurance brokerage. The Notifying Party indicated that from the supply side, the capabilities, infrastructure and client relationships required are similar, and that the large majority of reinsurance carriers and reinsurance brokers are involved in both types of reinsurance. The Notifying

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1316 In paragraph 716 of the Reply to the 6(1)(c) Decision, the Notifying Party claims that the Commission included direct placement in the product market definition in M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*. The Commission notes that, contrary to the Parties' assumption that does not rely on any factual evidence, this is not the case, and that in fact reinsurance brokerage was not discussed in that decision as it was not an affected market.

1317 M.4059 – *Swiss Re / GE Insurance*, paragraph 10.

1318 Form CO, paragraph 971.

Party also explained that the parties of a reinsurance contract have considerable discretion over the form and substance of an agreement.[1319]

(1091) In its Reply to the 6(1)(c) Decision, the Notifying Party changed its view, and argues that in fact it would be appropriate to define separate markets for treaty and facultative reinsurance brokerage.[1320] The Notifying Party argues that facultative and treaty reinsurance brokerage differ in key characteristics, such as (i) the prevalence of direct placement, (ii) the set of competing brokers, and (iii) barriers to entry.[1321]

(1092) The Notifying Party argues that from a **demand-side perspective**, cedents buy facultative and treaty reinsurance for different purposes: facultative reinsurance is bought for specific risks on a policy-by-policy basis, and treaty reinsurance is bought to automatically cede risk across policies. Facultative reinsurance can also serve for single risks that are too large for existing treaties.[1322]

(1093) From the **supply-side perspective**, the Notifying Party submits that while most brokerage companies are active in treaty and facultative reinsurance, the skillset required differs, and brokers typically employ distinct teams.[1323]

7.1.3.2. The Commission's assessment

(1094) The Commission considers, in line with the view of the Notifying Party as expressed in its Reply to the 6(1)(c) Decision, that treaty reinsurance brokerage and facultative reinsurance brokerage constitute separate product markets.

(1095) On the *demand side,* treaty and facultative reinsurance are only substitutable to a very limited extent. Most insurers that responded to the phase 2 market investigation indicate that they source both treaty and facultative reinsurance, but not all of them do so.[1324] Insurers also indicate that they buy the two products for different reasons.

(1096) Treaty reinsurance concerns the ceding of a portfolio of risks by an insurer to a reinsurer, thereby providing insurers with capacity to assume additional primary insurance. Insurers explain that this is the primary way in which they procure reinsurance and by extension reinsurance brokerage. Facultative reinsurance is less suitable for this type of systematic risk management, as it would require ceding risk on a transaction-by-transaction basis. One insurer explains: "*Treaty is the only effective way of purchasing reinsurance for a company of our size.*"[1325]

(1097) Facultative reinsurance and facultative reinsurance brokerage can be purchased for different reasons, which are often related to the characteristics of a single risk that is ceded, rather than the broader risk management strategy (as for treaty reinsurance). Insurers that responded to the market investigation explain that facultative purchases typically represent a smaller proportion of their total reinsurance purchases. They are deployed, for example, with large risks that exceed treaty limits and risk types that are not in the scope of an insurer's existing treaties.[1326]

1319 Form CO, paragraphs 972-975.
1320 Reply to the 6(1)(c) Decision, paragraph 712 and reply to RFI 32, paragraph 26.
1321 Reply to RFI 32, paragraph 24.
1322 Reply to RFI 32, paragraph 28.
1323 Reply to RFI 32, paragraph 29.
1324 Replies to question 4 of questionnaire Q17 to non-life reinsurance brokerage customers.
1325 Replies to question 4.1 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8132).
1326 Replies to question 4.1 of questionnaire Q17 to non-life reinsurance brokerage customers.

(1098) There are limited cases in which facultative reinsurance can be substituted by treaty reinsurance. For example, in case an insurer buys a large amount of facultative reinsurance in any particular area, it can be more efficient to buy treaty reinsurance instead.[1327]

(1099) Insurers demand different services from brokers for facultative and treaty reinsurance. The placement of a treaty requires actuarial and modelling capabilities to analyse the portfolio of risks to be transferred. Facultative reinsurance by comparison is considered more transactional.[1328] Most brokers that responded to the market investigation agree that facultative and treaty reinsurance brokerage requires different capabilities, underlining the financial, statistical and actuarial capabilities required from a broker for the placement of treaty reinsurance. Facultative placements require stronger operational processes, as it concerns more frequent and smaller transactions.[1329]

(1100) On the *supply side*, the majority of brokers that responded to the phase 2 market investigation indicated that they provide brokerage services for both facultative and treaty reinsurance. However, some only offer one type.[1330] Additionally, some brokers, while offering both, are primarily focused on facultative reinsurance.[1331] The reason is that the broker involved in the primary placement of a risk between the insurer and the cedent can also act as the broker on the facultative reinsurance placement for that risk between the insurer and the reinsurer. However, many brokers indicate that this requires the broker to have a reinsurance broker licence.[1332] As such, while in a number of cases facultative reinsurance is closely linked to primary insurance placement, treaty reinsurance is generally operated on a standalone basis.

(1101) Brokers often employ separate teams for treaty and facultative reinsurance brokerage. This is the case for the Parties. For WTW, the facultative team does not even sit within its reinsurance brokerage organisation (Willis Re), but instead sits in the commercial risk brokerage organisation.[1333]

(1102) For the reasons outlined above, the Commission considers that facultative reinsurance brokerage and treaty reinsurance brokerage constitute separate product markets.

7.1.4. Underlying risk types

(1103) As for primary insurance, reinsurance may be broadly categorised into the provision of life reinsurance, which relates to the death or serious illness of a person, and non-life reinsurance, which covers other liabilities. In addition, similarly to commercial risk brokerage,[1334] non-life reinsurance brokerage may be segmented according to the underlying risk type being insured. The Notifying Party notably distinguishes between the following risk types: (i) aviation, (ii) marine, energy and construction, (iii) property, (iv) casualty, (v) motor, (vi) trade credit & surety, (vii) accident & health and (viii) retrocession.

1327 Non-confidential minutes of call with a competitor dated 29 January 2021 (Document ID 10355).
1328 Replies to question 37.2.1 of questionnaire Q4 to insurers.
1329 Replies to question 66.1.1 of questionnaire Q5 to competitors.
1330 Replies to question 2 of questionnaire Q19 to reinsurance brokers.
1331 Replies to question 2.1 of questionnaire Q19 to reinsurance brokers and Reply to RFI 26, Annex 6B.3.
1332 Replies to questions 4 and 4.1 of questionnaire Q19 to reinsurance brokers.
1333 Form CO, paragraphs 980 and 981.
1334 M.9196 – Marsh & McLennan Companies / Jardine Lloyd Thompson Group, paragraph 22 and Section 6.1.5 of this Decision.

7.1.4.1. The Notifying Party's view

(1104) The Notifying Party does not express a clear view as to whether it is appropriate to operate a distinction between brokerage for life reinsurance and brokerage for non-life reinsurance,[1335] but indicates that broker intermediation is far less common for life reinsurance than for non-life reinsurance and that the Parties have limited activities in this segment.[1336]

(1105) Additionally, the Notifying Party initially put forward that a further segmentation of non-life reinsurance brokerage by risk type, equivalent to the segmentation of commercial risk brokerage, would not be appropriate. The Notifying Party explained that such segmentation is primarily relevant for administrative purposes, as insurers may choose to divide their non-life reinsurance into different types, for obtaining a dedicated pricing, as well as allowing for multi-homing and/or co-brokerage. The Notifying Party also indicated that (i) there is no single definitive segmentation of reinsurance per risk class, (ii) virtually all main reinsurance brokers handle all risk types, and (iii) capabilities, infrastructure and client relationships required are similar for all risk types.[1337]

(1106) However, in its Reply to the 6(1)(c) Decision, the Notifying Party changed its view. The Notifying Party now considers that for treaty reinsurance brokerage, it is appropriate to define two separate markets based on risk type, namely treaty reinsurance brokerage for non-specialised risk types and treaty reinsurance brokerage for specialised risk types. The Notifying Party considers that specialised risk types include (i) aviation and (ii) marine, energy and construction, and that non-specialised risk types include (i) property, (ii) casualty, (iii) motor, (iv) accident & health, (v) trade credit and surety, and (vi) retrocession.[1338]

(1107) On the *demand side*, the Notifying Party argues that for non-specialty treaty risks, cedents value risk specific-expertise from brokers less, as these risks are relatively commoditised. Instead, clients seek data and analytical capabilities and experience from their broker.[1339] Conversely, for specialty risks, the risk expertise of a broker plays a major role, and these risks are less well suited for data and analytical assessment due to their rarity.[1340]

(1108) On the *supply side*, the Notifying Party submits that the Parties split their treaty reinsurance business between "generalist" and "specialty" teams.[1341]

(1109) For facultative reinsurance, the Notifying Party does not consider it appropriate to define separate product markets by risk type.[1342] It argues that risk-specific expertise from the broker is less important, as the risk-specific assessment has already been made at the stage of primary insurance. Brokers can therefore rely on this assessment. The Notifying Party also explains that facultative reinsurance brokerage

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1335 Form CO, paragraphs 1056 to1059.

1336 Form CO, paragraph 1057. On the basis of the information provided by the Parties, the Parties only represent a small portion of the life reinsurance risks ceded globally, i.e. [0-5]% for Aon and less than [0-5]% for WTW, so that on any plausible market and/or segment (including the narrowest plausible segment for life reinsurance broking) would not be affected. As a result, life reinsurance will not be discussed any further in the context of this Decision.

1337 Form CO, paragraphs 1060 to 1062.

1338 Reply to the 6(1)(c) Decision, paragraphs 708 and 712 and reply to RFI 32, question 3.

1339 Reply to RFI 32, paragraph 34.

1340 Reply to RFI 32, paragraph 40.

1341 Reply to RFI 32, paragraph 35.

1342 Reply to RFI 32, paragraph 17.

is mainly transactional, and focused on structure and pricing of the placement, rather than risk analysis. Finally, the Notifying Party argues that facultative reinsurance brokers are generalist brokers and do not focus on developing risk-specific expertise.[1343]

7.1.4.2. The Commission's assessment

(1110) The Commission considers that facultative and treaty reinsurance brokerage are heterogeneous markets and are segmented by risk type, but does not consider that these segments constitute separate product markets.

(1111) On the *demand side*, the Commission notes that insurers employ different strategies to buy reinsurance and by extension reinsurance brokerage. For treaty reinsurance, which represents the bulk of the purchases, some insurers indicate that they purchase separate treaties per risk type, while others combine several risk types or even as many risk types as possible. Insurers that responded to the phase 2 market investigation indicate that it can be efficient to buy "broad" treaties across risk types, but that the appetite of reinsurers to accept those treaties may decrease if the risks in the treaty are too different.[1344] Some insurers that replied to the market investigation indicate that they buy reinsurance according to other groupings than risk type. For example, some indicate that they combine short tail and long tail risks, which refers to the length of the settlement period of potential claims.[1345]

(1112) The Commission also notes that while it is customary to define risk types in reinsurance and reinsurance brokerage, there is variety in which risk types are used and how they are defined. For example, brokers that replied to the market investigation indicate that they also identify risk types such as terrorism, mortgage, cyber and political violence.[1346] The Notifying Party did not submit these as individual risk types. Additionally, some parties may group risk types while others do not. For example, the Notifying Party considers marine, energy and construction a single risk type, while some competitors and insurers consider them individual risk types.[1347] One insurer explains: "*How you buy reinsurance is depending on your buying strategy. You name Marine Energy and Construction as on risk type. Within our company we reinsure Marine risks separately. Within our Construction reinsurance we have coverage for certain elements of Energy risks. The main reason is to arrange cost efficient programmes*."[1348]

(1113) Additionally, internal documents show that the Parties consider other risk types that were not put forward on the appropriate product market definition. For example, a WTW internal email thread dated 6 September 2019 discusses their market position for the reinsurance brokerage risk type *cyber.*[1349]

(1114) As a result of the above, there is no unambiguous definition for the groups of risk types proposed by the Notifying Party, *specialised* and *non-specialised* risks. While it is true that there are risk types that essentially every insurer buys reinsurance and

1343 Reply to RFI 32, paragraphs 18 to 21.
1344 Replies to questions 8 and 8.1 of questionnaire Q17 to non-life reinsurance brokerage customers.
1345 Replies to question 8 of questionnaire Q17 to non-life reinsurance brokerage customers.
1346 Replies to question 6 of questionnaire Q19 to reinsurance brokers.
1347 Replies to question 6 of questionnaire Q19 to reinsurance brokers and to question 8 of questionnaire Q17 to non-life reinsurance brokerage customers.
1348 Replies to question 8 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 7893).
1349 WTW internal email correspondence dated 6 September 2019 (Document ID 10271-42818).

reinsurance brokerage services for (e.g. risk types such as property and casualty), there are many risk types that are more niche, and this is not limited to aviation and marine, energy and construction, as the Notifying Party suggests. The same is true for risk types such as trade credit & surety.[1350]

(1115) On the *supply side*, replies by brokers to the market investigation show that not all brokers provide reinsurance brokerage for all risk types. While all brokers provide reinsurance brokerage for risk types such as property and casualty, choice is more limited for risk types such as aviation.[1351] However, the choice of brokers does not follow the line between specialised and non-specialised risk types set out by the Notifying Party. Almost all brokers that replied to the market investigation indicate offering services for marine, energy and construction, while this is considered a specialised risk type by the Notifying Party. Conversely, the offer of trade credit & surety is more restricted, while the Notifying Party considers this a non-specialised risk type.[1352]

(1116) Despite the above differences, the Commission notes that most major reinsurance brokers offer reinsurance brokerage services for all risk types. Insurers that replied to the market investigation, indicate that the brokers who they work with can provide brokerage services across risk types.[1353] The Commission additionally considers that it is important for brokers to be able to offer brokerage services for multiple risk types, as many reinsurance buyers buy treaty reinsurance across risk types.[1354]

(1117) Based on the above, the Commission considers that treaty and facultative non-life reinsurance brokerage are heterogeneous markets, which are segmented by risk type. However, there are no bright lines between risk types, as market participants (i) identify different risk types (ii) use different definitions for risk types, and (iii) often buy reinsurance and reinsurance brokerage across risk types. For these reasons, the Commission considers that individual risk types do not constitute separate product markets within treaty and facultative reinsurance brokerage.[1355] The Commission will therefore assess all risk type segments together for treaty and facultative reinsurance brokerage in the competitive assessment.

7.1.5. Distribution channels for reinsurance

(1118) Reinsurance distribution may be arranged either by direct dealing between the primary insurer and the reinsurer, or through a reinsurance broker.

7.1.5.1. The Notifying Party's view

(1119) The Notifying Party submits that direct placement of reinsurance and brokered placement of reinsurance belong to the same product market, and that reinsurance brokers thus compete for an insurance carrier's business not only against other intermediaries but also with reinsurers seeking to reinsure the risk directly.

(1120) *Firstly*, the Notifying Party argues that direct placement is always an alternative to brokers as insurers and reinsurers are sophisticated players that understand risk

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1350 Replies to question 35 of questionnaire Q4 to insurers.

1351 Replies to question 5 of questionnaire 19 to reinsurance brokers.

1352 Replies to question 5 of questionnaire 19 to reinsurance brokers.

1353 Replies to question 35.2 of questionnaire Q4 to insurers and question 9.1 to Q17 to non-life reinsurance brokerage customers.

1354 Replies to question 8 of questionnaire Q17 to non-life reinsurance brokerage customers.

1355 For the purpose of this assessment, retrocession, which constitutes reinsurance placed by reinsurers, is considered as a risk type – in line with the submissions by the Notifying Party.

management, so that they are able to replicate the value proposition offered by brokers. In this respect, the Notifying Party estimates that over [a high percentage] of insurers place some of their risk directly and that it would take an insurer less than a year to replicate the value proposition offered by brokers in-house.[1356] The Notifying Party also claims that pooling risks is the normal approach for insurance carriers and that a broker is not essential in this context.[1357]

(1121) *Secondly*, the Notifying Party puts forward that, in their past decisional practice, the Commission did not envisage distinguishing brokered placements from direct placements, but rather left the precise market definition open.

(1122) In its Reply to the 6(1)(c) Decision, the Notifying Party further argues that if non-life reinsurance is sub-segmented by treaty and facultative reinsurance (see above Section 7.1.3) and treaty is further sub-segmented by risk type (see above Section 7.1.4), the direct channel should be included for all those markets.[1358]

(1123) For all types of reinsurance brokerage, the Notifying Party argues that direct placement puts a competitive pressure on brokers evidenced by the facts that direct placements represent approximately [a significant percentage] of global ceded reinsurance, numerous instances of cedents ceding reinsurance directly are available, the majority of the Parties' clients cede a significant portion of reinsurance directly today, and large reinsurers have the distribution capabilities to expand direct placements.[1359]

(1124) For non-specialty treaty reinsurance brokerage, the Notifying Party argues that there is a strong degree of substitutability between brokered and direct placement and that cedents would switch in case of a small but significant non-transitory increase in price or reduction in service quality. The Notifying Party argues that reinsurers are able to offer competitive pricing for these risks due to economies of scale.[1360] In support of this position, the Notifying Party submits a set of examples of direct placement by reinsurers for non-specialty treaty risks.[1361] Finally, the Notifying Party argues that some reinsurers, such as Gen Re, prefer direct placement for non-specialty treaty risks.[1362]

(1125) For specialty treaty reinsurance brokerage, the Notifying Party argues that there is also a degree of substitutability between direct and brokered placement. The Notifying Party submits that although reinsurers have historically been less active in the direct placement of facultative and non-specialty treaty risks, they possess the technical capabilities to do so.[1363]

(1126) For facultative reinsurance, the Notifying Party argues that there is a strong degree of substitutability between brokered and directly placed facultative reinsurance. The Notifying Party argues that the main added value from brokers is in the transactional skills, as the risk assessment has already taken place on primary insurance level. The Notifying Party estimates that [a significant percentage] of all facultative placements

1356 Form CO, paragraphs 1010-1021.
1357 Form CO, paragraph 1022.
1358 Annex 1 to Reply to the 6(1)(c) Decision, paragraphs 3, 23 and 39 and reply to RFI 32, paragraphs 33, 39 and 43.
1359 Reply to the 6(1)(c) Decision, paragraph 715.
1360 Reply to RFI 32, paragraphs 36 and 37.
1361 Table 6 of Annex I to the Reply to the 6(1)(c) Decision.
1362 Reply to RFI 32, paragraph 39.
1363 Reply to RFI 32, paragraph 42.

are placed directly, and submits that cedents would switch in case of a small but significant non-transitory increase in price or reduction in service quality. Finally, it indicates that some reinsurers preferably or exclusively work via direct placement.[1364]

(1127) In three memoranda submitted on 25 February,[1365] 26 February[1366] and 1 March 2021,[1367] the Parties provide examples of internal documents and analyses of internal data sources that demonstrate that the Parties experience competition from reinsurers vying for direct business.

7.1.5.2. The Commission's assessment

(1128) In line with the findings of the phase 1 market investigation (but contrary to the Notifying Party's view), the Commission considers that direct placement of reinsurance should not be included in the product market definition for treaty or facultative reinsurance brokerage. The market investigation gave evidence that there are significant restrictions to the direct placement of reinsurance and that most insurers are unlikely to switch in case of a small, but significant non-transitory increase in price ("SSNIP"). As a result, brokers are not meaningfully constrained by direct placement of reinsurance.

(1129) On the *demand side*, while a majority of insurers confirmed that in theory direct placement is an option across treaty / facultative reinsurance and risk types,[1368] the market investigation gave clear indication that it is mostly not efficient or sometimes even not feasible to do so.

(1130) *First of all*, the large majority of insurers that replied to the market investigation, indicate that in case of a price increase in reinsurance brokerage, they are more likely to switch reinsurance brokers than to switch to direct placement, even partially. Moreover, insurers are more likely to stay with their current broker than to switch to direct placement in such event.[1369] As a result, the majority of insurers that responded to the market investigation consider that the possibility to switch a proportion of reinsurance placements to direct placement does not have a disciplining effect on brokers.[1370]

(1131) Within treaty reinsurance, while the Commission sees some variation across risk types, among insurers that responded to the market investigation the most likely reaction to a price increase is not to shift (part of) their placements to the direct channel. This is true for every risk type for treaty reinsurance. For facultative reinsurance, the responses are more mixed, but a full shift to direct placement remains the least likely reaction.[1371] Moreover, on facultative reinsurance, one customer explains: "*We could place all risk types directly with reinsurers – but this*

1364 Reply to RFI 32, paragraphs 30 to 32.

1365 Memorandum on evidence of constraint from rival brokers in commercial risk broking in Aon internal documents, 25 February 2021.

1366 Analysis of competitive constraints evidenced in WTW's ordinary course documents, 26 February 2021.

1367 Analysis of the competitive constraint from direct reinsurance, 1 March 2021.

1368 Replies to question 11 of questionnaire Q17 to non-life reinsurance brokerage customers.

1369 Replies to question 16 of questionnaire Q17 to non-life reinsurance brokerage customers.

1370 Replies to question 19 of questionnaire Q17 to non-life reinsurance brokerage customers.

1371 Replies to question 17 of questionnaire Q17 to non-life reinsurance brokerage customers.

would substantially limit the number of possible reinsurers – thus this is not a viable option for us."[1372]

(1132) Insurers that responded to the market investigation provide multiple reasons why they require brokers for reinsurance placements. Insurers explain that they lack the modelling capabilities and tools, access to global reinsurers (especially for placements that require multiple reinsurers called reinsurer panels), administrative support (e.g. billings, collection).[1373] One insurer explains: "*Direct placement is not a meaningful alternative to intermediated placement for any of the enumerated placement types. [our company] works with brokers, as opposed to utilizing direct placement, for the vast majority of its reinsurance business because (1) [our company] values having an independent advisor that can ensure that [our company] is receiving the best price from among the many competing reinsurers, (2) [our company] relies on the relationships that its brokers have built with reinsurers through repeat business across reinsurers and by virtue of their global presence, and (3) [our company] benefits from the insight that brokers provide by virtue of their broad customer access.*"[1374]

(1133) *Secondly*, the market investigation also confirmed that non-proportional placements are more challenging to place directly than proportional placements.[1375] Proportional and non-proportional reinsurance are two technically different ways in which risk is transferred to the reinsurer. Under proportional reinsurance, the reinsurer bears a proportion of loss based on a pre-negotiated percentage. For non-proportional reinsurance, the reinsurer will only pay if losses incurred by the insurer exceed a specified amount. Placing non-proportional reinsurance is more complex, as it requires analysis of the likelihood that the loss threshold is reached, and the effect of the ceding on the insurer's capital position is harder to evaluate.[1376,1377] The Notifying Party itself confirms that direct placement is less common for non-proportional placements.[1378] This significantly reduces the competitive threat of direct placement on the Parties, as the bulk of their reinsurance brokerage revenues stem from non-proportional placements. For Aon, [a high percentage] of reinsurance brokerage revenues stem from non-proportional placements ([a high percentage] of treaty revenues and [a significant percentage] of facultative revenues). For WTW, [a high percentage] of treaty revenues stem from non-proportional placements.[1379]

(1134) Furthermore, placements that are challenging to place directly are not limited to non-proportional placements. A majority of customers that responded to the Commission's market investigation consider that there are placements that they cannot place directly (or for that matter, even with a broker outside of the Big Three) and point out various characteristics of a placement that can contribute to this. These

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1372 Reply to question 12 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8703).

1373 Replies to question 14 of questionnaire Q17 to non-life reinsurance brokerage customers.

1374 Replies to question 14 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1375 Replies to question 13 of questionnaire Q17 to non-life reinsurance brokerage customers and question 9 of questionnaire Q19 to reinsurance brokers.

1376 Non-confidential minutes of call with a competitor, dated 29 January 2021 (Document ID 10355).

1377 Aon Reinsurance Solutions Brokerage Disclosure; https://www.aon.com/reinsurance/reinsurance-solutions-brokerage-disclosure.jsp. Accessed on 18 February 2021.

1378 Reply to RFI 32, paragraph 16,

1379 Annex I.A and I.B to the reply to RFI 32. For WTW, no breakdown between proportional and non-proportional placements is available for facultative reinsurance brokerage.

include the geographic footprint of a placement, specialty of risk types included in placement and requirement of natural catastrophe modelling or other analytics for the placement.[1380]

(1135) In light of the above, it appears unlikely that customers would be able to switch a significant proportion of risk able to defeat a price increase. It results that substitution is only partial and that the two distribution channels do not belong to the same market.

(1136) *Thirdly*, several insurers that responded to the market investigation explained that if anything, shifting part of their placements to the direct channel would entail significant investment and be a longer term strategy and not and immediate substitute. Insurers explain that placing directly would require them to build up staff significantly to support this process. Even when doing so, direct placement is less efficient as it will not allow the insurer to address global reinsurance capital in the way that international brokers do.[1381] One insurer explains: "*placing without brokers would require massive staffing up and is thus not cost efficient. Also, the global broker houses can access their internal [international] pools of global contacts in a manner that we could not replicate even with additional staff.*"[1382]

(1137) *Fourthly*, the Commission notes that large part of the direct placements that are in the market today are the result of historical relationships between insurers and reinsurers. These historical relationships primarily represent historical business. These historic placements do not form real competition to brokers, as they have not historically been available to brokers. Furthermore, many of these historical relationships are on the decline (as is explained in more detail in Section 7.3.2.3 D).[1383]

(1138) *Fifthly*, there is a trend of decreased direct placement in the non-life reinsurance market as insurers increasingly rely on broker services. Several competitors explain that this is driven by increased complexity in the market. One key competitor explains: "*The reinsurance market in general is becoming more complex and therefore growing more and more intermediated as clients demand broking services, such as analytics/modelling, market knowledge/expertise, marketing of risks to multiple insurers, ongoing servicing, and claims support. Even where direct placements are executed, there is often broker involvement in the analysis and structuring of the client's risk transfer program. This is particularly true within the large and complex global account space.*"[1384] This trend of increased broker intermediation is supported by the Parties' internal documents. […].

Figure 20: [internal document]

[Internal document]

Source: WTW internal document [internal document]. ID 314, US DOJ reference WTW-2R-000063980.

(1139) The decrease in direct placement is also apparent from Aon's internal documents. […]:

"*[…]:*

1380 Replies to question 55 of questionnaire Q17 to non-life reinsurance brokerage customers.
1381 Replies to question 12 of questionnaire Q17 to non-life reinsurance brokerage customers.
1382 Replies to question 12 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8132).
1383 Non-confidential minutes of call with a competitor, dated 29 January 2021 (Document ID 10355).
1384 Replies to question 10 of questionnaire Q19 to reinsurance brokers (Document ID 8443).

- *[…]*

- *[…].*

- *[…]*"[1385]

(1140) *Sixthly*, and in line with what the Notifying Party presents, reinsurance brokerage is not limited to placement of reinsurance. The set of services offered by brokers include: (i) advising on risk management strategy, (ii) finding the best reinsurance coverage options, (iii) price discovery with *multiple reinsurers*, (iv) negotiating terms of reinsurance coverage, and (v) assisting in the resolution and collection of claims from the reinsurer.[1386] While some reinsurers are equipped to support cedents with advice, as a direct counterparty to the insurer in the reinsurance transaction reinsurers cannot replace brokers for the full set of services. WTW's internal documents confirm that […][1387]

(1141) The importance of broker services other than placement itself is also confirmed by market participants, with one large customer saying: "*advice and market intelligence that brokers bring is the most valuable contribution. As such, placement is not a differentiating factor between different brokers; the analytics, on the other hand, are.*"[1388] Another key customer says: "*Brokers essentially have an advisory and a placement role. On the advisory side, brokers help with modelling and actuarial topics, and help to understand the overall market as well as each local market.*"[1389] A key competitor stresses the importance of claim handling support by brokers, as brokers represent the insurer when dealing with the reinsurer: "*Insurers need brokers for analytics, price discovery/comparison and claims support. They rely upon these services, and this reliance is spreading across risk types. Brokers can use their girth to convince reinsurance to pay out certain claims*."[1390]

(1142) As for the Notifying Party's argument that advisory services are provided free of charge, put forward amongst others in the memorandum of 1 March 2021[1391], the Commission considers that this does not affect the fact that the advisory services are a key element of reinsurance brokerage services, which the broker is reimbursed for through commissions. In this regard, a key competitor explains: "*Brokers may either be compensated directly for these advisory services, or their remuneration for this service may be embedded in the commissions for placement or in an overall fee, depending on the overall commercial relationship. This is particularly the case for large clients, to which brokers typically provide a wide range of advisory services.*"[1392] A customer's explanation further illustrates that cedents require a broker's advice even for placements where parts are placed directly: "*[Our company] only places risks direct with one reinsurer. This reinsurance is normally a share of a placement. In placing this reinsurance, [our company] typically waits until its reinsurance brokers has negotiated terms with the lead re-insurer and then uses this as a basis for the negotiations with this single insurer. In the absence of these lead*

1385 Aon internal document dated 12 August 2019 (Document ID 010271-016697).
1386 Form CO, paragraph 912.
1387 WTW internal document dated 20 November 2020 (Document ID 10691-244633).
1388 Non-confidential minutes of call with a customer, dated 21 September 2020 (Document ID 6047).
1389 Non-confidential minutes of call with a customer, dated 8 October 2020 (Document ID 6376).
1390 Non-confidential minutes of call with a competitor, dated 29 January 2021 (Document ID 10355).
1391 Analysis of the competitive constraint from direct reinsurance, 1 March 2021.
1392 Non-confidential minutes of a call with a competitor, dated 29 January 2021 (Document ID 10355).

terms, [our company] does not have the expertise or capability to conduct this transaction."[1393]

(1143) *Finally*, the Commission also considers that it is implausible that reinsurance brokerage services are substitutable with direct placement when considering the Parties' margins. The profit margin in 2019 in treaty reinsurance brokerage was [a significant percentage] for Aon and [a significant percentage] for WTW in 2019.[1394] For facultative reinsurance brokerage profit margins were [a significant percentage] for Aon and [a significant percentage] for WTW in 2019.[1395] If direct placement was truly a competitive alternative to the Parties, one would expect disintermediation, or at the very least price pressure, to be more significant.

(1144) Based on the above, the Commission considers that there is insufficient demand-side substitutability to consider direct placement part of the same product market as non-life reinsurance brokerage services (either treaty or facultative).

(1145) On the *supply side*, substitutability has significant limitations as well. The majority of reinsurers that responded to the market investigation indicated that they do not have the required capabilities, distribution network and resources to handle direct reinsurance placements.[1396] Therefore, any insurer choosing for direct placement restricts the amount of reinsurance capital available to it. As one reinsurer explains: "*There is a specific knowledge and service that the intermediaries bring to the table which a pure reinsurer would not have viz presence in the territories where the cedents are situated, the necessary logistics to manage the accounts and settlements and claims handling services, etc.*"[1397]

(1146) In light of the above, the Commission considers that the product markets for treaty and facultative non-life reinsurance brokerage exclude direct placement. However, the Commission will consider direct placement as an out-of-market competitive constraint in the competitive assessment.

7.1.6. Brokerage of alternative capital reinsurance

(1147) Aside from traditional reinsurance, insurers may place their risk on the alternative capital market.[1398]

(1148) In alternative capital markets[1399] insurers can cede their risk to entities operating in financial markets, e.g. hedge funds, mutual funds, sovereign wealth funds, through the four main forms of vehicles used in alternative capital reinsurance: industry loss warranty ("ILW"),[1400] collaterised reinsurance,[1401] sidecars,[1402] and catastrophe

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1393 Reply to question 12 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8371).

1394 Form CO, paragraphs 935 and 939.

1395 Form CO, paragraphs 935 and 939.

1396 Replies to question 12 of questionnaire Q18 to reinsurers.

1397 Reply to question 12.2 of questionnaire Q18 to reinsurers (Document ID 7403).

1398 Additionally, reinsurers may choose to retain risk, which could also be considered as an alternative to purchasing reinsurance. This will be considered as a competitive constraint, in Section 7.3.2.2.

1399 Alternative capital is a non-technical term for forms of capital other than debt, equity or traditional reinsurance.

1400 In an ILW, the insurer buys protection against a catastrophe through a derivative contract. The contract will pay if industry-wide insured losses from a catastrophe exceed an amount set by the contract.

1401 Collateralised reinsurance refers to a treaty in which the non-traditional reinsurer places in escrow the entire amount of coverage it is offering.

1402 In a reinsurance sidecar, the non-traditional reinsurer invests in a reinsurance vehicle that closely aligns with a specific traditional reinsurer. The company (or reinsurance vehicle) that receives the investment bonds (including insurance linked securities ("ILS")).[1403] As with other forms of reinsurance, insurers may cede their risk directly, or with the intermediation of an alternative capital provider, such as brokers or capital advisors.

7.1.6.1. The Notifying Party's view

(1149) In relation to alternative capital, the Notifying Party considers that the distribution of reinsurance via alternative capital, and the arrangement of ILWs, collaterised reinsurance, sidecars, catastrophe bonds, should not be considered as a separate market or segments.[1404] The Notifying Party submits that from the supply-side perspective, most reinsurance brokers are able to offer services for the placement of risks via alternative capital, and that the skills and knowledge required are similar to reinsurance brokerage, while indicating that for these services a wider range of intermediaries, such as investment banks, are available.[1405] The Notifying Party further argues that from a demand-side perspective, alternative capital and traditional reinsurance are substitutable, so that a small but significant and permanent increase in the price of traditional reinsurance, then cedents would easily switch to alternative capital.[1406]

(1150) In its Reinsurance White Paper,[1407] the Notifying Party argues more generally that reinsurance clients strongly discipline reinsurance brokerage firms, not only because they have a number of choices for how to buy reinsurance, but also because they have several other means of managing risk.[1408] According to the Notifying Party, an insurer's decision to buy reinsurance depends on the ability of brokers and reinsurers to develop reinsurance solutions that are structured in such a way to address the client's risk management requirements and that are priced competitively compared to all other forms of capital.[1409]

7.1.6.2. The Commission's assessment

(1151) For the purpose of this Decision, the Commission considers that reinsurance brokerage for alternative capital does not constitute a separate market. However, the Commission notes that alternative capital is primarily used for some risk types within treaty reinsurance, and is not used in facultative reinsurance.

(1152) On the *demand side*, the majority of insurers that responded to the Commission's market investigation indicated not to use alternative capital reinsurance (or, as a result, brokerage services for alternative capital reinsurance).[1410] Of those that do use alternative capital reinsurance, the majority indicate that they only use this for some risk types within treaty reinsurance, namely (i) catastrophe property risk; (ii)

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is called a sidecar, because that company rides alongside the traditional reinsurer, taking a portion of the risk the traditional reinsurer has underwritten.

1403 Sidecars and catastrophe bonds are together referred as Insurance linked securities ("ILS"). In an ILS, a bond provides the reinsurance protection. Bond investors provide collateral that will be tapped if the reinsurance is triggered. The premiums the insurer pays form the bond's coupon payments. Catastrophe bonds (typically referred to as "Cat bonds") are the most common form of ILS. Catastrophe bonds are designed to raise capital to cover losses resulting from a natural disaster, and allow the issuer to receive funding from the bond only if specific conditions, such as an earthquake or tornado, occur.

1404 Form CO, paragraph 1391.

1405 Form CO, paragraphs 997-1000, 1009 and 1399-1400.

1406 Form CO, paragraph 1396.

1407 Reinsurance White Paper Section 2.

1408 Reinsurance White Paper, paragraphs 3-16.

1409 Reinsurance White Paper, paragraph 5.

1410 Replies to question 23 of questionnaire Q17 to non-life reinsurance brokerage customers.

retrocession; and to a lesser extent (iii) non-catastrophe property risk. None of the respondents to the Commission's market investigation indicated that alternative capital reinsurance is used for facultative reinsurance placements.[1411] This is in line with the US DOJ deposition of Willis Re CEO James Kent, […] "*[…]*."

(1153) For the cases where alternative capital forms an alternative to traditional reinsurance, the results of the market investigation indicate clearly that brokers still play a key role (as for traditional reinsurance). The majority of reinsurers consider that alternative capital placements require broker intermediation. Some respondents even explain that in some instances, the help of a broker is required to a higher extent.[1412] Similarly, while only a minority of insurers indicated that they use alternative capital products for reinsurance purposes, among those that do, a large majority makes use of broker services. Therefore, while alternative capital reinsurance may in some cases form an alternative to traditional reinsurance, it is not an alternative to broker services. In line with this, an overwhelming majority of insurers that responded to the Commission's phase 1 market investigation indicate that they do not consider alternative capital as an alternative to reinsurance brokerage.[1413]

(1154) On the *supply side*, The Commission notes that, similarly to traditional reinsurance, the Parties are strong players in the field of alternative capital reinsurance brokerage. While many reinsurance brokers replying to the Commission's market investigation indicated that they do not provide brokerage services for alternative capital reinsurance, the Commission notes that the major reinsurance brokers (and the Parties main competitors) do offer these services.[1414]

(1155) As for the Notifying Party's argument that intermediaries other than brokers (e.g. banks) are available to support alternative capital reinsurance, this was only partially confirmed by the Commission's market investigation. The majority of insurers responding to the Commission's market investigation indicated that they do not consider the services of such alternative intermediaries equivalent to those of reinsurance brokers. For example, customers explain that banks lack the risk management expertise as well as the back-office infrastructure for claims servicing and legal support that brokers offer.[1415] As a result, while there are some nuances on the supply side, largely the same players provide brokerage services for traditional reinsurance and alternative capital.

(1156) For the purpose of this assessment, the Commission will consider alternative capital reinsurance brokerage as part of the treaty reinsurance brokerage market, while taking note that this is primarily relevant for the property and retrocessional risk types. As alternative capital reinsurance does not play a role in facultative reinsurance, it is not relevant to include alternative capital reinsurance brokerage in the market for facultative reinsurance brokerage.

7.1.7. Conclusion on relevant product markets

(1157) In summary, the Commission considers that non-life reinsurance brokerage consists of two product markets: (i) treaty reinsurance brokerage and (ii) facultative reinsurance brokerage, and will carry out its competitive assessment for these two

[1411] Replies to question 24 of questionnaire Q17 to non-life reinsurance brokerage customers.
[1412] Replies to question 18 of questionnaire Q2 to reinsurers.
[1413] Replies to question 38 of questionnaire Q4 to insurers.
[1414] Replies to question 16 of questionnaire Q19 to reinsurance brokers.
[1415] Replies to question 27 of questionnaire Q17 to non-life reinsurance brokerage customers.

markets. The Commission finds that these markets can be segmented by risk type, but will assess these segments together in the competitive assessment.

7.2. Relevant geographic markets

7.2.1. Commission's previous decisional practice

(1158) In a previous decision,[1416] the Commission considered the market for reinsurance brokerage to be worldwide in scope, notably in light of the fact that risks for insurers and reinsurer clients are placed on a worldwide basis.

7.2.2. The Notifying Party's view

(1159) In line with the Commission's previous decisions, the Notifying Party considers that reinsurance brokerage is worldwide in scope. The Notifying Party argues that insurers seek the best available terms regardless of where the reinsurer is based and brokers support their clients regardless of their location. While certain regional nuances, such as the prevalence of specific natural catastrophes, exist, the Notifying Party indicates that these do not warrant a narrower geographic market definition.[1417]

7.2.3. The Commission's assessment

(1160) The results of the market investigation indicate, in line with previous decisions and the Notifying Party's view, that the scope of non-life reinsurance brokerage is likely to be global in scope, both for the facultative and treaty markets. In this respect, most insurers indicate that they purchase their reinsurance brokerage at global level.[1418]

(1161) Based on the above, and in line with the Notifying Party's view and the Commission's previous decisions, the Commission considers that the markets for non-life treaty reinsurance brokerage and non-life facultative reinsurance brokerage are global in scope.

7.3. Competitive assessment: non-coordinated effects[1419]

7.3.1. The Notifying Party's view

(1162) The Notifying Party submits that the Transaction does not give rise to a significant impediment to effective competition in reinsurance brokerage or any possible sub-segmentations for the reasons set out below.[1420]

(1163) *Firstly*, The Notifying Party argues that the Parties' combined market share is below the level that could give rise to competition concerns. The Notifying Party asserts that this holds true for any plausible segmentation of the reinsurance brokerage market. For those segmentations where the Parties' combined market shares are higher, such as the EEA-wide shares for the aviation and marine, energy and construction risk types, the Notifying Party argues that (i) these segments are not relevant as the appropriate geographic market definition is global, and (ii) sufficient brokers and direct placement would constrain the Merged Entity.[1421]

1416 M.1307 – *Marsh & McLennan / Sedgwick*, paragraph 23.
1417 Form CO, paragraphs 1097-1101.
1418 Replies to question 47 of questionnaire Q4 to Insurers.
1419 In view of the results of the market investigation, which did not elicit any elements in this respect, as well as the nature of the remedies put forward by the Parties, which consist in the divestment of the full overlap resulting from the merger, the Commission does not consider appropriate to further elaborate on coordinated effects in the present case.
1420 Form CO, paragraph 1136.
1421 Form CO, paragraphs 1136 and 1146-1149.

(1164) In its Reply to the 6(1)(c) Decision, the Notifying Party reiterates that it considers the Parties' market shares for facultative and non-specialty treaty reinsurance brokerage too low to give rise to competition concerns. The Notifying Party presents that, based on its market share estimations and including the direct channel, the HHI would remain under [500-1,000].[1422] The Notifying Party indicates that it considers its market size estimates more robust than public market size estimates from other sources.[1423] It also considers that higher market shares in the Parties' internal documents and internal correspondence are "back-of-the-envelope" figures and therefore have limited evidentiary value compared to the Notifying Party's estimates.[1424]

(1165) *Secondly*, the Notifying Party submits that many competing brokers will remain on the market, and pose a credible competitive constraint on the Merged Entity post-Transaction. By way of illustration, the Notifying Party presents a variety of competing reinsurance brokers, such as Marsh, Hyperion / RKH, THB, Gallagher, UIB, BMS, Tysers, Ed, Beach, TigerRisk, EC3 Brokers, BDO, Assurex, BB&T and Chedid Re.[1425] The Notifying Party additionally indicates that it experiences competition from new entrants, such as McGill and Lockton Re, regional reinsurance brokers, such as Ecclessia and MDB, and specialised brokers, such as Atlantic and Lonmar Reinsurance.[1426]

(1166) In its Reply to the 6(1)(c) Decision the Notifying Party further argues that Marsh, the largest competitor to the Parties, is the closest competitor to both Aon and WTW, and that Marsh will continue to have at least the same incentives to compete aggressively post-Transaction.[1427]

(1167) The Notifying Party additionally submits that besides Marsh, a range of other brokers will also continue to exercise significant competitive pressure post-Transaction across the different segments of non-life reinsurance brokerage (facultative, specialty treaty and non-specialty treaty). The Notifying Party explains that for these brokers to compete meaningfully, they do not need to have the same reach, resources, expertise and capabilities as the Parties and Marsh.[1428] In this regard, the Notifying Party also puts forward that the win-loss data it provided show strong competitive constraints in the form of the direct channel, risk retention and the Parties' rival brokers.[1429]

(1168) The Notifying Party also considers that the Parties do not compete strongly across all segments of non-life reinsurance brokerage. The Notifying Party submits that WTW is relatively weak in a number of risk areas such as accident & health, motor and retrocession. The Notifying Party also considers that tender data show that the Parties do not compete strongly.[1430]

1422 Reply to the 6(1)(c) Decision, paragraphs 805 to 815.
1423 E.g. Swiss Re and AM Best.
1424 Reply to the 6(1)(c) Decision, paragraphs 816 to 825.
1425 Form CO, paragraphs 1159-1225.
1426 Form CO, paragraphs 1226-1289.
1427 Reply to the 6(1)(c) Decision, paragraphs 864 to 870.
1428 Reply to the 6(1)(c) Decision, paragraphs 871 to 893.
1429 Reply to the 6(1)(c) Decision, paragraphs 828 to 852.
1430 Reply to the 6(1)(c) Decision, paragraphs 837 to 842 and 853 to 863.

(1169) In two memoranda submitted on 25 February and 26 February 2021,[1431] the Parties provide examples of internal documents that demonstrate that the Parties experience competition from competing brokers other than Marsh.

(1170) *Thirdly*, the Notifying Party indicates that reinsurers will continue to aim at winning business from ceding insurers directly, posing a competitive constraint on brokers. By way of illustration, the Notifying Party argues that [a significant percentage] of reinsurance is placed directly globally (and [a significant percentage] in the EEA).[1432] Furthermore, the Notifying Party indicates that reinsurance companies actively pursue direct business, and that some insurance carriers, such as Talanx, have set up in-house brokers.[1433] The Notifying Party finally specifies that direct placement is particularly common outside of specialty treaty risks.[1434]

(1171) In its Reply to the 6(1)(c) Decision, the Notifying Party further argues that direct placement is used by cedents both across treaty and facultative and across risk types, and provides several examples of direct placements in support of this position.[1435] The Notifying Party submits that reinsurers have the capabilities to support direct placement and frequently hire talent from brokers to expand their services.[1436]

(1172) The Notifying Party considers that for direct placement to constrain the Parties, it is sufficient if cedents are able to switch *part* of their reinsurance portfolio to direct placement, rather than switching entirely.[1437] The Notifying Party experiences that cedents do in fact discipline brokers this way; in support of this it presents public statements from reinsurers and internal documents citing direct placement as competition.[1438]

(1173) In three memoranda submitted on 25 February,[1439] 26 February[1440] and 1 March 2021,[1441] the Parties provide examples of internal documents and analyses of internal data sources that demonstrate that the Parties experience competition from reinsurers vying for direct business.

(1174) *Fourthly*, the Notifying Party argues that buyers of reinsurance, i.e. primarily insurance companies, are sophisticated players that can exercise countervailing buyer power vis-à-vis brokers. The Notifying Party further explains that reinsurance buyers have various methods to do so, such as placing risk directly with reinsurers, reinsuring risk via captive reinsurance, reinsuring via alternative capital providers, and using multiple brokers in parallel (multi-sourcing). The Notifying Party indicates that reinsurance buyers organise tenders and negotiate rebates. Additionally, as

1431 Memorandum on evidence of constraint from rival brokers in commercial risk broking in Aon internal documents, 25 February 2021; Analysis of competitive constraints evidenced in WTW's ordinary course documents, 26 February 2021.
1432 Form CO, paragraph 1294.
1433 Form CO, paragraphs 1292 and 1306 to 1330.
1434 Form CO, paragraphs 1299 to 1303.
1435 Reply to the 6(1)(c) Decision, paragraphs 722 to 723.
1436 Reply to the 6(1)(c) Decision, paragraphs 724 to 728.
1437 Reply to the 6(1)(c) Decision, paragraphs 730 to 748.
1438 Reply to the 6(1)(c) Decision, paragraphs 749 to 774.
1439 Memorandum on evidence of constraint from rival brokers in commercial risk broking in Aon internal documents, 25 February 2021.
1440 Analysis of competitive constraints evidenced in WTW's ordinary course documents, 26 February 2021.
1441 Analysis of the competitive constraint from direct reinsurance, 1 March 2021.

switching costs are low, they are able to retaliate against attempts to exercise market power by brokers.[1442]

(1175) In support of its argument that reinsurance buyers have countervailing buyer power and do not need the Parties to place reinsurance, the Parties performed a share of wallet analysis. This analysis estimates the proportion of GWP for EEA's top cedents brokered by the Parties. The Parties estimate that the EEA top 25 cedents account for [a significant percentage] of cessions in the EEA, and that the Parties brokered [a small percentage] of the reinsurance needs for these clients.[1443]

(1176) In its Reply to the 6(1)(c) Decision the Notifying Party reiterates that it considers that cedents exercise significant buyer power. The Notifying Party explains that cedents do not need to switch fully to a competitor to constrain the Parties, but that competition "at the margins" is predominant in the industry. The Notifying Party also explains that brokers regularly provide cedents with a reinsurance strategy free of charge, and that brokers are only remunerated if they place the risks on behalf of the cedent.[1444]

(1177) *Fifthly*, the Notifying Party submits that the use of alternative capital transfer instead of traditional reinsurance poses a competitive threat to brokers. The Notifying Party explains that there are four main alternative capital instruments relevant to reinsurance (as described above in Section 7.1.6).[1445] The Notifying Party submits that there is a broader set of intermediaries available for alternative capital solutions, such as financial institutions (e.g. Goldman Sachs and Deutsche Bank) and consultancies (e.g. KPMG and Deloitte), as well as insurtech platforms.[1446]

(1178) In its Reply to the 6(1)(c) Decision, the Notifying Party submits that alternative capital is a growing risk management strategy and that while it is historically only been utilised for catastrophe risk placements, its availability for other types of risk is growing.[1447] The Notifying Party also submits data on 88 alternative capital placements to demonstrate the involvement of intermediaries other than brokers.[1448]

(1179) In a memorandum submitted on 26 February 2021,[1449] the Parties provide examples of internal documents that demonstrate the growth of alternative capital placements and insurtech.

(1180) *Sixthly*, the Notifying Party indicates that captive reinsurance by cedents continues to pose a competitive threat to brokers post-Transaction, as reinsurance buyers can adjust the volume of risk that they cede to the reinsurance market. The Notifying Party explains that a captive reinsurance organisation is essentially an in-house reinsurance company that provides reinsurance to its corporate group, and that a significant proportion of cedents use captives.[1450]

(1181) In its Reply to the 6(1)(c) Decision, the Notifying Party further explains that risk retention by cedents constrains brokers. The Notifying Party considers that even if

1442 Form CO, paragraphs 1136, 1315 to 1317 and 1320 to 1321.
1443 Reinsurance White Paper, Section 2.
1444 Reply to the 6(1)(c) Decision, paragraphs 894 to 908.
1445 Form CO, paragraph 1324.
1446 Form CO, paragraphs 1325 to 1329.
1447 Reply to the 6(1)(c) Decision, paragraphs 787 to 794.
1448 Reply to the 6(1)(c) Decision, paragraphs 795 to 804.
1449 Analysis of competitive constraints evidenced in WTW's ordinary course documents, 26 February 2021.
1450 Form CO, paragraphs 1330 to 1333 and Reinsurance White Paper, Section 1.

retaining risk may only be a possibility to cedents up to a limited extent, it is sufficient to pose a competitive constraint. In support of this position, the Notifying Party, amongst others, cites […].[1451]

(1182) *Seventhly*, the Notifying Party submits that the Transaction will not affect the ability of new players to enter, or the ability of existing players to expand in the reinsurance brokerage market, notably by attracting talent from existing reinsurance brokers or from companies active in related markets. According to the Notifying Party, talent mobility is high in the reinsurance brokerage market, and by way of illustration, it provides various examples of notable broker movements between brokerage companies and companies in related markets. It furthermore submits that mergers usually result in an increased number of brokers moving away from the merged entities, and that it has already experienced some departures following announcement of the Transaction.[1452] The Notifying Party considers that notice periods, non-solicitation clauses or non-compete clauses that may be part of employees' contracts do not materially affect broker mobility.[1453]

(1183) In its Reply to the 6(1)(c) Decision, the Notifying Party further illustrates the prevalence of talent mobility from the Parties to smaller brokers with a series of examples. The Notifying Party submits that the Parties lose clients and revenues as a direct result of talent departures. According to the Notifying Parties, this is particularly true for facultative reinsurance – because of the focus on transactional experience – and for specialty treaty risk – because of the required risk-specific expertise.[1454]

(1184) In a memorandum submitted on 26 February 2021, the Parties provide examples of internal documents that demonstrate talent mobility in the reinsurance brokerage sector.

(1185) In addition to broker mobility, the Notifying Party considers that the typically short duration of contracts for reinsurance brokerage, low switching costs and multi-sourcing by reinsurance buyers enable entry and expansion in the reinsurance brokerage market.[1455] Furthermore, the Notifying Party does not consider that data and analytical capabilities form a barrier to entry, as many of the relevant models and data are available from third party providers.[1456] Similarly, the Notifying Party indicates that local presence around the world is only beneficial in very limited cases,[1457] as (i) cedents can move risk intra-group to major reinsurance hubs, and (ii) local presence is not required to obtain market intelligence.[1458] The Notifying Party also does not consider presence in primary (commercial risk) insurance brokerage to be a competitive advantage for reinsurance brokers, as there are legal requirements[1459] to keep these businesses separate, both businesses serve different clients, and there are examples of successful reinsurance brokers that are not active in primary insurance brokerage.[1460] Finally, the Notifying Party submits that

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1451 Reply to the 6(1)(c) Decision, paragraphs 779 to 786.
1452 Form CO, paragraphs 1334 to 1340 and Reinsurance White Paper, Section 3.
1453 Form CO, paragraphs 1341 to 1346.
1454 Reply to the 6(1)(c) Decision, paragraphs 909 to 961.
1455 Form CO, paragraphs 1347 to 1352.
1456 Form CO, paragraphs 1353 to 1355.
1457 Primarily for broking of locally ceded facultative business.
1458 Form CO, paragraphs 1373 to 1383.
1459 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution, OJ L 26, 2.2.2016, p. 19–59 ("IDD").
1460 Form CO, paragraphs 1384 to 1388.

insurtech platforms are entering the reinsurance brokerage market and are changing the way (re)insurance products are marketed, priced and distributed, thereby exercising a competitive pressure on reinsurance brokers.[1461]

(1186) *Eighthly and finally*, the Notifying Party considers that the Transaction should instead be regarded as pro-competitive in the market of reinsurance brokerage, as it will accelerate the creation of new solutions to match capital with client needs.[1462]

(1187) In its Reply to the 6(1)(c) Decision, the Notifying Party further argues that the results of the market investigation are subjective and superficial and do not allow to establish a causal link between the Transaction combining two large reinsurance brokers globally and the likelihood of a significant impediment of effective competition. According to the Notifying Party, the Transaction will to the contrary benefit to clients and the larger reinsurance industry by accelerating innovation and meeting unmet client needs.[1463]

7.3.2. The Commission's assessment

7.3.2.1. Market structure for the treaty and facultative reinsurance brokerage market

(1188) The Notifying Party's market share estimates for the overall market for non-life reinsurance brokerage are provided in the below table.

Table 29: Notifying Party's global market share estimates for non-life reinsurance brokerage, brokered channel (in GWP, 2017-2019)[1464]

Company	GWP (million EUR) 2017	Share of supply 2017	GWP (million EUR) 2018	Share of supply 2018	GWP (million EUR) 2019	Share of supply 2019
Aon	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
WTW	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	***[…]***	***[30-40]%***	***[…]***	***[30-40]%***	***[…]***	***[30-40]%***
Guy Carpenter (Marsh)	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Talanx	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Hyperion / RKH / Howden / Matrix	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
BDO	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Acrisure / Beach / Axiom Re	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Tysers / RFIB	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Assurex	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
TigerRisk	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

1461 Form CO, paragraphs 1356 to 1372.

1462 Form CO, paragraph 1136.

1463 Reply to the 6(1)(c) Decision, paragraphs 962 to 965.

1464 Some percentages may not add up due to rounding. The Notifying Party submitted minor revisions to its estimates following adoption of the Article 6(1)(c) Decision, some numbers in this table are therefore different from the table in that decision.

Company	GWP (million EUR) 2017	Share of supply 2017	GWP (million EUR) 2018	Share of supply 2018	GWP (million EUR) 2019	Share of supply 2019
AmWINS / THB / Colemont	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Total	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Reply to RFI 26, Annex 6B.2 (REINS).

(1189) The Notifying Party bases its market size estimates on data sourced from Inpoint, Aon's management consulting and advisory business. Inpoint collects its data from regulatory data. Insurers submit their gross written premiums and net written premiums, and the difference between these is taken as the basis for the market size estimate. These numbers are then corrected for factors such as intra-company operations. To estimate the size of the brokered channel, the Notifying Party considered that the proportion of direct placements accounts to [a significant percentage] globally.[1465]

(1190) The Notifying Party has only performed the exercise described above for 2017. For 2018 and 2019, the market size and competitor market shares have been scaled up with the average GWP growth rate of the Parties. The Parties' combined market share and their competitor market shares are therefore identical over 2017, 2018 and 2019. Rather than market shares, the Notifying Party labels these estimates for 2018 and 2019 as "illustrative shares".[1466]

(1191) The Notifying Party considers its estimates of the overall size of the non-life reinsurance market more reliable than other publicly available sources, showing a smaller overall market size, notably those published by ratings agency AM Best[1467] and by reinsurer Swiss Re.[1468] In this respect, the Notifying Party argues that AM Best's market size is incomplete as it only covers the top 50 reinsurers. As to Swiss Re's estimate, the Notifying Party puts forward that the market sizing is not reliable as the estimate is lower than that of AM Best (which, according to the Notifying Party, only covers part of the total market).[1469]

(1192) Contrary to the Parties' contention, the Commission considers that the Parties' estimates of the size of the market cannot be considered as more reliable than that available from publicly available sources, which in turn has an impact on the market shares provided by the Parties. Concerning the 2017 market size estimate, the Commission notes that the approach adopted by the Notifying Party and Swiss Re to estimate the overall size of the market is similar. Both (i) adopt a demand-side

1465 Form CO, Annex 6B.1 (REINS), paragraphs 10-14; Form CO, paragraph 1124.

1466 Form CO, Annex 6B.1 (REINS), paragraph 15.

1467 AM Best's reports are available on http://www3.ambest.com/reinsurance/bestweekreports.asp.

1468 Swiss Re's market overview is available at https://reports.swissre.com/2017/financial-report/financial-year/market-environment/reinsurance-non-life.html for 2017, at https://reports.swissre.com/2018/financial-report/market-environment/reinsurance-non-life.html for 2018 and at https://reports.swissre.com/2019/financial-report/financial-year/market-environment/reinsurance-non-life.html for 2019.

1469 Form CO, Annex 6B.1 (REINS), paragraphs 21-28.

approach (meaning they source information from insurers), (ii) rely on regulatory data, and (iii) correct for factors such as internal operations. AM Best's estimate, on the other hand, follows a different approach, as it sources data from reinsurers (supply-side approach). The resulting market share is therefore not directly comparable to that of the Parties and Swiss Re, and could be different due to factors such as (i) inclusion of reinsurers' revenues from sources other than reinsurance in the market size estimate, and (ii) exclusions of factors such as intra-company operations.[1470]

(1193) Concerning the 2018 and 2019 market size estimates, the Commission considers that there is no basis to assume that the market has grown at the same rate as the average GWP growth rate of the Parties in the period 2017-2019. The Parties' average GWP growth rate in the period 2017-2019 equals [a significant percentage] ([a small percentage] in 2017-2018 and [a small percentage] in 2018-2019). Both AM Best and Swiss Re estimate a market growth in the period 2017-2019 that is significantly lower. AM Best estimates a GWP growth of 11.5% in the period 2017-2019 (0.1% in 2017-2018, and 11.3% in 2018-2019) and Swiss Re estimates a GWP growth of 11.8% in 2017-2019 (5.9% in 2017-2018, and 5.5% in 2018-2019).[1471] The estimated growth rates of AM Best and Swiss Re are relatively similar, and are therefore more likely to accurately reflect the actual market growth rate. Against this background, the "illustrative" shares provided by the Notifying Party for 2018 and 2019 therefore considerably understate the Parties' combined market share.

(1194) Based on the above, and taking into account the proportion of direct placements at global level provided by the Parties, the Commission considers that it is appropriate to consider a range of market size estimates for the non-life reinsurance brokerage market:

(a) **The lower bound** of the range is the Notifying Parties 2017 market size estimate, combined with the growth rate estimate of Swiss Re;

(b) **The upper bound** of the range consists of Swiss Re's market size estimates of 2017, 2018 and 2019.

This yields the following market share estimates for 2017-2019:

Table 30: Global market share estimate range for non-life reinsurance brokerage based on the Notifying Party's and Swiss Re's estimates for the Parties and selected competitors (by GWP, 2017-2019)[1472]

Broker	Share of supply 2017	Share of supply 2018	Share of supply 2019
Aon	[20-30]%	[20-30]%	[20-30]%
WTW	[10-20]%	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]-[40-50]%***	***[30-40]-[40-50]%***
Guy Carpenter (Marsh)	[20-30]%	[20-30]%	[20-30]%
Miller	[0-5]%	[0-5]%	[0-5]%
TigerRisk	[0-5]%	[0-5]%	[0-5]%
BMS	[0-5]%	[0-5]%	[0-5]%
Acrisure / Beach / Axiom Re	[0-5]%	[0-5]%	[0-5]%

1470 Non-confidential minutes of call with Swiss Re dated 28 January 2021 (Document ID 8598).
1471 Reply to RFI 26.
1472 Some percentages may not add up due to rounding.

Broker	Share of supply 2017	Share of supply 2018	Share of supply 2019
Lockton	[0-5]%	[0-5]%	[0-5]%
Gallagher / Capsicum Re	[0-5]%	[0-5]%	[0-5]%
Holborn	[0-5]%	[0-5]%	[0-5]%
Hyperion / RKH / Howden / Matrix	[0-5]%	[0-5]%	[0-5]%
Other brokers	[30-40]%	[20-30]-[30-40]%	[20-30]%
Total	[90-100]%	[90-100]%	[90-100]%

Source: Reply to RFI 38, Table 3 and 4.

(1195) According to paragraph 17 of the Horizontal Merger Guidelines,[1473] a merger involving a merged entity whose market share remains below 50% after the merger may also raise competition concerns in view of other factors such as the strength and number of competitors, the presence of capacity constraints or the extent to which the products of the merging parties are close substitutes. In this respect, the Commission notes the Parties' relative strength compared to their competitors in reinsurance brokerage as a whole. Indeed, if the Parties' combined share amounts to [40-50]% at most, the Merged Entity would become the first player in this area by far. By way of illustration, the next largest competitor (Marsh) would have at most a share of [20-30]%, *i.e.* [10-20] percentage points smaller than the Merged entity. Additionally, apart from Marsh, the Parties' other competitors have a very limited presence, resulting in having a market structure with a very large Merged entity, and apart from Marsh, a number of very small competitors having a market share of [0-5]% at most. Even considering the lowest bound of [30-40]% the gap between the Parties and other competitors is significant, as there is a difference of [5-10] percentage points between the Parties' and Marsh's share. On this basis, the Commission considers that the markets shares levels of the Parties in reinsurance brokerage as a whole, along other elements discussed further down below in Sections 7.3.2.2 and 7.3.2.3, are indicative of a significant impediment of effective competition on the market post-Transaction.

(1196) Based on the market share ranges above, the HHI pre-Transaction is between [1,000-1,500] and [1,500-2,000]. The Transaction leads to a very significant HHI delta, approximately [500-1,000].

(1197) As to the split between treaty and facultative reinsurance, the Notifying Party indicated that it is unable to break down the non-life reinsurance market size estimate into facultative and treaty reinsurance, and is therefore not able to provide reliable market shares for facultative and treaty. As a proxy, the Notifying Party provides "illustrative" shares for treaty and facultative reinsurance, by assuming that the proportional split between facultative and treaty for the market overall is the same as for the Parties (i.e. [a high percentage] treaty and [a small percentage] facultative globally).[1474] The Parties' combined market shares and competitor market shares are

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1473 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentration between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004, paragraph 22.

1474 Form CO, paragraph 1124.

therefore identical to the Notifying Party's estimates for the non-life reinsurance brokerage market overall.[1475]

(1198) However, the Commission considers that this assumption is not valid. As indicated by the Notifying Party itself, several smaller brokers are primarily active in facultative reinsurance (15 out of 34 named reinsurance brokers).[1476] This is currently not represented in the market shares. Therefore, the Parties market shares in treaty reinsurance are likely slightly higher than provided by the Parties, and the shares in facultative reinsurance lower. Nevertheless, taking into account the comparatively large size of the treaty segment and the low market shares of the brokers primarily active in facultative reinsurance, the Commission considers that this fact does not have a material impact on the Parties market shares in treaty reinsurance.

(1199) Finally, the Notifying Party has also estimated market shares for the non-life reinsurance brokerage market segmented by risk type. The Notifying Party was not able to do so separately for treaty and facultative reinsurance. However, as the large majority of the non-life reinsurance brokerage market consists of treaty reinsurance, it considers that the treaty reinsurance brokerage shares by risk type are similar to those in the reinsurance brokerage market overall, and has assumed that the market proportion of treaty reinsurance for each risk type is the same as that for the Parties.

(1200) The resulting market share estimates by treaty and facultative reinsurance and by risk type are provided in the table below.

Table 31: Notifying Party's global market share estimates for non-life reinsurance segmented by treaty and facultative and by risk type, brokered only (by GWP, 2019)[1477]

Segment	Aon share of supply	WTW share of supply	*Combined share of supply*	Market / segment size (million EUR)
Non-life reinsurance brokerage (overall)	**[20-30]%**	**[10-20]%**	***[30-40]%***	**[…]**
Facultative – overall	**[10-20]%**	**[10-20]%**	***[30-40]%***	**[…]**
Treaty – overall	**[20-30]%**	**[10-20]%**	***[30-40]%***	**[…]**
Treaty – specialty	**[20-30]%**	**[10-20]%**	***[40-50]%***	**[…]**
Treaty – Aviation	[20-30]%	[10-20]%	***[40-50]%***	[…]
Treaty – Marine, Energy and Construction	[20-30]%	[10-20]%	***[40-50]%***	[…]
Treaty – Non-specialty	**[20-30]%**	**[10-20]%**	***[30-40]%***	**[…]**
Treaty – Accident & Health	[10-20]%	[5-10]%	***[20-30]%***	[…]
Treaty – Casualty	[20-30]%	[10-20]%	***[40-50]%***	[…]
Treaty – Motor	[5-10]%	[0-5]%	***[5-10]%***	[…]

1475 Form CO, Annex 6B.1 (REINS), paragraphs 16-18.

1476 Reply to RFI 26, Annex 6B.3.

1477 Some percentages may not add up due to rounding.

Segment	Aon share of supply	WTW share of supply	*Combined share of supply*	Market / segment size (million EUR)
Treaty – Property	[20-30]%	[10-20]%	*[40-50]%*	[…]
Treaty – Retrocession	[20-30]%	[5-10]%	*[30-40]%*	[…]
Treaty – Trade Credit & Surety	[30-40]%	[10-20]%	*[50-60]%*	[…]

Source: Reply to RFI 38, Annex 1

(1201) As for the overall non-life reinsurance brokerage market shares overall (and described in the recitals above), the Commission considers that the market shares are likely understated and considers it appropriate to apply a range to the market shares based on the size and growth estimates provided by the Notifying Party and published by Swiss Re.

(1202) The market share ranges for the segmentations by treaty / facultative and risk type are derived by applying the Notifying Party' assumptions for these splits to the alternative market sizes. The Notifying Party submits that the market share ranges resulting from this are not reliable, as (i) it does not consider the market sizing from Swiss Re to be reliable, and (ii) applying the Parties' assumptions to the alternative market sizing is not valid when the difference in market size comes primarily from one or a few segments, rather than spread out proportionally over all segments.[1478]

(1203) While the Commission acknowledges that the market share ranges for the segmentations within non-life reinsurance brokerage have some shortcomings and are therefore less reliable than the ranges for non-life reinsurance brokerage overall, the same is true for the market share estimates provided by the Parties (see discussion in the recital above). As the Commission considers that the Notifying Party's market share estimates, particularly for 2018 and 2019, are understated, the same must be true for at least a significant part of the estimates for segmentations of that market as well. The Commission therefore considers that the market share ranges for each segment therefore nevertheless provide a reasonable proxy of the Parties' market positions in each of the segments.

(1204) The resulting market share ranges are provided below.

[1478] Reply to RFI 38, paragraph 14.

Table 32: Global market share estimate range for non-life reinsurance brokerage segmented by treaty / facultative and risk type based on the Notifying Party's and Swiss Re's estimates (by GWP, 2019)[1479]

Segment	Aon share of supply	WTW share of supply	*Combined share of supply*	Marsh share of supply[1480]
Non-life reinsurance brokerage (overall)	**[20-30]%**	**[10-20]%**	***[30-40]-[40-50]%***	**[20-30]%**
Facultative – overall	**[10-20]%**	**[20-30]%**	***[30-40]-[40-50]%***	**[20-30]%**
Treaty – overall	**[20-30]%**	**[10-20]%**	***[30-40]-[40-50]%***	**[20-30]%**
Treaty – specialty	**[20-30]%**	**[10-20]%**	***[40-50]-[50-60]%***	**[20-30]-[30-40]%**
Treaty – Aviation	[30-40]%	[10-20]-[20-30]%	***[50-60]%***	[30-40]%
Treaty – Marine, Energy and Construction	[20-30]%	[10-20]%	***[40-50]-[50-60]%***	[20-30]-[30-40]%
Treaty – Non-specialty	**[20-30]%**	**[10-20]%**	***[30-40]-[40-50]%***	**[20-30]%**
Treaty – Accident & Health	[10-20]%	[5-10]%	***[20-30]%***	[10-20]%
Treaty – Casualty	[30-40]-[40-50]%	[20-30]%	***[50-60]-[60-70]%***	[30-40]-[40-50]%
Treaty – Motor	[5-10]%	[0-5]%	***[10-20]%***	[5-10]%
Treaty – Property	[20-30]-[30-40]%	[10-20]%	***[40-50]%***	[20-30]-[30-40]%
Treaty – Retrocession	[40-50]%	[10-20]%	***[50-60]%***	[30-40]%
Treaty – Trade Credit & Surety	[30-40]%	[20-30]%	***[50-60]-[60-70]%***	[30-40]-[40-50]%

Source: Reply to RFI 38, Annex 1

(1205) Pursuant to paragraph 17 of the Horizontal Merger Guidelines,[1481] large combined market shares –50% or more– may in themselves constitute evidence of the existence of a dominant market position, and competition concerns are even more likely to arise where the transaction will reinforce an already concentrated market structure. Additionally, as mentioned above, the same paragraph provides that a merger involving a merged entity whose market share remains below 50 % after the merger may also raise competition concerns in view of other factors.

(1206) In the present case, the Commission notes that on both the treaty non-life reinsurance and the facultative non-life reinsurance markets, the Merged entity would become

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1479 Some percentages may not add up due to rounding.

1480 The Notifying Party is not able to provide competitor market shares for treaty / facultative reinsurance brokerage and shares of supply broken down by risk type segment. For Marsh, the broken down shares have been estimated by assuming that Marsh' GWP is broken down over the categories in the same proportion as the Parties' GWP.

1481 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentration between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

the largest player on the market post-Transaction with the next largest competitor (Marsh) having a smaller share ([20-30]% at most on both markets) and the Parties' other competitors having a very limited presence.

(1207) Furthermore, some segments of the treaty reinsurance market show that the Parties' combined segment share ranges are higher than on the overall market for various risk types. For aviation, marine, energy and construction, casualty, retrocession and trade credit & surety, the range is either entirely above 50% share, or the upper bound is above 50%. In addition, the Parties have a combined segment share for property, which is at [40-50]%.

(1208) These market shares, along other elements discussed further down below in Sections 7.3.2.2 and 7.3.2.3, are indicative of a significant impediment of effective competition post-Transaction on both the treaty non-life reinsurance and facultative non-life reinsurance brokerage markets.

(1209) Moreover, several qualitative indications from the Parties' internal documents and statements support the finding that the market shares provided by the Notifying Party are understated, that the range provided in above tables is a more accurate representation of the Parties' market position, and that the Parties combined hold a particularly strong position in treaty and facultative non-life reinsurance brokerage. This is particularly the case for treaty reinsurance.

(1210) First of all, the CEO of WTW's treaty reinsurance organisation (Willis Re), James Kent, stated in a deposition by the US Department of Justice that Guy Carpenter (Marsh), Aon Benfield (Aon) and Willis Re provide reinsurers with [a very high percentage] of their business.[1482] This is even higher than the upper bound of the Commission's market share range for Aon, WTW and Marsh combined ([70-80]%).

(1211) Secondly, an internal document by WTW named [internal document] contains "[…]".[1483] […], and estimates the global reinsurance brokerage market share of Aon, Marsh and WTW at [a high percentage], i.e. roughly in line with the upper bound of Commission's market share range. The document also indicates that "[…]." An extract of the document is provided below.

Figure 21: Extract of WTW internal document on reinsurance brokerage market shares.

[Internal document]

Source: WTW internal document [internal document]. Document ID 8009-000366.

(1212) *Thirdly*, a WTW internal presentation titled *Willis Re Specialty – Property & Casualty* […].[1484] […]. This is again broadly in line with the Commission's market share ranges. Similar evidence for the Parties' strong market positions is available for risk types for which the Parties have not provided segment shares (or even proposed as risk type segments within reinsurance brokerage). For example, in an Aon internal email exchange dated September 2019, the co-head of Aon Benfield's Cyber practice indicates "*[…]*".[1485]

Figure 22: Extract of WTW internal document on reinsurance brokerage market shares.

[Internal document]

Source: WTW internal document Willis Re Specialty – Property & Casualty. Document ID 8009-001030.

1482 Annex 20 to the Reply to the 6(1)(c) Decision, pages 96 to 97.
1483 WTW internal document [internal document] (Document ID 8009-000366).
1484 WTW internal document Willis Re Specialty – Property & Casualty (Document ID 8009-001030).
1485 Aon internal document dated 6 September 2019 (Document ID 010269-041550).

(1213) The fourth indication that the Parties market shares are higher than what is provided by the Notifying Party, at the very least for some regions, can be found in a WTW internal email exchange between […].[1486] […].[1487] In its Reply to the 6(1)(c) Decision, the Notifying Party simply dismisses this email as "*emotionally charged*" and claims that it has "*no evidentiary value*".[1488] However, the reply […][1489] Additionally, as demonstrated above, the estimates provided in the email are either in line with the US DOJ deposition of […] and reiterated in several internal documents of the Parties, or in line with the Commission's estimates. In this context, the Commission considers that the Notifying Party's dismissal of these estimates does not appear credible.

(1214) *Fifthly*, the Commission notes that for some of the largest competitors identified in its market share estimates (e.g. BDO, Talanx, BB&T, Assurex, USI, AssuredPartners), the Parties were not able to provide a single internal document discussing these reinsurance brokers,[1490] thereby suggesting that the competitive constraint allegedly exerted by these players does not justify that either of the Parties discuss it internally.

(1215) Finally, trade publications assess the market in a way that is in line with the upper bound of the Commission's market share ranges. The Insurer publishes an annual ranking of top 10 reinsurance brokers.[1491] This ranking, visualised below, shows that the combined share of WTW and Aon is approximately 56% in 2019. While this data displays overall revenues including both treaty and facultative reinsurance, considering that treaty reinsurance accounts for approximately 87% of the Parties' global revenues,[1492] the Commission considers that this general order of magnitude is relevant to appreciate the competitive dynamics on both the treaty and facultative reinsurance brokerage market.

1486 WTW internal email exchange dated 15 March 2020, US DOJ reference WTW-2R-000233660 (Document ID 6391).

1487 WTW internal email exchange dated 15 March 2020, US DOJ reference WTW-2R-000233660, (Document ID 6391).

1488 Reply to the 6(1)(c) Decision, paragraph 859.

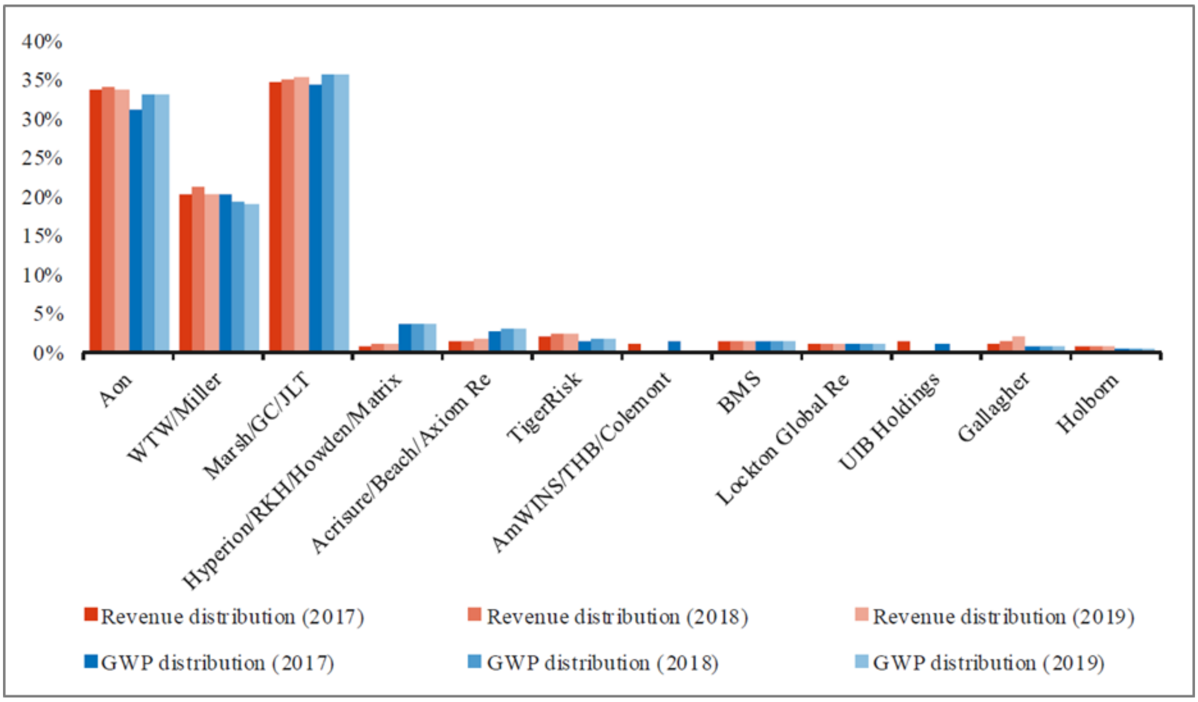
1489 WTW internal email exchange dated 15 March 2020, US DOJ reference WTW-2R-000233660, (Document ID 6391).

1490 Reply to RFI 42

1491 See the Insurer's website, "Top 10 reinsurance broker rankings", available at https://www.theinsurer.com/analysis/top-10-reinsurance-broker-rankings/11087.article, last accessed on 7 June 2021 at 16:30.

1492 Form CO, paragraph 1124.

Figure 23: Notifying Party's visualisation of The Insurer's reinsurance broker ranking.



Source: Reply to RFI 26, dated 14 January 2021.

(1216) The Commission considers that the above elements, in combination with other elements discussed below, are indicative of the Parties' strong position on a number of markets and segments of reinsurance.

(1217) In line with the products and geographic markets defined in Sections 7.1 and 7.2 above, the competitive assessment below will be carried out separately for each market, i.e. treaty non-life reinsurance brokerage and facultative non-life reinsurance brokerage.

7.3.2.2. Treaty reinsurance brokerage market: horizontal non-coordinated effects

(1218) As set out below, the Transaction would lead to a significant reduction of competition, due to the removal of the competitive constraint exerted by WTW and the lack of ability and/or incentive of the remaining competitors to effectively compete against the Merged Entity. In this context, the Commission considers that in the present case, the Transaction would result in a significant impediment of effective competition on the global market for the supply of non-life treaty reinsurance brokerage services.

A. Closeness of competition

(1219) Contrary to the Parties' assertions, the results of the market investigation confirmed that the Parties are particularly close competitors in the brokerage market for treaty non-life reinsurance and that, together with Marsh, they are the strongest and closest reinsurance brokers, for the reasons listed below.

(1220) *Firstly*, the Parties are, together with Marsh, by far the largest brokers in terms of size, with a significant gap to the next competitors. Apart from Marsh, the Parties have significantly larger revenues than their other competitors do. As shown and explained in Figure 23 above, the global reinsurance market has three large global brokers and a long tail of much smaller competitors. In this respect, revenue estimates available from public sources[1493] show that, although WTW is the third largest reinsurance broker overall, it is nearly eight times larger than the fourth player on the market (TigerRisk) and over ten times larger than the fifth player on the market (Gallagher Re[1494]).

(1221) *Secondly*, the market investigation evidenced that, together with Marsh, the Parties have the scale to work on reinsurance placements of any size and complexity, unlike other Tier two brokers.[1495] This question of scale seems to be particularly relevant to large global insurers, which indicated that their choice of broker is limited due to this requirement: "*only [Aon, WTW and Guy Carpenter] have the scale and depth of capabilities to serve its global activities, as well as to support on specialty lines.*"[1496]

(1222) Another insurer explains: "Aon, WTW and Guy Carpenter (Marsh) are the only reinsurance brokers with the depth of resources in multiple lines and the scale to compete effectively in all classes for [our] business. Others such as Gallagher Re/Capsicum have specific expertise [in] some classes, but there is a material gap between them and the leading three."[1497]

(1223) *Thirdly*, the market investigation highlighted that similar to the primary insurance brokerage markets, the Parties enjoy a significant competitive advantage linked to their geographic footprint. In the course of the in-depth market investigation, a vast majority of insurers, reinsurers and competitors indicated that the global reach is an important factor coming into play when selecting a treaty reinsurance broker.[1498]

(1224) Accordingly, an insurer stated that its "widespread footprint in Europe and the [sic] around globe combined with the complexity of its risk exposure, means that it needs a broker for its reinsurance business with the infrastructure and market intelligence to achieve the required depth of analysis (market benchmark, modelling and analysis), but also a local presence or capacity in all countries/regions where [it] has operations. As such, an international scale and local reach are both equally important".[1499]

(1225) In this respect, results of the market investigation show clearly that insurers do not consider reinsurance services provided through an owned network as equivalent to those of partner networks, third party networks and *ad hoc* collaboration with wholesale brokers.[1500]

1493 The Insurer, Top 10 reinsurance broker rankings, 15 September 2020, available at https://www.theinsurer.com/analysis/top-10-reinsurance-broker-rankings/11087.article, last accessed on 7 June 2021 at 16:30.

1494 Since its rebranding in 1 October 2020, Capsicum Re bears the name of Gallagher Re (more information at: https://www.ajg.com/gallagherre/news-and-insights/2020/sep/capsicum-re-switches-to-gallagher-re-to-drive-next-phase-of-ambitious-growth-strategy/). For the purposes of the present Decision, the Commission will therefore refer to this entity as Gallagher Re.

1495 Replies to question 18 of questionnaire Q18 to reinsurers.

1496 Non-confidential minutes of call with a customer, dated 21 September 2020, paragraph 4 (Document ID 6047).

1497 Reply to question 51 of questionnaire Q4 to Insurers (Document ID 9945).

1498 Replies to question 57 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to question 8 of questionnaire Q18 to reinsurers and Replies to question 40 of questionnaire Q19 to reinsurance brokers.

1499 Non-confidential minutes of call with a customer, dated 21 September 2020, paragraph 6 (Document ID 6047).

1500 Replies to question 58 of questionnaire Q17 to non-life reinsurance brokerage customers.

(1226) As such, and as explained in Section 6.3.4.1 above, the Parties having by far the largest owned competitive networks [1501] together with Marsh, including in reinsurance, they benefit from a significant competitive advantage compared to the other Tier two brokers.

(1227) *Fourthly*, the market investigation also highlighted that the Parties have, in comparison to other Tier two brokers, superior capabilities stemming from their large number of staff, in-depth analytics abilities and extended expertise.

(1228) The Parties have a large number of employees. While WTW (which is comparatively smaller than Aon) has approximately […] employees working within its treaty reinsurance arm (Willis Re),[1502] the next largest players which contributed to the Commission's investigation, *i.e.* Gallagher and Lockton, respectively indicated that their overall headcount in reinsurance (therefore not only limited to treaty) amounted to approximately less than […] employees.[1503] As such, even taking a conservative stance, the Parties each have a headcount that is at least 3 times larger than each of their competitors (except for Marsh).

(1229) Furthermore, respondents to the market investigation underlined the strength of the Parties and Marsh compared to other competitors relative to their structural limitations in terms of analytics capabilities and expertise: "*after the big 3, brokers will have competitively less capability in one or one of the critical areas: aggregated data and data manipulation; modelling; expertise and experience; broadest network resources; broadest relationships with varied reinsurers to best match risk appetite*."[1504]

(1230) In the same vein, an insurer indicated that only Aon, WTW and Marsh met the qualitative requirement of the tender it organised for the procurement of reinsurance brokerage services, notably because "*the second-tier brokers fell short in modelling capabilities compared with Aon, WTW and Marsh.*"[1505]

(1231) *Fifthly*, the Parties are able to offer a full suite of reinsurance solutions (e.g. treaty, facultative, alternative capital), and to approach cedents with holistic offers for risk management, which allows them to address the most difficult placements and develop advanced advisory relationships. In this regard, the results of the market investigation have shown that the Parties are, together with Marsh, the main brokers active in (i) the supply of services for reinsurance placements on the alternative capital markets,[1506] but also in (ii) the supply of captive-related services.[1507]

(1232) An insurer notes that "as these largest brokers place the bigger part of the programs in the market, they have insight into almost the full spectrum of the market, which allows for peer comparisons, benchmarking of programs and risk appetites etc. Such

1501 According to the information provided by the Parties, Marsh has offices in 60 countries, Aon in 50 and WTW in 28.

1502 Reply to RFI 16, Annex 3.

1503 Replies to question 27 of questionnaire Q19 to reinsurance brokers.

1504 Replies to question 23 of questionnaire Q18 to reinsurers (Document ID 8532).

1505 Non-confidential minutes of call with a customer, dated 8 October 2020, paragraph 9 (Document ID 6376).

1506 Replies to question 17 of questionnaire Q19 to reinsurance brokers; Replies to question 28 of questionnaire Q17 to non-life reinsurance brokerage customers.

1507 Non-confidential replies to Captive Insurance RFI to Customers, question 2. Nevertheless, specifically with respect to captives-related services, the Commission notes the presence of Gallagher as a significant and credible competitor to the Parties and Marsh. .

insight can be of great added value to their entire client base".[1508] Likewise, a competitor indicated that "insurers will […] tend to appoint flag brokers who are able to meet their needs across a broad set of product lines".[1509] Another competitor underlines that "to compete effectively across the reinsurance broking market, a broker needs scale and expertise across facultative, treaty, and specialty risks, as well as different placement mechanisms".[1510]

(1233) The results of the market investigation therefore show that the Parties and Marsh stand out from other competitors for a number of objective factors, notably (i) their size and revenues, (ii) scale, (iii) global footprint, (iv) capabilities and expertise, as well as (v) their ability to offer a full range of services. This translated into respondents to the market investigation confirming that they considered the Parties as being close, with only Marsh being considered as close.

(1234) In this respect, while insurers, reinsurers and competitors most often designated Marsh as Aon's closest competitor on the market for the brokerage of treaty non-life reinsurance, Aon is considered most often as WTW's competitor on this market.[1511] In this regard, if Aon is the market leader, its closeness to WTW, which ranks as number three, stems from the size of its business in primary insurance where Marsh is the market leader in most segments. A competitor explains: "*this close competitive dynamic exists with respect to the size of the retail businesses of Aon and WTW. Given the retail brokerage flow that Aon and WTW direct to cedents, cedents tend to feel compelled to allocate a significant share of their reinsurance wallet to Aon and WTW, which makes these companies close competitors in the reinsurance space too.*"[1512] As put by a respondent, "*the choice for either one of the 3 brokers (Aon, GC, Willis Re) typically lies in the nuance of small things. It typically is a close call between the three.*"[1513,1514]

(1235) Accordingly, an overwhelming majority of insurers and competitors also indicate that they consider the Parties to be particularly close competitors.[1515] A competitor further explains that "*Aon and WTW offer clients a similar value proposition of a global one-stop-shop offering advice and execution across facultative reinsurance, treaty reinsurance and alternative capital. Both offer a broad product range across a wide global footprint supported by deep capability. Both have substantive insurance portfolios, reinsurance portfolios and strong balance sheets. Both contest a broad set of requests for proposals from the world's leading insurance companies*."[1516]

(1236) The closeness between the Parties is also confirmed by the analysis of Aon's RFP data, showing a significant degree of competitive interactions between the Parties (and with Marsh), while Tier-2 brokers are significantly behind. In addition, the Commission also analysed tender data provided by Marsh, which covers formal

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1508 Replies to question 55 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8436).

1509 Replies to question 23 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1510 Replies to question 30 of questionnaire Q19 to reinsurance brokers (Document ID 8443).

1511 Replies to questions 54 and 55 of questionnaire Q17 to non-life reinsurance brokerage customers.

1512 Replies to question 38 of questionnaire Q19 to reinsurance brokers (Document ID 8519).

1513 Replies to question 56 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8436).

1514 In this regard, the Commission notes that paragraph 28 of the Horizontal Merger Guidelines requires that merging firms are close competitors to each other, but not necessarily the closest.

1515 Replies to question 56 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to question 38 of questionnaire Q19 to reinsurance brokers.

1516 Replies to question 38 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

RFPs as well. The analysis of Marsh's RFP data confirms that Aon, WTW, and Marsh are particularly close competitors, while other brokers are distant competitors. Lastly, the Commission also summarises its assessment of additional tender submissions from the Parties, which the Commission considers to be unlikely to be reliable, in particular due to implausible predictions. Annex B provides further details on the Commission's analysis of tender data.

(1237) The analysis of Aon's data is based on a dataset which records the requests for proposal ("RFP") in which Aon participated between 2018 and quarter 2 of 2020. According to the Parties, RFPs would cover around [a significant percentage] of the reinsurance business: Aon mentions that RFP tenders represent "*less than [a significant percentage] of the reinsurance business*",[1517] and WTW mentions that "*roughly [a significant percentage] of Willis Re's new business originates from RFPs*".[1518] The Commission carried out a participation and a loss analysis on this data at a global level. These analyses show that WTW and Marsh are two particularly close competitors to Aon, while other brokers exert a limited competitive constraint on Aon and do not appear as credible alternatives.

(a) Looking at the participants against Aon, […]. Therefore, other suppliers have more limited competitive interactions with Aon, and do not interact significantly with Aon.

(b) The loss analysis results are in line with that, indicating that […]. There is a large gap to the other brokers. […].

(1238) Secondly, the Commission also requested tender data from Marsh.[1519] The data provided cover the years 2017, 2018, and 2019, and include RFP processes in the EMEA region. This dataset provides information on the client name, the participants, and the value of each of tenders, but it does not include information in the identity of the winner (except for Marsh). According to Marsh, formal RFP tenders represent approximately [a significant percentage] of tender opportunities. This is consistent with both Aon, which mentions that RFP tenders represent "*less than [a significant percentage] of the reinsurance business*",[1520] and WTW, which mentions that "*roughly [a significant percentage] of Willis Re's new business originates from RFPs*".[1521]

(1239) The analysis of Marsh tender data confirms the finding that the big-Three brokers are particularly close competitors, while other brokers are distant competitors.

(a) In 2019, among all tenders where Marsh participated, […].

(b) In 2019, along all tenders won by Marsh, […].

(c) In 2019, among all tenders lost by Marsh, […].

(d) Similar considerations apply for the Marsh RFP data in 2017 and 2018.

(e) While the tender data provided by Marsh covers the EMEA region, the Commission considers that it is likely that a similar pattern applies at a worldwide level (as shown in Annex B, Section 3.2.2, results are similar at the EEA-level and worldwide-level based on Aon's RFP data).

1517 Reply to the 6(1)(c) Decision, paragraph 973.
1518 Reply to the 6(1)(c) Decision, paragraph 757.
1519 See emails of 18 and 25 February 2021 received from Marsh (Document IDs 10349 and 10516).
1520 Reply to the 6(1)(c) Decision, paragraph 973.
1521 Reply to the 6(1)(c) Decision, paragraph 757.

(1240) Similar to the Notifying Party' data, the data provided covers only formal tender opportunities. However, Marsh mentioned that it does expect that the patterns observed from the RFP dataset are generally in line with the broader reinsurance business (such as informal tenders, bilateral negotiations).

(1241) Thirdly, as discussed in more detail in Annex B, the Commission considers that the switching analyses submitted by the Notifying Party based on the tender data from WTW and on the Win-Loss data from Aon are unlikely to be reliable for the following reasons:

(a) The quality of both Aon Win-Loss dataset and WTW tender dataset appear unreliable and lead to implausible findings in light of the Notifying party's arguments in several submissions, the findings of the market investigation, and the high level of margins.

– According to the Notifying Party's submissions, Marsh would be a limited competitive constraint on the Parties. This contradiction on the competitive constraint exerted by Marsh with the Notifying Party' submissions during the course of the proceedings and the findings of the market investigation casts significant doubts on the reliability of Aon Win-Loss data and WTW tender data.

– According to the Notifying Party's submissions, risk retention and the direct channel are the main competitive constraints, and even the only competitive constraint to the Parties. However, the market investigation indicates that risk retention and the direct channel are not part of the relevant market for reinsurance brokerage. Moreover, such a high level of switching due to risk retention ([a high percentage] by value at the EEA level according to the Notifying Party) is incompatible with the high level of margins of the Parties (approximately [a significant percentage]), indicating instead a low sensitivity of the demand to (worse) terms and conditions from brokers, and therefore that retaining the risk internally does not exert a significant competitive pressure on reinsurance brokerage.

– Given the importance of risk retention and the direct channel in the Notifying Party's analysis of tender data, even a merger between the big-three brokers (Aon, WTW, and Marsh) would not lead to competition concerns. The Commission considers that such a conclusion is implausible in light of the findings of the market investigation, in particular given that the Big-Three brokers are considered to be close competitors with a significant gap to other brokers.

(b) The significant uncertainty of the matching algorithm used by the Notifying in its switching analysis to match the Aon and WTW tender datasets, in particular due to matching on qualitative variables.

(c) By aggregating all other brokers together (i.e., including Marsh, the smaller tier-2 brokers, and the local brokers), it is not possible for the Commission to assess whether the Notifying Party's analysis leads to plausible predictions.

(1242) Lastly, in its submissions on tender data, the Notifying Party considers that the participation rates and the win rates of other brokers should be interpreted at an aggregate level. The Commission understands the Notifying Party considers that WTW is not a particularly important competitive constraint to Aon since the aggregation of other brokers represents a win rate against Aon similar to the win rate of WTW. However, the Commission disagrees for the following reasons:

(a) The Commission cannot consider that the aggregation of a competitive fringe, being generally composed of non-credible players, would be in the aggregate a competitive constraint to Aon which is comparable or even more important than WTW. In other words, it is implausible that the aggregation of non-credible players would be a credible competitive constraint to Aon in the aggregate. The lack of credibility of Tier-2 brokers and smaller/local brokers for reinsurance brokerage is also evidenced by the market.

(b) The competitive effects from the Transaction are driven by the degree of competitive interactions between the Parties. Both the participation analysis and the loss analysis indicate a relatively important competitive interaction between the merging parties since, after Marsh, WTW is the closest competitor to Aon, while Tier-2 brokers are significantly behind. In other words, aggregating Tier-2 brokers does not change the fact that the degree of competitive interactions between the Parties is relatively high. Moreover, the Parties' high level of margin (around [a significant percentage] as stated in Section 7.3.2.2 D) makes the diverted sales between Aon and WTW profitable post-Transaction (as the merged entity), leading to incentives for anti-competitive effects.[1522]

(1243) On the basis of the above, the Commission considers that in reinsurance: (i) WTW and Aon are two particularly close competitors, and (ii) except Marsh, all other brokers are distant competitors to Aon and WTW.

(1244) In view of the above elements, the Commission considers that Aon and WTW are particularly close competitors in the brokerage market for treaty non-life reinsurance, with only Marsh being considered as close as well.

B. Competitive pressure from competitors post-Transaction

(1245) In its Reply to the 6(1)(c) Decision, the Notifying Party argues that post-Transaction, the merged entity will continue to face significant competitive constraints from their competitors, in particular Marsh, as well as a long tail of smaller Tier two brokers.

(1246) With respect to Marsh, the outcome of the market investigation shows that the competitive constraint exerted by Marsh alone is likely to be insufficient to successfully constrain the merged entity.

(1247) *Firstly*, while Marsh credibly competes against the Parties, the structural reduction of competition resulting from the Transaction will give it less of an incentive to compete against the merged entity post-Transaction. Indeed, as demonstrated above in Sections 7.3.2.1 and 7.3.2.2, Parties are, together with Marsh, the largest brokers in terms of size by far, with a significant gap to the next competitors, indicating an oligopolistic market structure.[1523] In this respect, the Commission's Horizontal Merger Guidelines specify that "*mergers in oligopolistic markets involving the elimination of important competitive constraints that the Parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition*."[1524]

[1522] For a presentation of the UPP framework, see Case M.6992 Hutchison 3G UK / Telefonica Ireland, Annex 1, and Case M.7018 Telefonica Deutschland/E-Plus, Annex A.

[1523] Pursuant to paragraph 29 of the Horizontal Merger Guidelines, an oligopolistic market refers to a market structure with a limited number of sizeable firms.

[1524] See Horizontal Merger Guidelines, paragraph 25.

In line with the economic models of oligopolistic competition with differentiated products, in the present case, Marsh as a non-merging firm can also benefit from the reduction of competitive pressure that results from the merger, since the merged firms' price increase is likely to switch some demand to the rival firms, which in turn can find it profitable to increase their prices.[1525] This is even more likely in this case given that the Big-Three brokers are particularly close competitors. Against this background, the Commission considers that Marsh is likely to have less incentive to compete post-Transaction.[1526] Furthermore and in any event, as shown by the market investigation, the remaining presence of only one credible competitor able to exert a competitive pressure on the Merged Entity is insufficient to ensure an equivalent level of competition on the market pre and post-Transaction.

(1248) *Secondly*, Marsh will have a reduced incentive to compete in the context of tenders. Indeed, while in its Reply to the 6(1)c Decision, the Notifying Party argues that formal tenders only represent a fraction of the reinsurance business,[1527] the use of tenders still has some relevance in the context of the assessment of the competitive landscape post-Transaction, particularly with respect to treaty reinsurance in relation to which the majority of tenders are organised.

(1249) In the course of the market investigation, respondents selected tenders as the second most common way to source treaty reinsurance, after bilateral negotiations.[1528] When asked to rate how frequently they have invited, each and every broker for tenders relating to treaty reinsurance in the last three years, on a scale of 1 to 5 (1 meaning not at all, and 5 meaning very frequently), respondents have clearly singled out the Parties and Marsh from other players. On average, while the Parties and Marsh obtained a tender invitation frequency mark of 3.6 or above, the next largest competitor Gallagher obtained a mark below 1.5,[1529] showing that for a significant proportion of respondents, inviting the next largest broker post-Transaction is not necessarily an available option. In this regard, the Commission notes that the Parties and Marsh are the only players for which a significant number of customers indicated that they were consistently invited to tenders (i.e. these players were the only ones not receiving a 1 mark by such a significant number of players).[1530] Additionally, respondents also underlined that they use tenders as a way to discipline reinsurance brokers if they were to increase prices, degrade the quality of service provided or otherwise worsen conditions.[1531]

(1250) Against this background, respondents to the market investigation indicated that maintaining at least three players of the size of scale of the Parties is crucial for competition. A respondent indicates for example that it requires at least three brokers because, by splitting its business and maintaining a relationship with each of the three, it preserves two low cost switching options that act as a competitive constraint on the ability of any one broker to increase its prices, and that if it were to work with just one or two brokers, its switching threats would be less credible, limiting its

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1525 See Horizontal Merger Guidelines, paragraph 24.

1526 For more discussion on Marsh's general incentive to compete post-Transaction, please refer to Section 6.3.5.1 B.4 above.

1527 Reply on the 6(1)(c) Decision, paragraph 756 and Section C.V.

1528 Replies to question 33 of questionnaire Q17 to non-life reinsurance brokerage customers.

1529 Replies to questions 34 and 35 of questionnaire Q17 to non-life reinsurance brokerage customers.

1530 Replies to questions 34 and 35 of questionnaire Q17 to non-life reinsurance brokerage customers.

1531 Replies to question 46 of questionnaire Q17 to non-life reinsurance brokerage customers.

ability to push back on proposed price increases.[1532] The same respondent explains that "*Aon, Guy Carpenter, and Willis Re each know that if they were to increase their prices or let their quality lapse, [the respondent] could shift part or all of that broker's share to their two closest competitors that have a proven track record […], established interpersonal relationships with […] personnel, and a deep understanding [its] risk appetite, goals, and strategic vision*."[1533]

(1251) Likewise, another respondent explains that specifically for larger treaty programs, there are currently only three options, which would result in almost no alternatives post-Transaction: "*In the current circumstances, there is at least one alternative in case of a co-broking where a cedant needs to switch (for whatever reason). Furthermore, a RFP for a treaty placement where only two serious competitors exist, provides for a rather limited choice of options. A disagreement or unsatisfactory experience with one of the brokers also leaves no choice/option to switch but one. These two brokers would rather dominate the larger placements of all the cedants, making both the cedants but also the reinsurance companies rather dependent on only two players.*"[1534,1535]

(1252) It results from the above that, while Marsh is a credible competitor to the Parties, the competitive pressure exerted by Marsh alone post-Transaction is likely to be insufficient to successfully constrain the merged entity.

(1253) As to the Parties' other competitors, the results of the market investigation shows that the Merged Entity is unlikely to face a significant competitive constraint from these players post-Transaction.

(1254) *Firstly*, results of the market investigation show that a large amount of insurers indicate that only Aon, WTW and Marsh are suitable for their needs across treaty risk types. The relative strength of the Big Three transpires clearly from the ratings provided by insurers.[1536] For both specialised and non-specialised treaty risks, the Parties and Marsh stand out from other competitors. While the Parties and Marsh strength is rated between 5 and 4 out of 5 by insurers and reinsurers (5 being very strong and 1 being weak), other competitors are not rated above 2.6, signalling a large gap between the three largest competitors and the rest of the competitive landscape.[1537]

(1255) *Secondly*, in the course of the market investigation competitors have indicated that they do not have the same market strength as the Parties (and Marsh): "*The large brokers have substantive competitive advantages from their premium-based negotiating power, deep data pools and owned networks. These limit the ability of Tier 2 brokers or entrants to win share and grow capability on a widespread basis. The advantages of the large brokers are reinforced by the balance sheets and portfolios of direct business they place with cedants that can indirectly influence how reinsurance programmes are put in place. As a result, negotiation power for a new*

1532 Replies to questions 38 and 39 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1533 Replies to questions 38 and 39 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1534 Replies to questions 59 and 60 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8436).

1535 Please also refer to Annex B to the Decision, relating to the analyses of tender data.

1536 Replies to questions 50 of questionnaire Q17 to non-life reinsurance brokerage customers.

1537 Replies to questions 51 and 52 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to questions 17 and 18 of questionnaire Q18 to reinsurers.

entrant can be low and this will be further emphasised through the combination of Aon and Willis."[1538]

(1256) *Thirdly*, the results of the market investigation highlighted the limitations of Tier two brokers. A large majority of insurers and reinsurers indicated that there are specific reinsurance placements that are typically only placed via the Parties and Marsh.[1539]

(1257) In the course of the market investigation, an insurer indicated that "with the exception of an extremely limited category of localized or specialty risks, only the three largest brokers can handle reinsurance placements, irrespective of risk type or nature of the placement."[1540]

(1258) Similarly, one reinsurer explained that "the biggest and most complicated exposures typically require the resources of the biggest players. This includes aggregated data, sophisticated modelling, experience and expertise and the broadest market contacts. The big 3 rise above the rest when all of these factors are required."[1541]

(1259) Another reinsurer mentions likewise that "only the larger brokers have the capabilities and scale to support large multinational companies that purchase large and complex reinsurance, the smaller ones may not have the international network needed to serve large global corporations, the full range of experts in all lines of business nor the scale and resources to acquire the necessary analytical tools for modelling."[1542]

(1260) More concretely, taking the example of one of the Parties' next largest competitor, this player itself acknowledged in the course of the market investigation that only Aon, WTW or Marsh have the resources required to handle some placements requiring access to certain markets, specialist knowledge or sophistication in relation to financial/risk analysis.[1543]

(1261) In two memoranda respectively dated 25 February[1544] and 26 February[1545] the Parties provided multiple examples of internal documents and analyses of internal data sources allegedly demonstrating the competitive constraint from rival brokers. However, it results from the follow up submissions submitted by the Parties at the Commission's request that, while the Parties provided a significant number of examples, such constraint only materialised and led to the loss of existing business in a limited number of cases. […].[1546] […].[1547] Altogether, this is illustrative of the limited occurrences during which Tier two brokers successfully exerted a competitive constraint on the Parties in the past years.

1538 Replies to question 26 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1539 Replies to question 23 of questionnaire Q18 to reinsurers; Replies to question 55 of questionnaire Q17 to non-life reinsurance brokerage customers.

1540 Replies to question 56 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1541 Replies to question 23 of questionnaire Q18 to reinsurers (Document ID 8532).

1542 Replies to question 19 of questionnaire Q18 to reinsurers (Document ID 8510).

1543 Replies to question 41 of questionnaire Q19 to reinsurance brokers (Document ID 8516).

1544 Memorandum on evidence of constraint from rival brokers in commercial risk broking in Aon internal documents, 25 February 2021.

1545 Analysis of competitive constraints evidenced in WTW's ordinary course documents, 26 February 2021.

1546 Reply to RFI 49, Annex 1.

1547 Reply to RFI 50, Annex 1.

(1262) Lastly, with respect to the Parties' argument that smaller players altogether exert a significant competitive constraint, the results of the market investigation and analysis of Aon's tender data show that this assertion is not supported by the facts.

(a) As discussed in recital (1242), the Commission considers that it is implausible that the aggregation of a competitive fringe, being generally composed of non-credible players, would be in the aggregate a competitive constraint similar to the Big-Three brokers. The lack of credibility of Tier-2 brokers and smaller/local brokers for reinsurance brokerage is also evidenced by the market investigation.

(b) Moreover, the competitive effects from the Transaction are driven by the degree of competitive interactions between the Parties. Both the participation analysis and the loss analysis indicate a relatively important competitive interaction between the merging parties since after Marsh, WTW is the closest competitors to Aon, while Tier-2 brokers are significantly behind. In other words, aggregating Tier-2 brokers does not change the fact that the degree of competitive interactions between the Parties is relatively high, leading to significant unilateral effect post-Transaction (see also recital (1242)).

(1263) In light of the elements listed above, the Commission considers that, because of their structural limitations, Tier two brokers are neither likely to exert individually or taken together a significant competitive constraint on the merged entity post-Transaction. As a competitor puts it, *"there are only three large global brokers in the reinsurance market. The Big Three are multiple times larger than the next tier of reinsurance brokers. The Big Three are not rivalled (apart from each other) in their depth of resources, global footprints, analytical capabilities and data pools, and expertise across geographies, lines of business, and market segments."*[1548] Furthermore, and as demonstrated below in Section E, barriers to entry and expansion are high, so that it is unlikely that Tier two brokers will step up and become a credible alternative to the Merged Entity post-Transaction.

(1264) It follows that only Marsh constitute a credible competitive constraint to the Parties, which alone is insufficient to maintain the level of competition post-Transaction.

C. Switching

(1265) The Parties put forward that treaty reinsurance clients are sophisticated and that they are able to exert a significant buyer power using, amongst others, their ability to switch brokers.

(1266) Contrary to the Parties' assertions, the results of the market investigation showed that while switching is achievable, the Parties have a stronger market power than most of their competitors (the only exception being Marsh) so that, in practice, switching is actually more difficult than what the Parties argue and rarely occurs in practice.

(1267) In the course of the market investigation, approximately half of insurers and competitors indicated that they viewed switching in treaty reinsurance brokerage as difficult or very difficult, while the other half considers that switching is easy or very easy.[1549] Among those insurers considering that there are some barriers to switching, several explain that this is linked to the significant preparatory work needed for the

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[1548] Replies to question 78 of questionnaire Q5 to Competitors (Document ID 5195).

[1549] Replies to questions 40 and 41 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to questions 22 and 23 of questionnaire Q19 to reinsurance brokers.

placement of treaty reinsurance and the subsequent loss of knowledge resulting from switching: "*brokers who place a treaty build up a knowledge of the nuances of that treaty, the expectations of the markets which underwrite it and the right balance of risk and reward in pricing and terms and conditions. All of these more subtle knowledge is lost when the placement of the program moves from one firm (sic) to another. It is for this reason that we do not seek to make frequent changes in placing broker.*"[1550]

(1268) Likewise, a competitor explained that renewal dates for treaty renewals are relatively infrequent and the process for cedents to switch brokers for their treaty placement can be a lengthy process: "*Treaty reinsurance requires a broader range of capabilities […]. Insurers will tend to value key partners with the ability to execute on their needs globally so having an owned network is more important in this space*."[1551]

(1269) Accordingly, a majority of insurers indicated that they have not switched brokers in the last three years.[1552] On the side of brokers, almost all players indicated that there is an incumbency advantage when cedents renew or source again reinsurance brokerage services.[1553] A competitor explains: "*the incumbent will have a detailed knowledge of the clients' reinsurance requirements, its risk appetite and a knowledge of their relationship with the existing markets, including how profitable (or otherwise) the business has been for the reinsurers*."[1554] Another competitor similarly concludes that "*the incumbent will typically be preferred if responses are relatively comparable given the time and effort involved in changing broker.*"[1555]

(1270) This is confirmed by the Parties' internal documents, which put forward very high retention rates. The internal document from WTW already mentioned above (see recital (1138)), of which an excerpt is shown below, show that WTW's client retention ratio in reinsurance brokerage is [a very high pecentage].

Figure 24: WTW internal document [internal document]

[Internal document]

Source: WTW internal document [internal document].

(1271) With respect to treaty reinsurance specifically, an internal document of Willis Re[1556], of 2019 and focussed on Western Europe, displays an even higher client retention rate at [a very high pecentage], as shown in the document excerpt below.

Figure 25: WTW internal document [internal document]

[Internal document]

Source: WTW internal document "[internal document], ID 8009-63

(1272) Lastly and in any event, even considering that switching is achievable and that customers are able to exert some buyer power in that way, for such strategy to be successful, customers would need to have sufficient alternatives to switch to. However, as demonstrated in Section 7.3.2.2 B above, this would not be the case

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1550 Replies to questions 40 and 41 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 9945).

1551 Replies to questions 22 and 23 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1552 Replies to question 43 of questionnaire Q17 to non-life reinsurance brokerage customers.

1553 Replies to question 24 of questionnaire Q19 to reinsurance brokers.

1554 Replies to question 24 of questionnaire Q19 to reinsurance brokers (Document ID 8516).

1555 Replies to question 24 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1556 As explained above, Willis Re handles the treaty reinsurance business of WTW.

post-Transaction. Indeed, the Parties having a stronger market position than most of their competitors (apart from Marsh) they constitute each other's main competitors, the Transaction would lead to a reduction from three to two credible players on the market.

(1273) The statement made by an insurer in the course of the market investigation illustrates well this issue, as it underlines that "tenders are already hard to organise now, with only three parties, and this will become even worse post-Transaction, when only two brokers remain."[1557] In particular, the same insurer explains that for programs where it currently uses two brokers, it "*will not have any options besides the two large remaining brokers post-Transaction*."[1558]

(1274) In view of the above, the Commission considers that the Parties' strong market power, compared to most of their competitors (the only exception being Marsh) does not allow customers to exercise their buyer power in practice.

D. Other countervailing factors

(1275) Apart from customer switching, the Notifying Party puts forward a number of other countervailing factors.

(1276) According to the Notifying Party, cedents are sophisticated players that are able to exert some significant buyer power and discipline brokers with alternatives to traditional reinsurance, and primarily with direct placement and risk retention. The results of the market investigation, however, have actually shown that cedents are limited in the buyer power that they are able to exert.

(1277) *Firstly*, as a general point, the results of the market investigation uncovered that the services offered by brokers, and the Parties in particular, go beyond the sole placement of reinsurance risks on the market. Rather, the Parties offer to customers a full suite of solutions aimed at covering any possible option to optimise their risk transfer. As such, brokers advise their customers according to their abilities, risk appetite *etc*., and do not limit themselves to providing services in relation to the traditional reinsurance markets. As put by the Parties' main competitor, brokers "*advise clients on their overall risk transfer strategy*".[1559]

(1278) As such, brokers are positioned to advice insurers on how they can optimise their business strategy and their risk portfolio transfer across the different options put forward by the Parties and for example "*play a part in insurers' decision to seek alternative capital solutions and can position themselves to execute these strategies.*"[1560] In this respect, a very large majority of brokers indicated that they also provide advisory services when clients place their risk directly.[1561]

(1279) As a result, despite the Parties' argument that brokers are disciplined by the ability of their customers to opt for alternatives to traditional reinsurance, the fact that brokers often intervene ahead, in the choice of customers risk management alternatives makes it unlikely that the possibility offered to select another option would exert a significant competitive pressure.

1557 Non-confidential minutes of call with a customer, dated 8 October 2020, paragraph 30 (Document ID 6376).

1558 Non-confidential minutes of call with a customer, dated 8 October 2020, paragraph 30 (Document ID 6376).

1559 Replies to question 12 of questionnaire Q19 to reinsurance brokers (Document ID 8443).

1560 Replies to question 18 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1561 Replies to question 12 of questionnaire Q19 to reinsurance brokers.

(1280) *Secondly*, with respect to **direct placement**, as mentioned above in Section 7.1.5, direct placement is only a substitute for broker services for certain types of risks, and requires investment in the necessary expertise and infrastructure on the side of the reinsurance buyer.

(1281) Accordingly, the majority of competitors consider that direct placement does not meaningfully discipline brokers.[1562] Regarding treaty reinsurance, the results of the market investigation have shown that insurers and competitors consider it difficult to place treaty reinsurance directly, in particular when it comes to non-proportional treaty reinsurance, some highly specialised risks as well as large and complex property programs.[1563] The Parties' main competitor indicates in this respect that "*brokers are most required when portfolios are more complex, as broking services supported by specialist knowledge become even more necessary. As a result, non-proportional and Specialty reinsurance placements are almost entirely intermediated. The same is true of Property risks, where broker catastrophe modelling is an essential client service.*"[1564]

(1282) Furthermore, as stated above in Section 7.1.5.2, a large proportion of the Parties' revenues consist in the placement of those risks for which direct placement is more difficult or unavailable. As such, the possibility for direct placement does not constitute a significant competitive threat to brokers.

(1283) The Parties' main competitor confirmed in this respect that, while the majority of its clients do access reinsurance directly, they do so for only a part of their reinsurance needs, and they could not think of a client that exclusively uses direct placement with insurers and does not need a broker as a result, which has also been confirmed by customers themselves.[1565]

(1284) A competitor of the Parties further explains that the limits of buyer power lies in the fact that "cedents are generally reluctant to threaten large brokers given the enormous retail and reinsurance premium those large brokers control or otherwise have significant influence on directing. Cedents are concerned that if they openly threaten or criticize large brokers, those large brokers will direct retail and reinsurance premiums to other markets."[1566]

(1285) This fact seems to be further confirmed by an internal document of Aon, which shows […].[1567]

(1286) Additionally, on both ends of the market, insurers on the one hand and reinsurers on the other hand, explain that they are not necessarily geared to place and/or receive reinsurance directly. In particular, insurers explain that increasing the amount of direct reinsurance placement requires significant expansion of their internal organisation. The specialised talent may be hard to source, especially for insurers not based in key insurance hubs with an abundance of available talent. Even when

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1562 Replies to question 60 of questionnaire Q5 to Competitors; Replies to question 19 of questionnaire Q17 to non-life reinsurance brokerage customers.

1563 Replies to question 13 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to question 10 of questionnaire Q19 to reinsurance brokers.

1564 Replies to question 10 of questionnaire Q19 to reinsurance brokers (Document ID 8443).

1565 Non-confidential minutes of call with a competitor, dated 6 October 2020, paragraph 14 (Document ID 6336); Replies to questions 16 and 19 of questionnaire Q17 to non-life reinsurance brokerage customers (see also Section 7.1.5.2).

1566 Replies to question 13 of questionnaire Q19 to reinsurance brokers (Document ID 8519).

1567 Aon's internal document, ID10269-045151.

developing a department in-house, quality may suffer; insurers explain that brokers do not only assist with placement, but also add value due to their expertise and overview of the market, developed in dealing with many insurers and reinsurers.[1568]

(1287) Even when an insurer would invest in the capabilities to place more risk directly, these attributes would still be missing. These advisory services are additionally increasingly valuable, as the complexity of ceded risks tends to increase. Insurers also indicate that reinsurers are not always set-up to interact with insurers directly, and may miss the distribution network and advisory capabilities that brokers provide. Therefore, when working directly, insurers limit their capacity to only the reinsurers that are able to support this.[1569] According to the Parties' […] competitor, brokers have four key advantages that reinsurers cannot match, all of which drive clients to brokers: market knowledge, the ability to benchmark and pool data from placements with multiple insurers, the ability to access multiple reinsurers to drive competition, and support for client claims.[1570]

(1288) Similarly, reinsurers indicated they had some reliance on brokers for their business and that they would face limitations receiving a large proportion of the business without the help from brokers: "*we are generally not organized, structured or equipped to generate business from cedents […] once cedents are identified, we don't have the market knowledge, perspective or resources to fully evaluate the history and evolution of prospective business.*"[1571]

(1289) More generally, brokers indicated to the Commission that they observe a trend for intermediation on the reinsurance market.[1572] A broker explains: "*Disintermediation is extremely rare. Clients rely upon broker services, particularly our analytics and modelling, our market knowledge from seeing a broader range of risks and prices, our ability to market risks to multiple reinsurers globally, and our servicing and claims support. Reinsurers cannot offer these services, so they do not credibly threaten us*."[1573]

(1290) This market trend is confirmed in the Parties' internal documents, as shown in Section 7.1.5.2, […]. In addition, only a very small amount of respondents to the market investigation indicated that they have disintermediated a brokered placement in the last three years.[1574]

(1291) Finally, as already stated above in Section 7.1.5.2 the high level of margins achieved by the Parties, at global level, in treaty reinsurance, i.e. [a significant percentage] for Aon and [a significant percentage] for WTW for 2019[1575] suggest that direct placement does not exercise a strong competitive constraint.

(1292) *Thirdly*, with respect to **risk retention**, the market investigation almost unanimously confirmed that risk retention does not exert a competitive constraint on reinsurance brokerage. The market investigation clearly showed that this is only an alternative to traditional reinsurance up to a limited extent and that in any event, the majority of

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1568 Replies to questions 31 and 32 of questionnaire Q4 to Insurers.
1569 Replies to questions 31 and 32 of questionnaire Q4 to Insurers.
1570 Non-confidential minutes of call with a competitor, dated 6 October 2020, paragraph 18 (Document ID 6336).
1571 Replies to question 12 of questionnaire Q18 to reinsurers (Document ID 8532).
1572 Replies to question 11 of questionnaire Q19 to reinsurance brokers.
1573 Replies to question 13 of questionnaire Q19 to reinsurance brokers (Document ID 8443).
1574 Replies to question 34 of questionnaire Q4 to Insurers.
1575 Form CO, paragraphs 935 and 939.

respondents did not consider a risk retention or the set-up of a captive as an alternative to reinsurance brokerage.[1576]

(1293) Almost all insurers indicated that level of brokerage fees and commissions did not play a role in their decision to retain a proportion of their risk, and rather explained that the amount of reinsurance they decide to purchase is a strategic decision based on risk appetite.[1577] Respondents explain that the amount of risk to retain is a strategic decision for insurance companies, and depends on factors such as the cost of capital, available reinsurance capacity and the price of reinsurance capacity, but not on the conditions on the reinsurance brokerage market.[1578] Many insurers explain that they can only retain risk up to the level of their risk appetite, and that this does not meet their full needs. Beyond that point, reinsurance is described as a "must have". Furthermore, reinsurance reduced volatility for insurance companies, as it reduces the exposure to single risks. In summary, one insurer explains that "*it is not a realistic option for a large insurer to self-insure, as de-risking of the portfolio is the entire reason for reinsurance.*"[1579]

(1294) Accordingly, a large majority of insurers and competitors put forward that risk retention cannot be used and does not act as a disciplining factor to brokers.[1580] A competitor of the Parties explain that "*Insurer management will also be cautious of the earnings volatility introduced by retaining significantly more risk and the efforts involved in explaining this volatility to equity or debt capital. Insurers are not generally able to credibly replace reinsurance structures with expanded risk retentions. The option to retain more risk is therefore not generally used to exert competitive discipline over reinsurance broker behaviour*."[1581]

(1295) Regarding risk retention in the form of a captive specifically, the results of the market investigation show that the intervention of a provider of captive-related services is almost always required, and that the Parties and Marsh are particularly strong players in this area, so that the set-up of a captive[1582] would not lead to disintermediation, nor pose a credible threat to the Parties.[1583]

(1296) *Fourthly*, the results of the market investigation indicated that **alternative capital** can only be an alternative to traditional reinsurance in limited cases as well and in any event is not an alternative to using broker services, as set out below.

(1297) The majority of reinsurance buyers responding to the market investigation indicate that they do not use alternative capital.[1584] More generally, customers indicated that alternative capital markets is primarily relevant for property catastrophe risks and

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1576 Replies to questions 36, 43, 44 of questionnaire Q4 to Insurers.

1577 Replies to question 20 of questionnaire Q17 to non-life reinsurance brokerage customers.

1578 Replies to question 44 of questionnaire Q4 to Insurers.

1579 Replies to question 43 of questionnaire Q4 to Insurers (Document ID 5581).

1580 Replies to question 22 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to question 14 of questionnaire Q19 to reinsurance brokers.

1581 Replies to question 14 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1582 As explained above, a company may establish a subsidiary referred to as a captive, whose sole purposes is to insure its parent's risk exposure. As a form of self-insurance, the parent company assumes its own risk by setting aside its own capital within the captive. A broker may then also place reinsurance for such a captive.

1583 Non-confidential replies to Captive Insurance RFI to Customers, questions 1 and 3.

1584 Replies to question 23 of questionnaire Q17 to non-life reinsurance brokerage customers.

retrocession, and to a lesser extent for other property risks.[1585] It is otherwise only used to an extremely limited extent for other risk types,[1586] […].

(1298) As to the Parties' assertion that brokers face the competition from other types of service providers such as banks and reinsurers, a majority of insurers indicated that they did not view the services provided by other intermediaries equivalent to those provided by brokers.[1587] In fact, as for traditional reinsurance brokerage, insurers that responded to the Commission's market investigation considered the Parties and Marsh amongst the strongest players.[1588] In line with this, a customer explains that "*banks lack the risk management expertise (and associated data and analytics), as well as the back-office infrastructure for claims servicing and legal support, that allow brokers to effectively advise insurers in connection with alternative capital products. Reinsurers compete with the alternative capital market and are not positioned to facilitate placement of alternative capital reinsurance*."[1589] Similarly, a majority of reinsurers indicated that they did not consider that they provide services with respect to placement on alternative capital markets, which are equivalent to that provided by brokers.[1590]

(1299) Among reinsurers, virtually all players indicated that they do not support cedents in the structuring and or placement of reinsurance on the alternative capital markets.[1591] The only exception to this are Munich Re and Swiss Re which indicated that their role is limited and focused on structuring, which typically requires the involvement of a third party book runner, so that they do not view the services they provide as equivalent to that provided by brokers.[1592] They explained that they are mainly active in structuring and typically require involvement of a third-party intermediary as a book runner, and that other reinsurers may not consider them as an intermediary for competition reasons.[1593]

(1300) Besides, the Commission notes that several of the alternative intermediaries identified by the Parties indicated in the course of the market investigation that they are actually not active in alternative capital reinsurance placement when the Commission contacted them.[1594]

(1301) More crucially, the results of the market investigation highlighted that the Parties and Marsh are considered as the strongest alternative capital intermediaries by respondents.[1595] The majority of brokers also explained that they do not support alternative capital placements.[1596]

(1302) Several respondents indicated that being able to offer alternative capital reinsurance placement is a competitive advantage for the broker, as they are able to support

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1585 Replies to question 24 of questionnaire Q17 to non-life reinsurance brokerage customers.

1586 Replies to question 24 of questionnaire Q17 to non-life reinsurance brokerage customers.

1587 Replies to question 27 of questionnaire Q17 to non-life reinsurance brokerage customers.

1588 Replies to question 28 of questionnaire Q17 to non-life reinsurance brokerage customers.

1589 Replies to question 27 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1590 Replies to question 15 of questionnaire Q18 to reinsurers.

1591 Replies to question 15 of questionnaire Q18 to reinsurers.

1592 Replies to question 15 of questionnaire Q18 to reinsurers.

1593 Replies to question 15 of questionnaire Q18 to reinsurers.

1594 Email dated 11 February 2021 (Document ID 9310) and email dated 16 February 2021 (Document ID 10790).

1595 Replies to question 28 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to question 17 of questionnaire Q19 to reinsurance brokers.

1596 Replies to question 16 of questionnaire Q19 to reinsurance brokers.

clients by choosing and implementing the most appropriate reinsurance strategy, whether it is traditional reinsurance or alternative capital reinsurance.[1597]

(1303) *Fifthly*, the results of the market investigation confirmed that **insurtech platforms** only have a very limited relevance on the reinsurance brokerage markets. The majority of market participants do not use insurtech in the context of reinsurance and the large majority does not consider insurtech an alternative to broker services. As explained by a customer, "*insurtech firms are not capable of handling complicated reinsurance needs and lack the necessary back-office infrastructure for claims servicing and legal support.*"[1598]

(1304) Based on the above, and contrary to the arguments of the Notifying Party, the Commission considers that Parties enjoy significant competitive strength vis-à-vis their customers and do not face a significant competitive constraint from the alternatives put forward by the Parties.

E. Barriers to entry and expansion

(1305) Contrary to the arguments developed by the Notifying Party in the Reply to the 6(1)(c) Decision, the results of the market investigation highlighted a number of barriers to entry in the treaty reinsurance market.

(1306) With respect to treaty reinsurance, three main factors come into play, namely (i) data and analytics capabilities, (ii) scale and expertise and (iii) a geographic footprint.

(1307) This is due to the fact that treaty reinsurance requires significant staff and capabilities to analyse, structure and place portfolios of risk.

(1308) In line with this, a majority of competitors indicated that they consider the barriers to entry and expansion in the treaty reinsurance brokerage markets as high to very high.[1599] This observation is valid for all risk types without any indications that the situation could differ for non-specialty risk types, as argued by the Parties.

(1309) Respondents to the market investigation further indicated that specialist areas of treaty reinsurance are harder to enter or expand into, notably because it requires additional capabilities, but also because the competitive strengths of the Big Three is even more pronounced in these segments, making it more challenging for new entrants to come in.[1600]

(1310) A competitor of the Parties states that the relatively high margins achieved by the industry point to the existence of high barriers to entry: "*the fact that the industry can operate with margins of between 20-30% indicates that there must surely be barriers to entry. The market is very highly regulated, and licenses are not easy to obtain. These are probably the biggest barriers to entry, so partnering with an existing organisation with licenses in place already is the simplest way to gain access to the market. The cost of analytics also presents a big barrier*."[1601]

(1311) With respect to the need for data and analytics capabilities, respondents to the market investigation pointed out that treaty placements require broader knowledge, aggregated data and analytic tools to effectively model and support the risk transfer,

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1597 Replies to question 16 of questionnaire Q19 to reinsurance brokers.

1598 Replies to question 27 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1599 Replies to question 30 of questionnaire Q19 to reinsurance brokers.

1600 Replies to question 30 of questionnaire Q19 to reinsurance brokers.

1601 Replies to question 30 of questionnaire Q19 to reinsurance brokers (Document ID 8516).

which would typically be provided for by brokers.[1602] According to market participants, this need for deep capabilities, including in proprietary data analytics and modelling and claims, translates into a barrier to entry since these market requirements are expensive to build and maintain, which feeds the strength of the Big Three in the treaty reinsurance market.[1603] In this regard, [a competitor] pointed out that the reinsurance brokerage revenue of Tier two brokers is typically lower than the amount that it spends on analytics alone, and stressed that the data it utilises is mainly based on proprietary customer data gathered in the course of placing reinsurance handling claims, making it difficult to obtain outside of the normal course of business.[1604] It follows that, even if contracts are of a relatively short duration (treaty reinsurance contracts are typically renewed annually) as the Notifying Party argues, the results of the market investigation clearly indicate that the scale and capabilities required are more crucial parameters to assess barriers to entry and expansion to the treaty reinsurance market.

(1312) As to talent mobility, which is put forward by the Parties as a rapid and easy mean for brokers to achieve entry and expansion into the market, the results of the market investigation indicated that recent talent mobility is not sufficient to offset the barriers to entry described above. In this respect, competitors indicated that investment in people and resources incur some significant costs and take time before they generate returns.

(1313) Several competitors indicated that investment in talent is costly and cannot necessarily be done in a timely manner.[1605] A competitor of the Parties explains that individual brokers are "*very highly remunerated, and have contracts with very onerous non-compete clauses, which it is imperative to respect. This in itself can become a barrier to entry for some brokerage firms*."[1606] This seems to constitute a barrier to expansion particularly in treaty reinsurance, which according to a competitor, is an area that "*has been traditionally hard to hire in*".[1607]

(1314) In addition, another competitor notes that the Parties engage in strategies aiming at disincentivising talent mobility: "Aon takes an aggressive approach to talent departure, with litigation threats against individuals and their new employers commonplace."[1608]Accordingly, approximately half of the Parties' competitors do not consider the hiring of talents as an easy avenue of expansion.

(1315) Furthermore, although individual brokers may move from one firm to another, the market investigation showed that this is only one of the drivers of brokers' selection by customers (with among others global reach, data and modelling capacities etc.) so that clients would not automatically follow individual brokers to their new firm

(1316) Indeed, the results of the market investigation show that the majority of insurers would not switch brokerage firms following the departure of key brokerage personnel, and within the minority that would consider switching, all insurers indicated that they would only do so depending on the capabilities of the destination

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1602 Replies to question 18 of questionnaire Q18 to reinsurers; Replies to question 9-10 of questionnaire Q19 to reinsurance brokers.

1603 Replies to questions 9 and 10 of questionnaire Q19 to reinsurance brokers.

1604 Non-confidential minutes of call with a competitor, dated 6 October 2020, paragraph 14 (Document ID 6336).

1605 Replies to question 30 of questionnaire Q19 to reinsurance brokers.

1606 Replies to question 29 of questionnaire Q19 to reinsurance brokers (Document ID 8516).

1607 Replies to question 29 of questionnaire Q19 to reinsurance brokers (Document ID 7427).

1608 Replies to question 28 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

firm.[1609] Respondents to the market investigation indicate that relationships are institutionalised, and not dependent on individuals.[1610]

(1317) Finally, the difference in scale between the different brokers results in talent mobility having a smaller impact on competitive dynamics than what the Parties argue. Indeed, the Parties each having a headcount that is at least 3.5 larger than that all of their competitors (except for Marsh), the effects of talent mobility are reduced compared to smaller brokerage firms.

(1318) Lastly, with respect to the global footprint, as mentioned in Section 6.3.4.1 above, a worldwide presence constitutes a significant competitive advantage in treaty reinsurance brokerage, is difficult to grow organically and is, in any event, very costly to set up.

(1319) As a result, a large majority of insurers do not consider it plausible that a challenger firm grows to the size of WTW and is able to compensate the elimination of WTW as an important competitive constraint post-Transaction within a short timeframe.[1611]

(1320) It follows from the above that the barriers to entry and expansion on the treaty reinsurance market are such that they would not allow smaller competitors to exert a significant competitive constraint on the merged entity post-Transaction.

F. Results of the market investigation on the likely impact of the Transaction

(1321) Overall, respondents to the market investigation formulated some strong and articulated concerns with respect to the impact of the Transaction on the treaty reinsurance brokerage market. These concerns primarily focus around the lack of available alternative options for customers post-Transaction, naturally leading to a reduction of choice, but also ultimately having an adverse effect on price and/or quality of service.

(1322) As such, a majority of insurers consider that competition on the market will decrease post-Transaction and take the view that there will not be enough remaining competitors. This concern is not limited to specialty risk types, but also very strong for non-specialty risk types.[1612]

(1323) Respondents fear a negative effect on competition in the market for treaty reinsurance, translating into price increases in the form of an increase of fees along with a corresponding decrease of rebates that are granted on standardised commissions, as well as a decrease in the quality of service provided.[1613] Some insurers that employ a co-broking strategy involving the Big Three indicate that the Transaction could be especially damaging, as they could not credibly threaten to exclude any of the brokers from their portfolio post-Transaction.[1614]

(1324) Lastly, and in any event, respondents to the market investigation indicated that they did not expect smaller brokers to rise to the level and compete with Marsh and the merged entity post-Transaction. An insurer explains: "*For large, complex treaties and reinsurance structures which need actuarial know how, modelling, etc. the competition between 3 brokers (Aon, Willis, Guy Carp) will be reduced to 2 brokers*

[1609] Replies to question 47 of questionnaire Q17 to non-life reinsurance brokerage customers.

[1610] Replies to question 28 of questionnaire Q19 to reinsurance brokers; Replies to question 47 of questionnaire Q17 to non-life reinsurance brokerage customers.

[1611] Replies to question 49 of questionnaire Q17 to non-life reinsurance brokerage customers.

[1612] Replies to questions 60 and 61 of questionnaire Q17 to non-life reinsurance brokerage customers.

[1613] Replies to question 27 of questionnaire Q18 to reinsurers.

[1614] Replies to questions 59 and of questionnaire Q17 to non-life reinsurance brokerage customers.

(Aon/Willis, Guy Carp). Other (local) brokers will not be able to compete with them."[1615] In the same vein, another insurer confirms that "*the merger of two of the biggest brokers with worldwide networks can not be compensated by any smaller reinsurance broker.*"[1616]

(1325) It follows from the above that the Transaction is likely to have an adverse impact on competition on the market for treaty reinsurance brokerage.

G. Conclusion

(1326) For the reasons set out above, and in light of the results of the investigation, the Commission considers that the Transaction would create a significant impediment to effective competition on the global market for the supply of non-life treaty reinsurance brokerage services, due to non-coordinated horizontal effects.

7.3.2.3. Facultative reinsurance brokerage market: horizontal non-coordinated effects

(1327) As set out below, the Transaction would lead to a significant reduction of competition, due to closeness of competition between the merging parties and the removal of the competitive constraint exerted by WTW and the lack of ability and/or incentive of the remaining competitors to effectively compete against the Merged Entity. In this context, the Commission considers that in the present case, the Transaction would result in a significant impediment of effective competition on the global market for the supply of non-life facultative reinsurance brokerage services.

A. Closeness of competition

(1328) With respect to the brokerage market for facultative non-life reinsurance, the results of the market investigation confirmed that the Parties are particularly close competitors and showed that, together with Marsh, Aon and WTW are the strongest brokers in this area.

(1329) The Commission refers to the market investigation's findings described in recitals (1220) to (1235), which can also be applied to the brokerage market for facultative non-life reinsurance, where the Parties' competition position on the market is similar. This is primarily explained by the fact that the Parties aim at advising insurers on all types of reinsurance and position themselves strongly across the different types of reinsurance, resulting in them having an equivalent position on the two main reinsurance brokerage markets. As put by the Parties' closest competitor, "*the Big Three reinsurance brokers remain the clear market leaders in both facultative and treaty reinsurance broking.*"[1617]

(1330) Indeed, as explained above, the results of the market investigation showed that the Parties and Marsh stand out from other competitors for a number of objective factors, notably (i) their size and revenues, (ii) scale, (iii) global footprint, (iv) capabilities and expertise, as well as (v) their ability to offer a full range of services. This translated into respondents to the market investigation confirming that they considered the Parties as being close, with only Marsh being considered as close.

(1331) In this respect, while insurers, reinsurers and competitors most often designated Marsh as Aon's closest competitor on the market for the brokerage of facultative

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1615 Replies to question 61 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8700).

1616 Replies to question 24 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8826).

1617 Replies to question 66 of questionnaire Q5 to Competitors (Document ID 5195).

non-life reinsurance, Aon is considered most often as WTW's competitor on this market.[1618]

(1332) The closeness between Aon and WTW in facultative reinsurance brokerage stems from the size of their business in primary insurance where Marsh is the market leader in most segments. This is particularly important in facultative reinsurance brokerage which, as explained in further details below is a business that is closely linked to primary reinsurance. It follows as a result that an overwhelming majority of insurers and competitors indicated that they consider the Parties to be particularly close competitors.[1619]

(1333) In view of the above elements, the Commission considers that Aon and WTW are particularly close competitors in the brokerage market for facultative non-life reinsurance, with only Marsh being considered as close as well.

B. Competitive pressure from competitors post-Transaction

(1334) In its Reply to the Article 6(1)(c) Decision, the Notifying Party argues that post-Transaction, the merged entity will continue to face significant competitive constraints from their competitors, in particular Marsh, as well as a long tail of smaller Tier two brokers.

(1335) With respect to Marsh, the outcome of the market investigation shows that the competitive constraint exerted by Marsh alone is likely to be insufficient to successfully constrain the merged entity.

(1336) As noted with respect to treaty reinsurance brokerage in recital (1247), while Marsh credibly competes against the Parties, the structural reduction of competition resulting from the Transaction will give it less of an incentive to compete against the merged entity post-Transaction.[1620] As such, while Marsh is a credible competitor to the Parties, the competitive pressure exerted by Marsh alone post-Transaction is likely to be insufficient to successfully constrain the merged entity.

(1337) As to the Parties' other competitors, the market investigation shows the relative weakness of such players compared to the Parties, making it unlikely that the Merged Entity will face a significant competitive constraint from these players post-Transaction.

(1338) *Firstly*, the results of the market investigation highlight the Parties' strength, together with Marsh, compared to other competitors. For facultative reinsurance brokerage, only the Parties and Marsh display an average rate above 4 out of 5 from market participants (i.e. competitors, insurers and reinsurers alike), while the next largest competitor is rated at 2.9, at most (5 being very strong and 1 being very weak).[1621]

(1339) *Secondly*, respondents to the market investigation pointed out that facultative reinsurance being focused on single risks, it requires a dedicated specialised expertise that is very dependent on specific class of business and analysis of the

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1618 Replies to questions 54 and 55 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to questions 19 and 20 of questionnaire Q18 to reinsurers; Replies to questions 36-37 of questionnaire Q19 to reinsurance brokers.

1619 Replies to question 56 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to question 38 of questionnaire Q19 to reinsurance brokers.

1620 See Horizontal Merger Guidelines, paragraphs 22-25.

1621 Replies to questions 51 and 52 of questionnaire Q17 to non-life reinsurance brokerage customers; Replies to questions 17 and 18 of questionnaire Q18 to reinsurers; Replies to question 58 of questionnaire Q19 to reinsurance brokers.

original risk.[1622] This, combined to the fact that facultative placements are tightly linked to primary insurance transactions, gives a significant competitive advantage to the Parties which are able to partly rely on their position as primary insurance brokers to successfully operate in facultative reinsurance.[1623]

(1340) *Thirdly,* respondents to the market investigation have indicated that only the Parties and Marsh are able to provide for a wide ranging offer across facultative reinsurance, treaty reinsurance and alternative capital, which is an important feature for customers.[1624] Indeed, reinsurance clients will typically approach brokers for the design of a risk transfer program, with the expectation that they will be able to cater for both treaty and/or facultative placements, depending on their needs. A competitor explains that "*Aon offers advice and execution across all elements of an insurer's capital strategy. They seek to offer a one-stop shop solution globally. Only Guy Carpenter and WTW offer a similar value proposition at scale.*"[1625]

(1341) As such, although there is a more numerous and diverse tail of small competitors on the facultative reinsurance brokerage market, the gap between those smaller competitors and the Big Three is too wide for those smaller players to exert individually, or in an aggregated way, a meaningful competitive constraint on the Parties post-Transaction.

(1342) In light of the elements listed above, the Commission considers that Tier two brokers are not likely to exert a significant competitive constraint on the merged entity post-transaction, and that the overall levels of competition on the market will be reduced post-Transaction.

C. Switching

(1343) Regarding the Parties' argument that facultative reinsurance brokerage clients are able to exert a significant buyer power using, among others, their ability to switch brokers, the results of the market investigation are more nuanced.

(1344) Indeed, while respondents indicated that switching is achievable, the results of the market investigation have also shown that Parties have a stronger market power than most of their competitors (the only exception being Marsh) so that, in practice, switching is actually more difficult that what the Parties argue and rarely occurs in practice.

(1345) In this regard, the results of the market investigation indicated that facultative reinsurance is by far most commonly sourced through bilateral negotiations with one broker (the current one), and typically are rarely tendered. In this regard, even discussions with multiple brokers are less used than bilateral negotiations with the current broker. Several respondents to the market investigation explained that this results from the existing links between primary insurance and facultative reinsurance. For example, when primary insurance is brought to an insurer via a broker, if facultative reinsurance is required (in particular for complex or large risks), the

1622 Traditional facultative reinsurance requires analysis of exposures associated with individual insured risks (for property for example: fire, explosion, catastrophe etc). In this respect, the facultative broker capabilities are more akin to that of a primary insurance broker. Replies to question 66 of questionnaire Q5 to Competitors.

1623 Replies to question 66 of questionnaire Q5 to Competitors.

1624 Replies to question 38 of questionnaire Q19 to reinsurance brokers.

1625 Replies to question 36 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

underwriter (i.e. the insurer) often directly contacts the facultative reinsurance department of the same broker for assistance with the facultative placement.[1626]

(1346) A competitor explains "facultative reinsurance requires dedicated expertise, and the business is typically sourced by brokers with a significant retail presence (facultative placements are typically derived from insurance transactions where the broker has sourced facultative reinsurance support in conjunction with the insurance placement)".[1627] An insurer confirms that it is not unusual, when one of the Big Three intermediates the primary insurance transaction, to work with that broker to intermediate any associated facultative reinsurance as well.[1628]

(1347) In line with this, a competitor points out – as confirmed by the Parties[1629] – that WTW primarily houses its facultative business within the specialty units of its insurance business.[1630]

(1348) Accordingly, a majority of insurers indicated that they have not switched brokers in the last three years.[1631] On the side of brokers, almost all players indicated that there is an incumbency advantage when cedents renew or source again reinsurance brokerage services.[1632] A competitor explains: "*the incumbent will have a detailed knowledge of the clients' reinsurance requirements, its risk appetite and a knowledge of their relationship with the existing markets, including how profitable (or otherwise) the business has been for the reinsurers*."[1633] Another competitor similarly concludes that "*the incumbent will typically be preferred if responses are relatively comparable given the time and effort involved in changing broker.*"[1634]

(1349) Lastly and in any event, even considering that switching is achievable and that customers are able to exert some buyer power in that way, for such strategy to be successful, customers would need to have sufficient alternatives to switch to. However, as demonstrated in Section 7.3.2.3 B above, this would not be the case post-Transaction. Indeed, the Parties having a stronger market position than most of their competitors (apart from Marsh) they constitute each other's main competitors, the Transaction would lead to a reduction from three to two credible players on the market. By way of illustration, the Commission notes that in the few cases where facultative reinsurance brokerage is sourced through tenders, the Parties and Marsh clearly stand out from their other competitors. Asked to identified those brokers which they have frequently invited to participate to RFPs/tenders for facultative reinsurance in the last three years, on a scale of 1 to 5 (1 meaning not at all, and 5 meaning very frequently), the only brokers which have mark that is higher than 2 are the Parties and Marsh.[1635]

D. Other countervailing factors

(1350) Apart from customer switching, the Notifying Party argues that cedents are able to exert significant buyer power and discipline brokers with alternatives to traditional

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1626 Replies to questions 30 and 31 of questionnaire Q17 to non-life reinsurance brokerage customers.

1627 Replies to question 66 of questionnaire Q5 to Competitors (Document ID 3527).

1628 Replies to question 7 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

1629 Form CO, paragraph 981.

1630 Replies to questions 38 of questionnaire Q19 to reinsurance brokers.

1631 Replies to question 43 of questionnaire Q17 to non-life reinsurance brokerage customers.

1632 Replies to question 24 of questionnaire Q19 to reinsurance brokers.

1633 Replies to question 24 of questionnaire Q19 to reinsurance brokers (Document ID 8516).

1634 Replies to question 24 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1635 Replies to question 32 of questionnaire Q17 to non-life reinsurance brokerage customers.

reinsurance, primarily with direct placement and risk retention. The results of the market investigation, however, have actually shown that cedents are limited in the buyer power that they are able to exert.

(1351) As a preliminary point, for a number of factors, the Commission refers to the market investigation's findings described above, which are applicable to the brokerage market for facultative non-life reinsurance. In particular, the results of the market investigation showed that (i) the services offered by the Parties go beyond the sole placement of reinsurance risks on the market but include a full suite of solutions, including the alternative options put forward by the Parties (see recitals (1277) to (1279)) and (ii) insurtech platforms only have a very limited relevance on the reinsurance brokerage markets (see recital (1303)).

(1352) With respect to features that are specific to facultative non-life reinsurance, the Commission *firstly* notes, in relation to the **direct placement** of facultative reinsurance, that while the results of the market investigation have shown that treaty reinsurance is generally more challenging to place directly than facultative reinsurance, respondents also indicated that the substitutability between direct placement and brokered placement of facultative reinsurance is limited.

(1353) In this regard, in the course of the market investigation, a majority of insurers have notably indicated that they would not, or only partially switch to direct in case of small but significant and non-transitory increase in price.[1636] The Commission notes that the proportion of respondents varies, notably depending on whether it relates to proportional or non-proportional facultative reinsurance, with non-proportional facultative reinsurance being considered as more challenging to place directly.[1637]

(1354) Similar to treaty reinsurance, there is a proportion of facultative risks for which customers turn to brokers, that they would not be able to place directly. A reinsurer notes in this respect that "*placing facultative [reinsurance] directly is no option for most buyers*".[1638]

(1355) As stated above in Section 7.1.5.2, a large proportion of the Parties' revenues consist in the placement of those risks for which direct placement is more difficult or unavailable. Accordingly, the possibility for direct placement does not constitute a significant or credible competitive threat to brokers, and a majority of insurers confirmed that they did not consider the threat of direct placement to have a disciplining effect on brokers.[1639]

(1356) Moreover, the possibility for the placement of facultative reinsurance directly is not always an available alternative, because it requires investment in expertise and infrastructure on the side of the reinsurance buyer. In this regard, competitors indicated in the course of the market investigation that facultative units perform a large number of small transactions, which translates into a need for strong operational processes.[1640]

(1357) Finally, and as stated above in Section 7.1.5.2, the Parties' margin level for facultative reinsurance, i.e. [a significant percentage] for Aon and [a significant

1636 Replies to question 17 of questionnaire Q17 to non-life reinsurance brokerage customers.
1637 Replies to question 13 of questionnaire Q17 to non-life reinsurance brokerage customers.
1638 Replies to question 25 of questionnaire Q18 to reinsurers (Document ID 8881).
1639 Replies to question 19 of questionnaire Q17 to non-life reinsurance brokerage customers.
1640 Replies to question 66 of questionnaire Q5 to Competitors.

percentage] for WTW for 2019,[1641] are relatively high, which suggests that the alleged competitive constraint posed by direct placement is not as forcefully as the Parties argue.

(1358) *Secondly*, regarding the possibility – argued by the Parties – for market participants to **retain their risk**, the market investigation almost unanimously confirmed that risk retention does not exert a competitive constraint on reinsurance brokerage. The market investigation clearly showed that this is only an alternative to traditional reinsurance up to a limited extent and that in any event, the majority of respondents did not consider a risk retention or the set-up of a captive as an alternative to reinsurance brokerage.[1642]

(1359) Almost all insurers indicated that level of brokerage fees and commissions did not play a role in their decision to retain a proportion of their risk, and rather explained that the amount of reinsurance they decide to purchase is a strategic decision based on risk appetite.[1643] Respondents explain that the amount of risk to retain is a strategic decision for insurance companies, and depends on factors such as the cost of capital, available reinsurance capacity and the price of reinsurance capacity, but not on the conditions on the reinsurance brokerage market.[1644] Many insurers explain that they can only retain risk up to the level of their risk appetite, and that this does not meet their full needs. Beyond that point, reinsurance is described as a "must have". Furthermore, reinsurance reduced volatility for insurance companies, as it reduces the exposure to single risks. In summary, one insurer explains that "*it is not a realistic option for a large insurer to self-insure, as de-risking of the portfolio is the entire reason for reinsurance.*"[1645]

(1360) Accordingly, a large majority of insurers and competitors put forward that risk retention cannot be used and does not act as a disciplining factor to brokers.[1646] A competitor of the Parties explain that "*Insurer management will also be cautious of the earnings volatility introduced by retaining significantly more risk and the efforts involved in explaining this volatility to equity or debt capital. Insurers are not generally able to credibly replace reinsurance structures with expanded risk retentions. The option to retain more risk is therefore not generally used to exert competitive discipline over reinsurance broker behaviour*."[1647]

(1361) Regarding risk retention in the form of a captive specifically, the results of the market investigation showed that the intervention of a provider of captive related services is almost always required, and that the Parties and Marsh are particularly strong players in this area, so that the set-up of a captive[1648] would not lead to disintermediation, nor pose a credible threat to the Parties.[1649]

1641 Form CO, paragraphs 935 and 939.

1642 Replies to questions 36, 43 and 44 of questionnaire Q4 to Insurers.

1643 Replies to question 20 of questionnaire Q17 to non-life reinsurance brokerage customers.

1644 Replies to question 44 of questionnaire Q4 to Insurers.

1645 Replies to question 43 of questionnaire Q4 to Insurers (Document ID 5581).

1646 Replies to question 17 of questionnaire Q22 to non-life reinsurance brokerage customers; Replies to question 14 of questionnaire Q19 to reinsurance brokers.

1647 Replies to question 14 of questionnaire Q19 to reinsurance brokers (Document ID 8476).

1648 As explained above, a company may establish a subsidiary referred to as a captive, whose sole purposes is to insure its parent's risk exposure. As a form of self-insurance, the parent company assumes its own risk by setting aside its own capital within the captive. A broker may then also place reinsurance for such a captive.

1649 Non-confidential replies to captive insurance solutions RFI to customers, questions 1 and 3.

(1362) *Thirdly*, the results of the market investigation indicated that **alternative capital** is typically not used as an alternative to facultative reinsurance and, as a result, neither can it be considered as an alternative to the supply of facultative reinsurance brokerage services.

(1363) The majority of reinsurance buyers responding to the market investigation indicate that they do not use alternative capital markets as an alternative to reinsurance.[1650] In this respect, as stated in Section 7.1.6.2, […].

(1364) In line with this, the results of the market investigation clearly confirmed the absence of use of alternative capital as a substitute for facultative reinsurance, since none of those customers which indicated using alternative capital, use it for facultative reinsurance.[1651]

(1365) Based on the above, and contrary to the arguments of the Notifying Party, the Commission considers that Parties enjoy significant competitive strength vis-à-vis their customers on the market for the brokerage of facultative non-life reinsurance, and do not face a significant competitive constraint from the alternatives put forward by the Parties.

E. Barriers to entry and expansion

(1366) As to the barriers to entry and expansion existing for the facultative reinsurance brokerage market, while the results of the market investigation evidence that the barriers to entry for this market are somewhat less high than those for the treaty reinsurance brokerage market, respondents to the market investigation pointed out that there is still a number of barriers to entry making it challenging to enter and grow to a level allowing to exert a significant competitive constraint on the merged entity post-Transaction.

(1367) A competitor explained that the barriers to entry are particularly high when it comes to large accounts, which require a significant scale to meet client demands. This is linked to the transactional nature of facultative reinsurance, which means that brokers need to have large middle and back office to effectively service such high volumes and grow the business.[1652]

(1368) Furthermore, some respondents also pointed out that the requirement for data and analytics is increasing in facultative reinsurance as well, both for complex and simpler transactional risks, making it difficult for smaller facultative brokers to compete.[1653]

(1369) Crucially, respondents also indicated that the fact that clients seek a full suite of solutions and combined insight, across facultative and treaty reinsurance to reinsure their risk in an optimum way, further increases the barriers to entry.[1654]

(1370) Lastly, regarding specifically talent mobility, which is put forward by the Parties as a rapid and easy mean for brokers to achieve entry and expansion into the market, the Commission refers to the market investigation's findings described above in Section 7.3.2.2. E, which are equally applicable to the brokerage market for facultative non-life reinsurance.

1650 Replies to question 23 of questionnaire Q17 to non-life reinsurance brokerage customers.
1651 Replies to question 24 of questionnaire Q17 to non-life reinsurance brokerage customers.
1652 Replies to question 30 of questionnaire Q19 to reinsurance brokers.
1653 Replies to question 30 of questionnaire Q19 to reinsurance brokers.
1654 Replies to question 30 of questionnaire Q19 to reinsurance brokers.

(1371) It follows from the above that the barriers to entry and expansion on the facultative reinsurance market make it unlikely that they would allow smaller competitors to exert a significant competitive constraint on the merged entity post-Transaction.

F. Results of the market investigation on the likely impact of the Transaction

(1372) Resulting from the elements set out above, a sizable proportion of customers indicate that competition on the market for facultative reinsurance will decrease post-Transaction.[1655]

(1373) Among those respondents that voiced some concerns with respect to the impact of the Transaction on the facultative reinsurance market, they indicated that the negative impact primarily results from the lack of alternatives offered to customers.[1656] Several respondents point out in this respect that the transaction would reduce from three to two with an impact, leading to a number of negative effects. One reinsurance explains for instance that "*[customers] would have to rely on just two big brokers, who would increase prices, be less reactive to client's needs, offer less service.*"[1657]

(1374) Similarly, a customer indicates that the Transaction will result in the loss of one of the three top competitors in an already concentrated market for facultative reinsurance, positioning Marsh and Aon/WTW to extract supracompetitive profit from insurers. According to this customer insurers will have limited ability to push back on increases in broker commissions and fees and be forced to protect their profit margins by increasing the premiums they quote to clients in the primary insurance market. As a result, the Transaction will result in insurers paying more for reinsurance, corporate clients paying more for insurance, and brokers receiving more compensation for services of the same or diminished quality as those they currently provide.[1658]

G. Conclusion

(1375) For the reasons set out above, and in light of the results of the investigation, the Commission considers that the Transaction would create a significant impediment to effective competition on the global market for the supply of non-life facultative reinsurance brokerage services, due to non-coordinated horizontal effects.

7.3.3. Conclusion on the reinsurance brokerage markets

(1376) Taking into account the evidence set out above, and in view of the level of the combined market shares, the closeness of competition between the Parties and the resulting loss of the important competitive constraints that WTW exercised on Aon pre-Transaction, the lack of other credible competitive constraints on the Parties (other than Marsh), the limited countervailing factors, the high barriers to entry and expansion and the negative feedback received from market participants, the Commission concludes that it is likely, and there is even a strong probability, that the Transaction will significantly impede effective competition on the following markets:

(a) the supply of non-life treaty reinsurance brokerage services at worldwide level;

1655 Replies to question 61 of questionnaire Q17 to non-life reinsurance brokerage customers.

1656 Replies to questions 60, 61 of questionnaire Q17 to non-life reinsurance brokerage customers.

1657 Replies to question 25 of questionnaire Q18 to reinsurers (Document ID 8881).

1658 Replies to question 63 of questionnaire Q17 to non-life reinsurance brokerage customers (Document ID 8504).

(b) the supply of non-life facultative reinsurance brokerage services at worldwide level.

8. RETIREMENT SOLUTIONS

(1377) Both Aon and WTW provide retirement solutions which can be grouped into three different categories: (i) retirement benefits consulting; (ii) pension administration; and (iii) group pension products. These services consist in providing companies' employees with benefits and services relating to their retirement.

(1378) The Transaction leads to horizontal overlaps for the provision of retirement benefits consulting, pension administration, and group pension products.

(1379) With reference to group pension products, the Parties' activities horizontally overlap only to a very limited extent and the Transaction does not give rise to any affected markets. The Transaction, however, leads to vertically affected markets for (i) group pension products and retirement benefits consulting in Ireland, and (ii) group pension products and investment consultancy in the Netherlands.

8.1. Retirement benefits consulting

(1380) Retirement benefits consulting consists in the provision of advisory services to pension fund trustees, corporate entities and public authorities administering pension schemes in relation to the design and/or review of the retirement benefits they provide to their employees, who are the pension funds members. Such consulting services typically include retirement plan and strategy design; actuarial services;[1659] insurance intermediation services; benchmarking retirement benefit plans; review of retirement plan strategy and performance; pension risk management; advice on retirement readiness; and governance, legal compliance and regulatory consultancy.

8.1.1. Relevant product markets

8.1.1.1. Commission's previous decisional practice

(1381) In its previous decisions,[1660] the Commission considered that retirement benefits consulting would constitute a separate product market from pension administration services due to an essential difference in the expertise and skills required to provide the two services. While for retirement benefits consulting services, specific knowledge in the area of pension funds would be necessary, for pension administration services, IT systems and IT knowledge play a more critical role.

(1382) In its previous decisions,[1661] the Commission also found that retirement benefits consulting constitutes a separate product market from other consulting services. Retirement benefit consulting would consist of consulting and actuarial services to corporations, trustee bodies and other entities relating to retirement and health benefits for employees' pension funds. According to the Commission's past decisions, the relevant services include advisory activities about planning, designing and implementing retirement benefits, actuarial and financial valuations, retirement

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1659 Actuarial services are used by corporate customers to determine, assess, and plan for the financial impact of risk by using mathematical and statistical models. Actuarial services providers forecast risk and uncertainty and help firms plan for future probabilities and possibilities. While actuarial science is most commonly applied to mortality analysis for life insurance, many of the same procedures are also used for investment, retirement plans, property, liability, and other kinds of insurance.

1660 M.5597 - *Towers Perrin / Watson Wyatt*, paragraph 13.

1661 M.5597 - *Towers Perrin / Watson Wyatt*, paragraphs 11-13; M.5951 – *Aon Corporation / Hewitt Associates*, paragraphs 10-11.

risk management, due diligence process, research, market surveys and benchmarking studies, pension fund management, compliance and administration of funds and other actuarial services.

(1383) The Commission did not draw a conclusion in its past decisions as to whether there would be certain specific services, such as insurance intermediation services or actuarial services, which would constitute a separate product market. In this respect, the Commission observed that insurance intermediation services are often provided by specialised brokers who are not always active in retirement benefit consulting services, and different skills are needed for the different kind of services and the services are also often provided by different teams within each company. As mentioned above, however, the Commission ultimately left the exact definition of the product scope of the market for retirement benefits consulting open.[1662]

(1384) Finally, the Commission has not assessed in its previous decisions whether a potential distinction in the type of advisory services provided can be applicable to retirement benefits consulting services. This distinction would depend on the type of pension schemes these services are being provided to, namely defined contribution schemes ("DC schemes"), defined benefits schemes ("DB schemes"), and hybrid schemes. Currently, retirement plans arranged by an employer are typically of two main types: DB schemes and DC schemes. DB schemes provide a pre-determined retirement income to all members, accrued based on length of service and the member's final or career-average salary. Typically, both the employer and member will contribute to the scheme. The employer acts as scheme sponsor and is responsible for ensuring that members receive their benefits, potentially by funding the scheme through a covenant. Therefore, ultimately the benefit that a member receives may not depend wholly on the performance of investments. In a DB scheme, the employer usually takes that risk and pays higher contributions in order to maintain the agreed level of benefits. In hybrid schemes, the risk can be shared between the employer and employees.[1663] DC schemes are those where members (and employers) contribute an amount to be invested but there is no pre-determined benefit. The investment risks, which determine the scheme benefit, are borne by the scheme member rather than the employer. DC schemes give no certainty about the benefit the member will receive on retirement.[1664] A hybrid pension scheme is one which is neither a full DB scheme nor a full DC scheme but has some of the characteristics of both.

(1385) In the context of its market investigation about the conditions of competition for investment solutions in the UK[1665], the CMA investigated the variation in the investment services provided to pension schemes, depending on the variation of the specific characteristics of pension schemes, *inter alia*, in terms of scheme type (DB scheme, DC scheme or hybrid scheme). The CMA observed that the advice these schemes may seek is different depending on the type of scheme. The CMA, however, noted that, because of commonalities in the nature of the advice across different pension schemes, service providers in one segment could easily and quickly expand into other segments. In addition, most investment consultants and investment managers offer services to all types of pension schemes. On that basis, the CMA

[1662] M.5951 – *Aon Corporation / Hewitt Associates*, paragraph 11.
[1663] Form CO, footnotes 1686 and 2306.
[1664] Form CO, footnotes 1590, and 1993.
[1665] CMA, *Investment Consultants Market Investigation final report*, 12 December 2018.

concluded that the market for investment consultancy services to pension schemes should not be further segmented per type of pension scheme.[1666]

(1386) As mentioned above, the Commission has not assessed in its past decisions this potential further market segmentation among DB schemes, DC schemes and hybrid schemes with reference to retirement benefits consulting services.

8.1.1.2. The Notifying Party's view

(1387) The Notifying Party agrees with the Commission's previous decisional practice pursuant to which the market for the provision of retirement benefits consulting constitutes a separate relevant product market from other consulting markets, in light of the specific knowledge, skills, qualifications and technical resources required to be active in this field. The Notifying Party also submits that corporate clients distinguish between the specific services required in the retirement benefits consulting area and other human resources areas and, where necessary, procure these services separately.[1667] The Notifying Party also agrees with the Commission's previous decisions as regards the identification of separate markets for retirement benefits consulting, on the one hand, and pension administration services, on the other hand.[1668]

(1388) As regards the identification of a potential sub-segment for insurance intermediation services, the Notifying Party considers that these services are intrinsically linked to other aspects of retirement benefits consulting services and, therefore, would not represent a plausible segment or market. By referring to the Insurance Distribution Directive ("IDD")[1669], the Notifying Party observes that the IDD recognizes the similarities between the brokerage and consulting aspects of retirement benefits consulting services as the consulting aspects are often necessary for the brokerage to take place. Moreover, it would be industry practice that brokerage and consulting aspects of the retirement benefits services are provided together to customers, since customers demand them together. In fact, the Notifying Party observes that the same team within each service provider often provides both services.[1670] Moreover, the Notifying Party does not consider appropriate to identify a separate product market for actuarial services because they would also be inextricably connected with the provision of other retirement benefits consulting services. It observes that the vast majority of actuarial services are not provided as standalone services but alongside other advisory services. The Notifying Party also submits that clients typically use the same firm that provides actuarial services for any advisory work in light of a pre-existing customer relationship and understanding of how the pension scheme operates. Also from a supply-side standpoint, the Notifying Party observes that the same employees typically provide both actuarial and advisory services and there would be perfect supply-side substitutability between actuarial services and other retirement benefits consulting services.[1671]

1666 Form CO, paragraph 1541.
1667 Form CO, paragraph 2180.
1668 Form CO, paragraph 2524.
1669 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), OJ L 026, 2.2.2016, p. 19.
1670 Form CO, paragraphs 2196-2197.
1671 Form CO, paragraphs 2210-2219.

(1389) Finally, in relation to a potential segmentation of the market for retirement benefits consulting by type of scheme, *i.e.*, DC schemes, DB schemes, and hybrid schemes, the Notifying Party considers that this segmentation is not warranted.[1672]

(1390) The Notifying Party stresses that, in its past decisions, the Commission did not consider that retirement benefits consulting should be segmented between consulting services to DB, DC and hybrid schemes. The Notifying Party argues that there would be no ground to depart from the Commission's past practice. The Notifying Party observes that it would be inappropriate to separate DB and DC schemes, since retirement benefit services for DB and DC customers overlap to a significant extent. For example, retirement benefit services provided by consultants are broadly the same for both DC and DB pension schemes.[1673]

(1391) More specifically, the Notifying Party argues that, to the best of its knowledge, the majority of retirement benefits consulting services providers serve both DB and DC schemes and there are very few examples of specialized service providers based on the type of scheme. Additionally, the Notifying Party observes that, to the best of its knowledge, the large majority of its competitors have one single combined retirement benefits consulting team providing services to both DB and DC schemes. The Notifying Party also clarifies that, in most of the countries where the Parties are active, they either have one single team providing services to both DB and DC schemes or, even in those countries where the Parties have specialised DB and DC teams, such teams are fluid and employees might move from one team to another, as employees can provide, or can be trained to provide both types of services.[1674]

(1392) The Notifying Party concludes that the segment for retirement consulting services to hybrid schemes is not a plausible segment within the market for retirement consulting solutions. It observes that this term does not have a unique and objective definition across the EEA and this type of hybrid plans are used in very few EEA countries. Belgium, Spain and the UK are the only countries in the EEA where both Parties are active and which have hybrid schemes. These schemes, however, would not have any specific characteristics that require retirement benefits consulting services that are in any way different or go beyond those services provided in respect of DC and DB schemes. Therefore, all retirement benefits consultants that provide services in relation to DC and DB schemes can also provide services in relation to "hybrid schemes".[1675]

8.1.1.3. The Commission's assessment

(1393) As established in *Towers Perrin / Watson Wyatt*, *Aon Corporation / Hewitt Associates*, and further supported by the Notifying Party, the Commission considers that retirement benefits consulting constitutes a separate product market from other consulting services.

(1394) In line with the above remarks, the majority of customers and competitors who responded to the phase 1 market investigation indicated that consulting services relating to, on the one hand, retirement solutions and, on the other, to health and welfare benefits solutions are not sourced/provided together.[1676] Additionally, the

1672 Form CO, paragraphs 2181-2182.
1673 Form CO, paragraphs 2181-2182.
1674 Form CO, paragraphs 2183-2192.
1675 Form CO, paragraphs 2189-2192.
1676 Replies to question 73 of questionnaire Q3 to Customers in Investment, Retirement and Health and Welfare Benefits Solutions; replies to question 156 of questionnaire Q5 to Competitors.

large majority of customers who responded to the phase 1 market investigation confirmed that retirement benefits consulting services and pension administration services are not typically sourced together.[1677]

(1395) As regards the identification of a potential sub-segment for insurance intermediation services, as mentioned above, in its past decisions,[1678] the Commission, when describing the type of services encompassed under the definition of retirement benefits consulting services, included consulting and actuarial services to corporations. More specifically, the Commission listed the following activities: advisory activities about planning, designing and implementing retirement benefits, actuarial and financial valuations, retirement risk management, due diligence process, research, market surveys and benchmarking studies, pension fund management, compliance and administration of funds and other actuarial services. The Commission also discussed whether intermediation services should belong to the same market as all the other retirement benefits consulting services listed above or whether it would be more appropriate to identify a separate market for insurance intermediation services. The Commission, in fact, observed that, in certain instances, insurance intermediation services are provided by specialised brokers who are not active in retirement benefits consulting services, and different skills might be needed for the different kind of services. The Commission, however, in its previous decisions, did not conclude as to whether insurance intermediation services would constitute a separate market from retirement benefits consulting.[1679]

(1396) The phase 1 market investigation results indicate that the large majority of competitors are capable of providing and/or currently provide all services falling under the definition of retirement benefits consulting as described above, *i.e.*, retirement plan and strategy design; actuarial services; benchmarking retirement benefit plans; review of retirement plan strategy and performance; pension risk management; advice on retirement readiness; governance, legal compliance and regulatory consultancy; and insurance intermediation services. Similarly, the majority of customers who responded to the phase 1 market investigation consider that, typically, retirement benefits consulting services providers can provide all services as described above.[1680]

(1397) Finally, in relation to the potential identification of separate segments within the market for retirement benefits consulting depending on the type of scheme to which the service is provided, the Commission has not previously assessed this potential market segmentation.

(1398) The phase 1 market investigation results indicated that the vast majority of competitors would be able to provide and/or currently provide services to all types of schemes.[1681] In addition, although certain customers recognized that DB schemes can be more complex than DC schemes and might need a specific type of expertise – one customer, for instance, indicated that "*DB plan management is more complex and needs more / specific support (e.g. risk management) compared to pure DC*

1677 Replies to question 72 of questionnaire Q3 to Customers in Investment, Retirement and Health and Welfare Benefits Solutions.

1678 M.5597 - *Towers Perrin / Watson Wyatt*, paragraphs 14-17; M.5951 – *Aon Corporation / Hewitt Associates*, paragraphs 15-17.

1679 M.5951 – *Aon Corporation / Hewitt Associates*, paragraphs 15-17.

1680 Replies to question 154 of questionnaire Q5 to Competitors; replies to question 70 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1681 Replies to question 162 of questionnaire Q5 to Competitors.

plans"[1682] – the majority of them indicated that there is no difference in the range of providers offering retirement benefits consulting services to the various types of schemes.[1683] Hence, the phase 1 market investigation results suggested that these segments are substitutable under a supply-standpoint and, therefore, they do not constitute separate product markets.

(1399) To the effect of the present assessment, in line with its practice and in view of the above considerations, the Commission concludes that it is appropriate to distinguish a separate product market for retirement benefits consulting services. Due to supply-side substitutability, the Commission does not consider appropriate to further distinguish separate markets for retirement benefits consulting depending on the specific type of service provided or on the type of scheme to which the service is provided.

8.1.2. Relevant geographic markets

8.1.2.1. Commission's previous decisional practice

(1400) In its previous decisions, the Commission left the geographic market definition for retirement benefits consulting services open and observed that this activity presented both national and international aspects. On the one hand, in order to operate in this market, it is crucial to have knowledge of national pension systems. On the other hand, retirements benefits consulting services provided to large multinational companies are generally required to cover multiple jurisdictions, in particular, due to the need to reconcile pension accounting with a single underlying set of international accounting and financial reporting standards.[1684] Pursuant to the Commission's past decisions, these services may seem, in certain instances, to have a scope which is wider than national.[1685]

8.1.2.2. The Notifying Party's view

(1401) The Notifying Party submits that the relevant market for retirement benefits consulting is national given the need to take into account local specificities, including the different fiscal and regulatory environments with respect to pensions.[1686]

8.1.2.3. The Commission's assessment

(1402) As mentioned above, in its past practice, the Commission has left open whether the market for retirement benefits consulting is national or wider in scope in light of certain national and international characteristics.

(1403) The phase 1 market investigation results provided a number of indications pointing towards national markets, despite recognizing that certain specific services, such as actuarial and accounting services, might have international characteristics. The large majority of customers and competitors who responded to the phase 1 market

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1682 Reply to question 1700 of questionnare Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions (Document ID 3333).

1683 Replies to question 82 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1684 International Accounting Standards were replaced in 2001 by the International Financial Reporting Standards (IFRS). Currently, the Unites States, Japan, and China are the only major capital markets without an IFRS mandate. The goal of having international accounting and financial reporting standards is to facilitate the comparison of businesses around the world, increase transparency and trust in financial reporting, and foster global trade and investment, on the basis of globally comparable accounting standards.

1685 M.5597 - *Towers Perrin / Watson Wyatt*, paragraph 15.

1686 Form CO, paragraphs 2220-2221.

investigation indicated that these services are sourced/provided on the basis of national contracts. Only a smaller sub-set of customers indicated that they source some services at EEA-wide level or on an even wider basis, for services such as actuarial and accounting services. When asked, however, about the geographic coverage of their actuarial services contracts, the vast majority of customers who responded to the phase 1 market investigation indicated that this is national.[1687]

(1404) To the effect of the present assessment, the Commission concludes that the relevant geographic market for retirement benefits consulting services is national in scope. The Commission considers that the ability to provide services on a broader geographical level to customers with a multinational presence represents a competitive differentiating factor, rather than amounting to a separate relevant market, and, as such, will be taken into consideration in the competitive assessment.

8.1.3. Competitive assessment

(1405) With regard to retirement benefits consulting, the Transaction results in horizontally affected markets in Belgium, Denmark, France, Germany, Ireland, the Netherlands, Portugal, Spain, and the UK. The detailed list of affected markets is set out below.

Table 33: Overview of the national affected markets for retirement benefits consulting by revenue (2019)[1688]

Country	Aon	WTW	*Combined*
Belgium	[10-20]%	[10-20]%	*[20-30]%*
Denmark	[10-20]%	*[20-30]*%	*[30-40]%*
France	[5-10]%	[10-20]%	*[20-30]%*
Germany	[10-20]%	[10-20]%	*[20-30]%*
Ireland	[10-20]%	*[20-30]*%	*[30-40]%*
Netherlands	[10-20]%	[10-20]%	*[20-30]%*
Portugal	[0-5]%	*[30-40]*%	*[40-50]%*
Spain	[10-20]%	*[20-30]*%	*[30-40]%*
UK	[10-20]%	[10-20]%	*[20-30]%*

Source: Form CO, paragraph 2264.

(1406) In this Section, the Commission assesses the likelihood that the Transaction may result in anticompetitive effects in the affected markets for the provision of retirement benefits consulting services as identified above.

8.1.3.1. The Notifying Party's view

(1407) *Firstly*, on the basis of the market share estimates, the Notifying Party claims that the combined market share in Belgium, France, Germany, the Netherlands, and the UK does not reach to a level that could give rise to competition concerns in these countries. The Notifying Party also indicates that in these countries there will remain well-established competitors which will continue to constrain the Merged Entity. As regards Portugal, despite a combined market share of [40-50]%, the Notifying Party considers that the Transaction will only lead to a limited market share increment of [0-5]% and, therefore, will not result in any change in the conditions of competition. With respect to Denmark, Ireland, and Spain, the Notifying Party argues that these

1687 Replies to questions 80 and 80.2 of questionnaire Q3 to Customers of Investment, Retirement and Health and Welfare Benefits Solutions; replies to question 157 of questionnaire Q5 to Competitors.

1688 Some percentages may not add up due to rounding.

markets are dynamic and evolving, there is a sufficient number of credible competitors which will exert effective competitive pressure on the Merged Entity post-Transaction, and there is ample potential for new market entry. Furthermore, particularly in Denmark and Spain, insurers, pension providers and fund managers act as significant competitive constraints for the Parties.[1689]

(1408) *Secondly*, the Notifying Party claims that the markets for the provision of retirement benefits consulting services in Belgium, Denmark, France, Germany, Ireland, the Netherlands, Portugal, Spain, and the UK are fragmented and highly competitive. According to the Notifying Party, these markets are all characterised by the presence of a long list of strong competitors, including both national and international players, more traditional consulting firms and also less traditional competitors, such as insurance companies, boutique firms, and financial market players.[1690]

(1409) *Thirdly*, the Notifying Party observes that the markets for retirement benefits consulting services have steadily evolved in recent years, hence, attracting more competitors and enhancing the level of competition. According to the Notifying Party, such expansion of the market will create further opportunities for small players to grow and for new players to enter, thereby continuously increasing the competitive pressure on the Parties as there is no material barrier to entry or scale advantage.[1691]

(1410) *Fourthly*, the Notifying Party claims that the size of a retirement benefits consulting firm does not have any meaningful impact on the range of services it can provide. In the Notifying Party's view, there are no retirement benefits consulting services that competitors with a market share of 5% or below would not be able to provide at competitive conditions. The capacity of smaller players to represent a viable competitive force in the market for retirement benefits consulting would be fostered by the absence of economies of scale, since these services are purely advisory in nature, there are no strong capacity constraints and no significant infrastructure is required. Moreover, the Notifying Party considers that clients have strong negotiating power, and all retirement benefits consultants have to face this power, regardless of their size. The Notifying Party observes that clients' bargaining power in this market results mostly from the existence of well-informed in-house teams and/or professional trustees which often scrutinise and challenge the work done by the consultants; the use of specific project-based work as a mechanism to discipline the incumbent retirement benefits consultants; and the ability of smaller consultant firms to provide all kinds of services.[1692]

(1411) *Fifthly*, the Notifying Party contends that smaller and local/national competitors can successfully compete against multinational players since these markets are inherently national. These markets are characterized by strong local specificities, such as fiscal and regulatory environment, cultural and local habits. Therefore, the Notifying Party argues that domestic and international players have equal opportunities to compete for retirement benefits consulting work in each of the relevant countries. Strong competitive pressure is exercised on the Parties not only by other international companies, such as Marsh and Milliman, but also by local consultancies, by the big four consulting firms (KPMG, EY, PwC, and Deloitte), as well as by networks of

[1689] Form CO, paragraphs 2269-2272.
[1690] Form CO, paragraphs 2273-2278.
[1691] Form CO, paragraphs 2279-2291.
[1692] Form CO, paragraphs 2305-2310.

local retirement benefits consulting firms, and in-house teams, which typically have the skills and expertise to do the work themselves.[1693]

(1412) *Sixthly*, the Notifying Party argues that barriers to entry and expansion are low. There are no substantial natural, technical, commercial or regulatory barriers to entry and/or expansion in the retirement benefits consulting markets. The competitive pressure from the continued threat of further sustained and timely entry and/or expansion stems from the fact that businesses do not need scale or high levels of investment to compete very effectively in the relevant markets. Potential competition from new entrants and/or existing competitors seeking to win more business will thus always be a significant competitive constraint on the Merged Entity post-Transaction.[1694]

(1413) *Seventhly*, the Notifying Party claims that customers enjoy strong bargaining power and they can easily switch between retirement benefits consulting providers and often multi-source. The Notifying Party stresses that customers in this sector are sophisticated companies and, in several instances, they conduct their retirement benefits consulting work fully or partially in-house. The ability of clients to internalise retirement benefits work reinforces their bargaining power and can exert an additional competitive constraint on external service providers which are aware of the fact that the clients can also conduct the retirement consulting activities in-house instead of working with an external service provider. Moreover, the Notifying Party reports that there is also an increasing trend of appointing professional trustees to scheme boards, who will typically have relevant pensions experience and/or come from a complementary professional background such as investment, actuarial, accountancy or legal services. In addition, the Notifying Party observes that many clients typically multi-source and use several service providers at the same time, thus making themselves familiar with a variety of suppliers in the market. This creates an additional competitive pressure on every player in the market as the clients have vast experience with many suppliers and can more easily compare the quality of the services received. In connection with the above, the Notifying Party considers that clients would be able to switch providers relatively easily and cheaply as client contracts do not contain onerous termination clauses nor does the transition from the incumbent supplier to the new supplier require a substantial amount of time. Therefore, there is a constant threat of switching suppliers which adds to the competitive pressure on the incumbent supplier, and, according to the Notifying Party, this happens often in the market.[1695]

(1414) *Finally*, the Notifying Party contested several findings of the Article 6(1)(c) Decision with respect to Belgium, Denmark, Germany, Portugal, and Spain, where the Commission raised serious doubts following the phase 1 market investigation.

(1415) The Notifying Party claims that the Parties' market shares overstate their market position because they do not take into account the competitive constraint represented by insurers, fund managers, and in-house teams.[1696]

(1416) Moreover, the Notifying Party argues that the tender data analysis run by the Commission to support the Parties' closeness of competition is not reliable. In particular, the Notifying Party considers that a participation analysis is not a suitable proxy for an assessment of closeness of competition, even more so is the

1693 Form CO, paragraphs 2311-2320.
1694 Form CO, paragraphs 2321-2348.
1695 Form CO, paragraphs 2349-2428.
1696 Reply to Article 6(1)(c) Decision, paragraphs 986, 1039, 1073, 1121.

Commission's participation analysis since it is based on Aon Connect data. The Notifying Party clarifies that Aon Connect is […].[1697]

(1417) Additionally, the Notifying Party considers that the Parties' ability to provide the full range of retirement benefits consulting services does not make them particularly close competitors since there are other players capable of offering the full range of retirement benefits consulting services and customers do not typically require the full range of services altogether but, rather, specific services based on individual business' or project's needs.[1698]

8.1.3.2. The Commission's assessment

(1418) As explained in this Section, and following the results of the phase 1 and phase 2 market investigation, the Commission considers that there is some evidence showing that the Parties would exert important competitive constraints for the provision of retirement benefits consulting solutions, not only on each other, but also on the remaining competitors, to a larger extent in Germany compared to other affected national markets. This would appear to be true based on the market feedback received to the phase 1 and phase 2 market investigation, both in light of (i) the degree of closeness of competition (between each other and *vis-à-vis* Marsh), but also in view of (ii) the high level of market concentration, specifically for larger multinational customers, headquartered in Germany, for whom only the Big Three would represent suitable alternatives to fulfil their needs. Despite this evidence, as further detailed below, the Commission considers that it can be left open whether the Transaction would lead to a significant impediment to effective competition on the market for retirement benefits consulting in Germany as the final commitments, as submitted by the Notifying Party on 12 May 2021 with a view to addressing the competition concerns identified in the market for pension administration in Germany would, in any event, also effectively address any competition concerns in the market for retirement benefits consulting in Germany.

(1419) Following the results of the phase 1 market investigation, the Commission raised serious doubts about the compatibility of the Transaction with the internal market not only for Germany, but also for Belgium, Denmark, Portugal, and Spain. While for France, Ireland, the Netherlands, and the UK, the overall feedback received by market respondents to the phase 1 market investigation regarding the impact of the Transaction on the internal market was largely positive, for Belgium, Denmark, Germany, Portugal, and Spain, the majority of customers and competitors who responded to the phase 1 market investigation submitted that the Transaction would have had a negative impact on the market and, therefore, the purpose of the phase 2 market investigation was to understand to what extent these concerns were substantiated. In the context of the phase 2 market investigation, the Commission carried out a thorough assessment of the competitive dynamics in Belgium, Denmark, Germany, Portugal, and Spain, by contacting local competitors who did not respond to the Commission's phase 1 market investigation, such as Vanbreda, Funk, Lohoff, Söderberg & Partners, MDS, and the big four consultancy companies (PwC, E&Y, KPMG, and Deloitte), as well as all customers who expressed concerns during the phase 1 market investigation, regardless of their size. Only for Germany, however, these concerns were confirmed and further substantiated in the phase 2 market investigation.

1697 Reply to Article 6(1)(c) Decision, paragraphs 986, 1039, 1073, 1121.

1698 Reply to Article 6(1)(c) Decision, paragraphs 986 and 1039.

A. Market structure

(1420) First, the Commission notes that the Transaction leads to larger combined market shares in a number of affected markets and to more moderate market combined market shares in other affected markets. Market shares, however, are only a useful first indication of the market structure and of the respective positions of the Parties. In this specific case, the Commission considers that other qualitative elements should also be taken into account to conclude that the Transaction would lead to a significant increase of market power of the Merged Entity post-Transaction in Germany, as opposed to the other affected markets identified.

(1421) More specifically:

(a) In **Belgium**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the Belgian market for retirement benefits consulting services, with a [10-20]% increment brought by WTW. The new entity would face competition from a number of different competitors, such as Marsh ([10-20]% market share), Vanbreda ([5-10]%), and Nexyan ([0-5]%). This market will have an HHI of around [1,000-1,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. While the majority of customers who replied to the phase 1 market investigation submitted that only the Parties and Marsh were to be considered credible alternatives and, according to them, there was a big gap between the Parties and Vanbreda,[1699] this feedback was not confirmed during the phase 2 market investigation, by way of which the Commission investigated whether the claims brought forward during the phase 1 market investigation were substantiated. The large majority of customers who responded to the phase 2 market investigation submitted that, post-Transaction, not only the Big Three, but also other players, such as Nexyan and Vanbreda, would remain in the market as credible suppliers.[1700] Moreover, several competitors who responded to the phase 2 market investigation confirmed that the market is sufficiently competitive with several alternatives available.[1701] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1702]

(b) In **Denmark**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the Danish market for retirement benefits consulting services, with a [10-20]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as APC Forsikringsmægler ([20-30]% market share), Söderberg & Partners ([10-20]%), and Marsh ([5-10]%). This market will have an HHI of around [2,000-2,500] post-Transaction and the delta HHI caused by the Transaction is around [500-1,000]. While the majority of customers who replied to the phase 1 market investigation submitted that only the Parties and Marsh were to be considered credible alternatives and, according to them, there

[1699] Replies to question 89 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1700] Non-confidential replies to phase 2 RFI – Customers – RBC - Belgium, questions 4-5.

[1701] Non-confidential replies to phase 2 RFI – Competitors – RBC – Belgium, questions 5-7.

[1702] Replies to question 99.2 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.2 of questionnaire Q5 to Competitors.

was a big gap between the Parties and Söderberg & Partners or Deloitte,[1703] this feedback was not confirmed during the phase 2 market investigation, by way of which the Commission investigated whether the claims brought forward during the phase 1 market investigation were substantiated. Customers and competitors who responded to the phase 2 market investigation largely confirmed the market structure as portrayed by the market shares submitted by the Notifying Party; especially competitors submitted that the market is sufficiently competitive with several credible alternatives available.[1704] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors who responded to the phase 2 market investigation submitted that it will be neutral on price, quality, and innovation.[1705] Moreover, certain internal documents show that, according to the Parties, the competitive landscape is sufficiently dynamic in Denmark, there are other players in the market in addition to the Parties and, as argued by the Notifying Party, insurance companies also play a role in terms of competitive constraints in the market. For instance, as shown in Figure 26: [Internal document] below, despite acknowledging its leading position in the market, WTW considers that competitive pressure is high and barriers to entry are not sufficiently strong to be protected against competition. Moreover, the same Figure shows that other brokers are competing against the Parties, such as Marsh and Söderberg & Partners, and the "*supplier power*" works as a competitive constraint, consisting in insurers directly providing to end-customers services which are similar to those provided by brokers. Similarly, Figure 27: [Internal document] below shows that, not only brokers are competing with the Parties, but also pension-specialized companies, such as Danica Pension, PFA Pension, as well as Deloitte.

Figure 26: [Internal document]

[Internal document]

Source: WTW's internal document.[1706]

Figure 27: [Internal document]

[Internal document]

Source: WTW's internal document.[1707]

(c) In **France**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the French market for retirement benefits consulting services, with a [5-10]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Marsh ([10-20]% market share), Siaci Saint Honoré ([10-20]%), and Optimind ([5-10]%). This market will have an HHI of around [1,000-1,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. The market structure was confirmed by the majority of customers and competitors who

1703 Replies to question 89 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1704 Non-confidential replies to phase 2 RFI – Customers – RBC - Denmark, questions 5-6; non-confidential replies to phase 2 RFI – Competitors – RBC - Denmark, questions 4-6.

1705 Replies to question 99.3 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.3 of questionnaire Q5 to Competitors.

1706 WTW internal document on "Pension" dated *not specified* (Document ID 8009-100).

1707 WTW internal document on "Pension" dated *not specified* (Document ID 8009-100).

responded to the phase 1 market investigation, and submitted that, post-Transaction, a sufficient number of credible providers would remain in the market, mentioning, among the others, Marsh, Siaci Saint Honoré, as well as Deloitte and PwC.[1708] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1709]

(d) In **Germany**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the German market for retirement benefits consulting services, with a [10-20]% increment brought by Aon. Based on the market shares submitted by the Notifying Party, the new entity would appear to face competition from, primarily, Marsh ([10-20]% market share) and Heubeck ([0-5]%). All the other competitors, mentioned by the Notifying Party, would not hold a market share bigger than [0-5]%. This market will have an HHI of around [1,000-1,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. Despite the fact that the Merged Entity's combined market share would not be above 30% post-Transaction, the majority of customers who replied to the phase 1 market investigation submitted that only the Parties and Marsh were to be considered credible alternatives and, according to them, there was a big gap between the Parties and Heubeck.[1710] This feedback was largely confirmed during the phase 2 market investigation, by way of which the Commission investigated whether the claims brought forward during the phase 1 market investigation were substantiated. The large majority of customers and competitors who responded to the phase 2 market investigation consider that, post-Transaction, there would not be a sufficient number of alternatives remaining in the market, even more so considering only those companies who are capable of fulfilling large multinational customers' needs, several of which are headquartered in Germany.[1711] One customer declared "*the retirement solutions consulting market is hardening and dominated by only a few players offering a competitive global network. Since this development is shifting the dependency and market power to a low number of players, we are concerned that the transaction could even accelerate this trend. Consequently, further price increases in the retirement solutions consulting market would be likely. In addition, decreasing competition will hold prices at an unreasonably high level, slow down innovation speed and will therefore reduce the overall welfare, by favoring inefficient market conditions. In our opinion the transaction strongly endangers a level-playing-field in the retirement benefits consulting service market*".[1712] Moreover, one competitor submitted "*the transaction would have a big impact on competition in Germany because Aon and WTW have very many customer relationships. Aon derives a lot of customer relationships in Germany from their international business and WTW is at home in the German market (formerly*

1708 Replies to question 89 and 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 177 of questionnaire Q5 to Competitors.

1709 Replies to question 99.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.4 of questionnaire Q5 to Competitors.

1710 Replies to question 89 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1711 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6.

1712 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6 and 12 (Document ID 9223).

Rauser). Therefore they would command both operational channels. The impact of the transaction on pricing would be synergy effects in regards to volume. In terms of choice there would be one competitor less, which reduces the choice of providers for large and mid-sized clients who want a large player that offers all services that fall under the definition of retirement benefits consulting. The quality is expected to stay high. Regarding innovation, Aon and WTW will be able to bundle their capacity for innovation regarding budget and market volume, which will make it harder for their competitors to keep up".[1713] Therefore, there has been a number of consistent concerns expressed by market respondents during both the phase 1 and the phase 2 market investigations. However, it has to be taken into consideration, at the same time, that the Parties' combined market share would not be higher than 30% post-Transaction and, on the basis of the market shares submitted by the Notifying Party also for the remaining competitors, there would appear to be other players still active in the market. Hence, the Commission considers that, whilst there is some evidence that the Transaction may give rise to horizontal non-coordinated effects on the market for retirement benefits consulting in Germany, it can be left open whether the Transaction would lead to a significant impediment of effective competition on this market as the final commitments submitted by the Notifying Party on 12 May 2021 with a view to addressing the competition concerns on the market for pension administration in Germany would, in any event, also effectively address any competition concerns on the market for retirement benefits consulting in Germany.

(e) In **Ireland**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the Irish market for retirement benefits consulting services, with an [10-20]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Marsh ([30-40]% market share), Irish Life ([10-20]%), and Lane, Clark & Peacock ([0-5]%). The market shares show that Marsh is the largest competitor in the Irish market for retirement benefits consulting services and the large majority of customers and competitors who responded to the phase 1 market investigation submitted that, post-Transaction, a sufficient number of credible providers would remain in the market, mentioning, among the others, Marsh, as well as Lane, Clark & Peacock, and Irish Life.[1714] This market will have an HHI of around [2,500-3,000] post-Transaction and the delta HHI caused by the Transaction is around [500-1,000]. Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1715]

(f) In **the Netherlands**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the Dutch market for retirement benefits consulting services, with a [10-20]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Marsh ([10-20]% market share), Sprenkels & Verschuren ([5-10]%), and Triple A ([5-10]%). This market will have an HHI of around [500-1,000]

1713 Non-confidential replies to phase 2 RFI – Competitors – RBC – Germany, questions 12-14 (Document ID 7947).

1714 Replies to questions 89 and 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 177 of questionnaire Q5 to Competitors.

1715 Replies to question 99.6 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.6 of questionnaire Q5 to Competitors.

post-Transaction and the delta HHI caused by the Transaction is around [0-500], therefore unlikely to raise competition concerns. This market structure was confirmed by the majority of customers and competitors who responded to the phase 1 market investigation, who submitted that, post-Transaction, a sufficient number of credible providers would remain in the market, mentioning, among the others, Marsh, as well as Sprenkels & Verschuren, and KPMG.[1716] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1717]

(g) In **Portugal**: post-Transaction, the Merged Entity would hold a (value) combined market share of [40-50]% in the Portuguese market for retirement benefits consulting services, with a [0-5]% increment brought by Aon. This market will have an HHI of around [3,000-3,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. The new entity would face primarily competition from Marsh ([40-50]% market share). The market shares show that Marsh is the largest competitor in the Portuguese market for retirement benefits consulting and that the market structure will not change as a result of the Transaction, since the increment brought by Aon is modest ([0-5]% market share). While the majority of customers who replied to the phase 1 market investigation submitted that only the Parties and Marsh were to be considered credible alternatives and, according to them, there was a big gap between the Parties and MDS,[1718] this feedback was not confirmed during the phase 2 market investigation, by way of which the Commission investigated whether the claims brought forward during the phase 1 market investigation were substantiated. The majority of insurers who responded to the phase 2 market investigation submitted that fund managers are capable of offering services comparable to those offered by the Parties and are, therefore, exerting competitive pressure on them, confirming the Notifying Party's arguments with specific reference to Portugal in this respect.[1719] Customers who responded to the phase 2 market investigation did not express concerns in relation to the Transaction.[1720] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1721]

(h) In **Spain**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the Spanish market for retirement benefits consulting services, with a [10-20]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Marsh ([20-30]% market share), CPPS ([5-10]%), and AFI ([5-10]%). This market will have an HHI of around [1,500-2,000] post-Transaction and the delta HHI caused by the Transaction is around [500-1,000]. While the majority

1716 Replies to questions 89 and 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 177 of questionnaire Q5 to Competitors.

1717 Replies to question 99.7 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.7 of questionnaire Q5 to Competitors.

1718 Replies to question 89 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1719 Replies to question 3.1 of questionnaire Q20 to Insurers and Fund Managers in RBC.

1720 Non-confidential replies to phase 2 RFI – Customers – RBC – Portugal, question 12.

1721 Replies to question 99.8 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.8 of questionnaire Q5 to Competitors.

of customers who replied to the phase 1 market investigation submitted that only the Parties and Marsh were to be considered credible alternatives and, according to them, there was a big gap between the Parties and KPMG,[1722] this feedback was not confirmed during the phase 2 market investigation, by way of which the Commission investigated whether the claims brought forward during the phase 1 market investigation were substantiated. The large majority of customers who responded to the phase 2 market investigation submitted that, post-Transaction, not only the Big Three, but also other players, such as CPPS, Novaster, KPMG, and EY would remain in the market as credible suppliers.[1723] Moreover, certain competitors who responded to the phase 2 market investigation confirmed that the market is sufficiently competitive with several alternatives available.[1724] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1725]

(i) In **the UK**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the UK market for retirement benefits consulting services, with a [10-20]% increment brought by WTW. The new entity would face competition from a number of different competitors, such as Marsh ([20-30]% market share), Lane, Clark & Peacock, XPS, Hymans Robertson, Isio, and Barnett Waddingham, all with [5-10]% market share. This market will have an HHI of around [1,000-1,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. The market structure was confirmed by the large majority of customers and competitors who responded to the phase 1 market investigation, who submitted that, post-Transaction, a sufficient number of credible providers would remain in the market, mentioning, among the others, Marsh, Barnett Waddingham, Lane, Clark & Peacock, Hymans Robertson, and Isio.[1726] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1727]

(1422) In light of the foregoing analysis and of the evidence in the Commission's file, as regards the structure of those markets, combined with the factors set out in the following sections below, the Commission considers that, the market structure post-Transaction in the markets for retirement benefits consulting in Belgium, Denmark, France, Ireland, the Netherlands, Portugal, Spain, and the UK, is as such not to raise any significant competition concerns. In Germany, while the market structure, similarly to the other national affected markets analysed, would appear to suggest that no significant competition concerns arise post-Transaction in the market for retirement benefits consulting, a number of concerns have been expressed by customers and competitors throughout the phase 1 and the phase 2 market

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1722 Replies to question 89 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1723 Non-confidential replies to phase 2 RFI – Customers – RBC - Spain, questions 5-6.

1724 Non-confidential replies to phase 2 RFI – Competitors – RBC – Spain, questions 4-6.

1725 Replies to question 99.9 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.9 of questionnaire Q5 to Competitors.

1726 Replies to questions 89 and 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 177 of questionnaire Q5 to Competitors.

1727 Replies to question 99.10 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 180.10 of questionnaire Q5 to Competitors.

investigation. The Commission, therefore, considers that it can be left open whether significant competition concerns could be identified in the market for retirement benefits consulting in Germany.

B. Closeness of competition

B.1 Germany

(1423) As regards closeness of competition, the market investigation confirmed that the Parties would appear to be competing particularly closely in the market for retirement benefits consulting in Germany. Both customers and competitors who responded to the phase 2 market investigation for Germany generally consider that WTW is Aon's second closest competitor, or third closest competitor after Marsh.[1728]

(1424) The market investigation revealed that only Marsh competes closely with the Parties, especially due to its capability to fulfil large multinational customers' needs, whereas small or mid-sized players are generally capable of serving the needs of national smaller customers and cannot equally compete with the Parties and Marsh for the entire market.[1729]

(1425) More specifically, a significant number of customers who responded to the phase 2 market investigation are large customers with a presence across different jurisdictions and they consistently submitted that only the Big Three are credible competitors in Germany for retirement benefits consulting services, especially to fulfill large multinational clients' needs. For instance, one customer submitted "*The* […] *as a global company with a comparably low headcount in retirement benefits is in need to choose one global provider of retirement benefits consulting services, due to efficiency reasons. This significantly limits the range of providers, who can offer a convenient global network. Therefore, we see the market structure as very concentrated. Precisely the are only three options (AON, WTW, Marsh) which could satisfy the international needs of a global player* […]. *Unfortunately, a merger between AON and WTW reduces this amount by one option.*"[1730] and another one added "*There is a limited number of consultants which we think have an adequate set-up (Aon, WTW, Mercer* [Marsh]*, maybe Heubeck) due to their scope, size, and experience as well as international presence*".[1731]

(1426) Additionally, when looking at the parameters of competition, such as knowledge of local regulatory requirements, or track-record, scale of the organization, price, and experience with large multinational clients with more complex needs, the market investigation has shown that the Big Three are perceived as the most competitive players. In relation to the experience and the capacity to serve large multinational clients with complex needs, the majority of competitors who responded to the market investigation declared that multinational providers enjoy a competitive advantage *vis-à-vis* national providers and a significant sub-set of customers consider that, post-Transaction, conditions of competition in Germany would be particularly worsened for large multinational companies due to the reduction in the number of multinational providers of retirement benefits consulting services in the country. On a similar note, a competitor submitted that specialists capable of serving large clients in more

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1728 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6.

1729 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6.

1730 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6 (Document ID 9223).

1731 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6 (Document ID 9180).

complex situations are very limited, including primarily the Big Three and potentially Heubeck as tier-2 provider.

(1427) The Parties' closeness of competition with respect to the German market for retirement benefits consulting services is further shown in the tender data analysis (see Annex B for further details).

(1428) In particular, when considering Aon tender data for the period 2017-2019:[1732]

(a) WTW participated against Aon in tenders representing [a high percentage]% of the overall value of tenders where Aon participated ([percentage] by count), and Marsh participated in [percentage] of the corresponding tender value ([percentage] by count). By contrast, there is a significant gap in the participation rates against Aon between the above competitors and all other suppliers. None of the other suppliers participated in more than [a small percentage] of tender value ([a small percentage] by count).[1733]

(b) The findings are confirmed when only 2019 is considered. While Marsh's participation rate against Aon […] ([percentage] by value excluding unknown, [percentage] by value including unknowns), WTW participation rate […] ([percentage] by value excluding unknown, [percentage] by value including unknowns). The next biggest supplier, Heubeck, achieves a participation rate of [a small percentage] by value, with and without the unknown category.

(1429) The participation analysis shows that, for the period 2017-2019 and 2019 only, in the retirement benefit consulting market in Germany: [summary of conclusions on closeness].

(1430) As regards the loss analysis submitted by the Notifying Party in the Reply to the Article 6(1)(c) Decision, showing […] for 2017-2019, the Commission considers that this analysis is not reliable for the following reasons:

(a) According to the same Notifying Party's analysis, Marsh would not be a competitive constraint to Aon (with a [small percentage] win rate against Aon by count). This prediction is implausible, in light of the submissions from the Notifying Party arguing that Marsh is a competitive constraint, as well as the results from the market investigation.

(b) Moreover, the Commission notes that among the competitors listed by the Notifying Party and available in Aon's internal data, and other suppliers such as […] achieves a win rate […] (i.e., when considering tenders where winners are known).

(c) Last, given the high participation rate of […] (see recital (1428)), the Commission considers that the Notifying Party's assumption that the tenders with unknown winners correspond to winners different from […] is likely to be incorrect.

(1431) In light of the above, the Commission considers that the Parties would appear to be competing particularly closely in the German market for retirement benefits

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1732 The tender data submitted by WTW does not allow to carry out an analysis due to the small number of observations (with only [...] tenders for the period 2017-2019). In contrast, Aon tender data includes […] tenders with information on participants, for the period 2017-2019.

1733 As noted by the Notifying Party in the Reply to the Article 6(1)(c) Decision, there is a significant number of tenders with unknown participants. However, even under a conservative assumption where […].

consulting, especially for large multinational companies. However, as further detailed below, the Commission considers that it can be left open whether the Transaction would lead to a significant impediment of effective competition on this market.

B.2 Other affected markets

(1432) In the markets for retirement benefits consulting in France, Ireland, the Netherlands, and the UK, based on the phase 1 market investigation results, the Commission considers that the Parties, despite competing closely with each other, are competing closely with, or are closely followed by, other players, such as Marsh and the big four consultancy companies in almost all countries mentioned above, as well as Siaci Saint Honoré in France, Irish Life and Lane, Clark & Peacock in Ireland and in the UK, and Sprenkels & Verschuren in the Netherlands.[1734] Moreover, no specific customers' needs have been identified in these markets which can only be fulfilled by the Parties, as opposed to Germany, where there would appear to be a larger presence of large multinational customers, whose needs seem to be fulfilled effectively by a more limited number of companies, namely the Parties and Marsh.[1735]

(1433) In the markets for retirement benefits consulting in Belgium, Denmark, Portugal, and Spain, based on the phase 1 and phase 2 market investigation results, the Commission considers that the Parties compete more closely with each other compared to France, Ireland, the Netherlands, and the UK, but they are competing very closely also with Marsh and at least one or two other players, such as Vanbreda in Belgium,[1736] Söderberg & Partners in Denmark,[1737] CPPS and Novaster in Spain.[1738] Moreover, no specific customers' needs have been identified in these markets which can only be fulfilled by the Parties, as opposed to Germany, where there would appear to be a larger presence of large multinational customers, whose needs seem to be fulfilled effectively by a more limited number of companies, namely the Parties and Marsh.

C. Switching

C.1 Germany

(1434) With regard to the market for retirement benefits consulting services in Germany, as pointed out by the large majority of customers who responded to the phase 2 market investigation, the Commission considers that switching provider is rather difficult. These customers indicated that switching would be difficult for them and, for a significant amount of them, it would take at least half a year or even longer, up to two or three years. Certain customers who responded to the phase 2 market investigation also specified that there are differences in the time needed to switch depending on the type of retirement benefit consulting service, *e.g.*, switching provider of actuarial services would take them much longer than switching supplier

1734 Replies to question 89 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1735 Replies to questions 89 and 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; non-confidential replies to phase 2 RFI – Customers – RBC – Belgium, questions 5-6.

1736 Non-confidential replies to phase 2 RFI – Customers – RBC – Belgium, questions 5-6.

1737 Non-confidential replies to phase 2 RFI – Customers – RBC – Denmark, questions 5-6.

1738 Non-confidential replies to phase 2 RFI – Customers – RBC – Spain, questions 5-6.

of other retirement benefits consulting services.[1739] The majority of competitors also consider switching as rather difficult and taking considerable time.[1740]

C.2 Other affected markets

(1435) Similarly to Germany, for Belgium, Denmark, France, Ireland, the Netherlands, Portugal, Spain, and the UK, the majority of customers who responded to the phase 1 and phase 2 market investigations consider that switching provider would be rather difficult and take, on average, one year.[1741]

D. Likely reaction from competitors

D.1 Germany

(1436) The Parties' competitors do not appear to have the ability to counteract the loss of competition deriving from the Transaction in the market for retirement benefits consulting in Germany.

(1437) All customers who responded to the phase 2 market investigation perceive the market as not very competitive, as concentrated or very concentrated, and many customers complained about the limited number of providers, mentioning the Big Three as credible competitors and, only in very limited instances, mentioning Heubeck, Funk, or one of the major consultancy companies (Deloitte, EY, KPMG).[1742] In addition, competitors who responded to the phase 2 market investigation confirm that the Transaction will lead to further consolidation in the German market for retirement benefits consulting, further enlarging the gap between the Merged Entity and Marsh, on the one hand, and all local competitors, on the other hand.[1743]

(1438) With specific reference to retirement benefits consulting services presenting a scope which might not necessarily be national, but wider from a geographical standpoint, such as actuarial and accounting services, one customer indicated that only the Parties and Marsh are considered credible providers, arguing also that "*The second tier of providers of these services lacks of global footprint and capability of helping and supporting* […] *in as many countries as possible around the world.*"[1744]

(1439) Moreover, as regards insurers and the arguments brought forward by the Notifying Party, according to which insurers would exert significant competitive pressure on the Parties as providers of retirement benefits consulting solutions, the phase 2 market investigation revealed that the large majority of customers do not consider insurers as effective providers of the same services as the Parties mainly because their advice is perceived to be biased. For instance, one customer indicated "*We acknowledge that most of the big insurance companies in Germany (especially Allianz) have started consulting teams over the last decades including implementation of required infrastructure to serve the interests of bigger corporates looking for solutions outside the classical insurance market. However the core business is still the insurance operations itself and there might remain a conflict of interest. We therefore do not consider that insurance companies are already effective*

1739 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 10-11.
1740 Non-confidential replies to phase 2 RFI – Competitors – RBC – Germany, questions 9-10.
1741 Replies to question 86 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1742 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 5-6.
1743 Non-confidential replies to phase 2 RFI – Competitors – RBC – Germany, questions 12-14.
1744 Non-confidential minutes of call with a customer dated 29 January 2021 (Document ID 591).

competitors of AON or WTW in such scenarios".[1745] Similarly, the competitors who replied to the phase 2 market investigation consider that insurers cannot objectively advice on suitable products; therefore, they are not seen as competitors to brokers.[1746]

D.2 Other affected markets

(1440) As discussed above, for Belgium, Denmark, France, Ireland, the Netherlands, Portugal, Spain, and the UK, the Parties' competitors appear to have the ability to counteract the loss of competition deriving from the Transaction in the markets for retirement benefits consulting. More specifically, for France, Ireland, the Netherlands, and the UK, the majority of customers and competitors who responded to the phase 1 market investigation confirmed that the markets would remain sufficiently competitive post-Transaction, mentioning at least three or four competitors capable of competing sufficiently closely with the Parties and, in the specific case of the UK, mentioning an even higher number of credible players.[1747] For Belgium, Denmark, Portugal, and Spain, while a sub-set of customers argued that the markets are not sufficiently fragmented, when asked about the credibility of current players active in the markets for retirement benefits consulting, the large majority of customers and competitors confirmed that there are at least two or three competitors capable of competing with the Parties and Marsh, including for certain countries, such as Denmark and Portugal, other sources of competition represented by insurers and fund managers, respectively, which would appear to be capable of exerting competitive pressure on the Parties.[1748]

E. Countervailing factors

E.1 Germany

(1441) With regard to the German market for retirement benefits consulting, the Commission does not consider customers' countervailing buyer power sufficiently strong to the extent of exercising competitive pressure on the Parties. The Notifying Party argues that customers would either have currently in place or have the capability to easily build in-house teams to insource retirement benefits consulting services which would be purely advisory in nature, and no significant infrastructure would be required to provide them. The majority of customers who responded to the phase 2 market investigation, however, indicated not to have an in-house team for the provision of retirement benefits consulting and a slight majority of them specified that, should terms and conditions from external providers worsen with a price increase between 5-10%, they would not be able to increase the amount of work done in-house, and would consider to be more profitable to keep outsourcing these services. One customer specified "*the overall broad expertise of an external provider*

[1745] Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 2-3 (Document ID 7780).

[1746] Non-confidential replies to phase 2 RFI – Competitors – RBC – Germany, question 3.

[1747] Replies to question 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 177 of questionnaire Q5 to Competitors.

[1748] Non-confidential replies to phase 2 RFI – Customers – RBC – Belgium, questions 5-6; non-confidential replies to phase 2 RFI – Customers – RBC – Denmark, questions 5-6; non-confidential replies to phase 2 RFI – Customers – RBC – Portugal, questions 5-6; non-confidential replies to phase 2 RFI – Customers – RBC – Spain, questions 5-6; non-confidential replies to phase 2 RFI – Competitors – RBC – Belgium, questions 5-7; non-confidential replies to phase 2 RFI – Competitors – RBC – Denmark, questions 4-6; non-confidential replies to phase 2 RFI – Competitors – RBC – Spain, questions 4-6.

cannot be build up internally. Even if we try, it would not be equivalent".[1749] Moreover, while a significant number of customers who responded to the phase 2 market investigation declared that they multi-source retirement benefits consulting services in Germany, the vast majority of them would appear to do so from the Big Three only.[1750]

E.2 Other affected markets

(1442) Similarly to Germany, for Belgium, Denmark, France, Ireland, the Netherlands, Portugal, Spain, and the UK, the majority of customers who responded to the phase 1 market investigation confirmed that they do not currently have an in-house team to fulfil their needs with respect to retirement benefits consulting services. The majority of customers, moreover, added that, should the terms and conditions from external providers worsen, they would still outsource these services rather than increase the amount of work performed in-house.[1751]

(1443) The Commission's market investigation is not conclusive as to whether customers tend to multi-source or not in these markets.

F. Barriers to entry and expansion

F.1 Germany

(1444) The Commission notes that, in the market for retirement benefits consulting in Germany, meaningful entries are difficult due to high barriers to entry, the main one being the knowledge of the German regulatory and legal system which is considered particularly complex compared to other countries.[1752]

(1445) The Commission considers that barriers to entry and expansion are overall high. The large majority of customers who responded to the phase 2 market investigation consider that entering the market for retirement benefits consulting in Germany is difficult or very difficult and no meaningful new entrants have been identified by market respondents.[1753] As mentioned by several customers who responded to the phase 1 market investigation, barriers to entry and expansion would mainly be represented by knowledge of local requirements, experience and expertise in relation to local market features, track-record, and, in some instances, multinational presence across different jurisdictions. One customer specified "*it may be relatively difficult for new local players to get noticed by larger companies*",[1754] and another one added that "*building reputation for a new entrant is difficult*".[1755] One competitor submitted "*We consider the barriers to enter the German market to be high. It is difficult, because of a necessary size a company needs to have. This includes number of employees, necessary expertise and market perception. There are also regulatory*

1749 Non-confidential reply to phase 2 RFI – Customers – RBC – Germany, question 8 (Document ID 8185).

1750 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, question 9.

1751 Replies to questions 85 and 85.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1752 Non-confidential replies to phase 2 RFI – Customers – RBC – Germany, questions 10-11.

1753 Replies to question 92 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1754 Replies to question 92.1 of Questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions (Document ID 5201).

1755 Replies to question 92.1 of Questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions (Document ID 5145).

barriers (such as data protection) and the political environment can be tricky (examples are discussions about the prohibition or reduction of commission)."[1756]

F.2 Other affected markets

(1446) Similarly to Germany, the majority of customers who responded to the phase 1 market investigation confirmed that, for Belgium, Denmark, France, Ireland, the Netherlands, Portugal, Spain, and the UK, barriers to entry and expansion are relatively high and no meaningful new entrants have been identified.[1757] Only a slight majority of competitors, however, appears to consider that barriers to entry are high, while the rest of them argues that entering these markets would not be particularly difficult for players with a certain degree of industry expertise.[1758]

G. Results of the market investigation on likely impact of the Transaction

G.1 Germany

(1447) In light of the foregoing, the Transaction may lead to significant horizontal non-coordinated effects in the form of higher prices and less innovation. This is because the Merged Entity would have fewer incentives to compete than those the Parties would have separately in a pre-Transaction scenario.

(1448) This view is supported by the respondents to the market investigation. Almost all customers who responded to the phase 2 market investigation consider that the Transaction would have a negative overall impact in the market for retirement benefits consulting in Germany; moreover, competitors, who responded to the phase 2 market investigation, argued that the Transaction would lead to less choice and price increases. One customer, for instance, submitted that "*the retirement solutions consulting market is hardening and dominated by only a few players offering a competitive global network. Since this development is shifting the dependency and market power to a low number of players, we are concerned that the transaction could even accelerate this trend. Consequently, further price increases in the retirement solutions consulting market would be likely. In addition, decreasing competition will hold prices at an unreasonably high level, slow down innovation speed and will therefore reduce the overall welfare, by favoring inefficient market conditions. In our opinion the transaction strongly endangers a level-playing-field in the retirement benefits consulting service market*".[1759]

(1449) For the reasons outlined above, the Commission considers that, whilst there is some evidence that the Transaction may give rise to horizontal non-coordinated effects on the market for retirement benefits consulting in Germany, it can be left open whether the Transaction would lead to a significant impediment of effective competition on this market as the final commitments submitted by the Notifying Party on 12 May 2021 with a view to addressing the competition concerns on the market for pension administration in Germany would, in any event, also effectively address any competition concerns on the market for retirement benefits consulting in Germany.

1756 Non-confidential replies to phase 2 RFI – Competitors – RBC – Germany, questions 9-10 (Document ID 7947).

1757 Replies to question 92 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1758 Replies to questions 96 and 99 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to questions 177 and 180 of questionnaire Q5 to Competitors.

1759 Non-confidential reply to phase 2 RFI – Customers – RBC – Germany, question 12 (Document ID 9223).

G.2 Other affected markets

(1450) In light of the foregoing, the Commission considers that the Transaction would not raise any significant anticompetitive effects in the markets for retirement benefits consulting in Belgium, Denmark, France, Ireland, the Netherlands, Portugal, Spain, and the UK. These considerations are largely supported by the market investigation results. More specifically, for France, Ireland, the Netherlands, and the UK, the large majority of customers and competitors who responded to the phase 1 market investigation submitted that the markets would remain sufficiently competitive and the Transaction would have a neutral impact on the main parameters of competition, *i.e.*, price, quality, and innovation.[1760] For Belgium, Denmark, Portugal, and Spain, despite in certain instances acknowledging a slight decrease in choice, such as in Belgium, and while the majority of customers who replied to the phase 1 market investigation submitted that only the Parties and Marsh were to be considered credible alternatives, this feedback was not confirmed during the phase 2 market investigation, by way of which the Commission investigated whether the claims brought forward during the phase 1 market investigation were substantiated. The majority of customers and competitors who responded to the phase 2 market investigation did not express concerns about the impact of the Transaction on competition and they argued that no significant impact is expected post-Transaction on the relevant markets.[1761]

8.2. Pension administration

(1451) Pension administration services consist in providing clients, such as pension fund trustees, corporate entities and public authorities, with the administration of the pension fund(s) that they have set up to the benefit of their employees. These services include pension benefit calculation; recordkeeping and maintenance of participant records; producing and distributing participant benefits packages; participant customer service; trustee interactions; and the provision of web solutions and platforms for current and former employees and members to access their employer pension accounts.

8.2.1. Relevant product markets

8.2.1.1. Commission's previous decisional practice

(1452) In its previous decisions[1762], and as already mentioned in Section 8.1.1.3 of this Decision, the Commission considered that pension administration constitutes a separate product market from retirement benefits consulting due to an essential difference in the main skills and expertise required to provide the two services. While for retirement benefits consulting services, specific knowledge in the area of pension funds would be necessary, for pension administration services, IT systems and IT knowledge play a more critical role.

1760 Replies to question 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1761 Non-confidential replies to phase 2 RFI – Customers – RBC – Belgium, question 12; non-confidential replies to phase 2 RFI – Customers – RBC – Denmark, question 12; non-confidential replies to phase 2 RFI – Customers – RBC – Portugal, question 12; non-confidential replies to phase 2 RFI – Customers – RBC – Spain, question 12; non-confidential replies to phase 2 RFI – Competitors – RBC – Belgium, questions 12-14; non-confidential replies to phase 2 RFI – Competitors – RBC – Denmark, questions 12-14; non-confidential replies to phase 2 RFI – Competitors – RBC – Spain, questions 12-14.

1762 M.5597 - *Towers Perrin / Watson Wyatt*, paragraphs 10-13.

(1453) For the underlying pension products (but not for the activity of pension administration), the Commission considered in past decisions whether these should be further segmented by the type of pension product, namely (i) group pension products and (ii) individual pension products. Ultimately, this was left open.[1763]

8.2.1.2. The Notifying Party's view

(1454) In line with the Commission's decisional practice, the Notifying Party considers that pension administration services form a separate market, due to the importance of IT systems and IT knowledge required.[1764]

(1455) Furthermore, the Parties submit that they only offer pension administration services for group pension products. The Parties further submit that pension administration services for individual pension products (if existing) are not in any way affected by the Transaction.[1765]

(1456) On whether the market for pension administration should be further segmented by the type of pension scheme, namely (i) DB, (ii) DC and (iii) hybrid, the Notifying Party submits that such a segmentation is not appropriate. According to the Notifying Party, pension administration services for all pension scheme types are largely the same.[1766]

8.2.1.3. The Commission's assessment

(1457) As discussed in Section 8.1.1.3 of this Decision and in line with the Commission's previous decisions, the market investigation gave sufficient evidence to conclude that pension administration services constitute a separate market from retirement benefits consulting.

(1458) Whether the market for pension administration services should be segmented by type of pension scheme can be left open for the purposes of this Decision, as it does not materially affect the Commission's assessment. Furthermore, as put forward by the Notifying Party, a potential segmentation by type of pension product (group or individual) is not relevant in this case, as the Parties are only active in the provision of pension administration services for group pension products and the Commission has not received any indications that the market should be wider and possibly encompass services in connection to individual pension products.

(1459) Based on the above, the Commission considers that the relevant product market definition, for the purposes of this Decision, encompasses the provision of pension administration services for group pension products without any further segmentation.

8.2.2. Relevant geographic markets

8.2.2.1. Commission's previous decisional practice

(1460) In its previous decisions, the Commission left the geographic market definition for pension administration open. However, the Commission observed that pension administration services are likely national in scope.[1767]

1763 M.8257 – *NN Group/Delta Lloyd*, paragraphs 78-81; M.5951 – *Aon Corporation/Hewitt Associates*, paragraphs 10-11.

1764 Form CO, paragraph 2524.

1765 Form CO, paragraphs 2525-2527.

1766 Form CO, paragraphs 2525-2527.

1767 M.5597 - *Towers Perrin / Watson Wyatt*, paragraphs 14-17.

8.2.2.2. The Notifying Party's view

(1461) The Notifying Party submits that the relevant market for pension administration services is national given the need to operate within local regulatory frameworks and factors such as social security and tax rules. The Notifying Party indicates that, on the supply side, a provider of pension administration services cannot easily extend its offer to other countries and that, on the demand side, it would not be easy to switch for a customer to a provider in a different country.[1768]

8.2.2.3. The Commission's assessment

(1462) The market investigation gave sufficient evidence to conclude that the appropriate geographic market definition for pension administration services is national. The overwhelming majority of customers source pension administration services nationally.[1769] The overwhelming majority of competitors also indicated that pension administration contracts are typically national in scope, and that they would not be able to provide pension administration services in countries where they are not present.[1770]

(1463) Based on the above, the Commission considers that the relevant geographic market definition for pension administration services, for the purposes of this Decision, is national.

8.2.3. Competitive assessment

(1464) With regard to pension administration, the Transaction results in horizontally affected markets in Belgium, Germany, Ireland, and the UK. The list of affected markets is set out below.

Table 34: Overview of the national affected markets for pension administration by revenue (2019)[1771]

Country	Aon	WTW	*Combined*
Belgium	[5-10]%	[10-20]%	[20-30]%
Germany	[5-10]%	[40-50]%	*[50-60]%*
Ireland	[10-20]%	[10-20]%	[20-30]%
UK	[5-10]%	[20-30]%	[20-30]%

Source: Form CO, Table 6D.90 (RET).

(1465) In this Section, the Commission assesses the likelihood that the Transaction may result in anticompetitive effects in the affected markets for the provision of pension administration services as identified above.

8.2.3.1. The Notifying Party's view

(1466) The Notifying Party considers that the Transaction does not give rise to competitive concerns for pension administration services for the reasons set out below.

(1467) *Firstly*, the Notifying Party considers the Transaction will not give rise to any anticompetitive effects in any of the affected national markets, since they will remain highly competitive, due to the large number of remaining strong competitors, the

1768 Form CO, paragraph 2534.
1769 Replies to question 106 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1770 Replies to questions 185 and 186 of questionnaire Q5 to Competitors.
1771 Some percentages may not add up due to rounding.

clients' sophistication and strong bargaining power.[1772] With specific reference to Germany, the Notifying Party argues that, while the Parties' combined market share is high, […].[1773] Furthermore, the Notifying Party considers that the pension administration market in Germany is dynamic and characterised by growth, and that there is a sufficient number of credible competitors to the Merged Entity post-Transaction.[1774]

(1468) To support its view that the Parties are not close competitors, the Notifying Party further submits that the Parties' customer portfolios differ. […].[1775]

(1469) *Secondly*, the Notifying Party argues that there are a large number of strong players in the German pension administration market to compete with the Merged Entity post-Transaction. By way of example, the Notifying Party names Marsh, as well as national competitors such as Lohoff, Lurse, Heubeck and Funk.[1776] The Notifying Party submits that global and national players do not only compete head-to-head, but that a significant number of customers actually prefer using local players.[1777] The Notifying Party considers that these local competitors credibly compete for multinational accounts as well, as pension administration remains a local activity.[1778]

(1470) *Thirdly*, the Notifying Party indicates that the German pension administration market is evolving and attractive to new competition. It indicates that the reasons of this development are represented by the increasing volume of outsourcing activities by customers and the establishment of DB plans with minimised risks. These trends create opportunities for existing competitors as well as new entrants.[1779]

(1471) *Fourthly*, the Notifying Party submits that barriers to entry and expansion in pension administration are not significant. The Notifying Party explains that one of the key assets to grow is expertise, which can be poached from competitors or trained internally. While IT infrastructure may require some investment, the Notifying Party does not consider this a significant barrier.[1780]

(1472) The Notifying Party also considers that a trend of reduced regulatory complexity is expected to facilitate expansion of national pension administration providers to other countries. The Notifying Party considers that an additional avenue of expansion is for in-house teams to start providing their services to third parties, and indicates that in Germany the in-house administration unit of RWE has started doing this in 2018.[1781]

(1473) *Fifthly*, the Notifying Party argues that pension administration customers enjoy strong bargaining power. By way of illustration, the Notifying Party submits that there is a trend of appointing professional trustees to pension scheme boards, and that these trustees have relevant pension-related experience, which they use when selecting and assessing pension administration providers. Clients can also use other tools to discipline their suppliers, such as monitoring performance, asking to modify

1772 Form CO, paragraphs 2557-2558.
1773 […].
1774 Form CO, paragraph 2560.
1775 Form CO, paragraph 2566.
1776 Form CO, paragraph 2568.
1777 Form CO, paragraphs 2569-2570.
1778 Form CO, paragraphs 2580-2583.
1779 Form CO, paragraphs 2574-2578.
1780 Form CO, paragraphs 2584-2586.
1781 Form CO, paragraphs 2590-2592.

prices and threatening to retender, and leveraging their buyer power across multiple projects (e.g. pension administration and retirement benefits consulting).[1782]

(1474) *Sixthly*, the Notifying Party submits that pension administration services are typically sourced through competitive tenders, and that clients can and do switch providers. The Notifying Party explains that switching involves certain costs (an estimated […] in Germany) and time (an estimated 5-6 months), but does not consider those prohibitive. The Notifying Party experiences that clients switch for a number of reasons, including unsatisfactory service, uncompetitive pricing or member communication and technology. To support its argument on switching, the Notifying Party provides various examples of customers switching providers.[1783]

(1475) *Finally,* the Notifying Party contested several findings of the Article 6(1)(c) Decision with respect to Germany, where the Commission raised serious doubts following the phase 1 market investigation.

(1476) The Notifying Party argues that WTW's market share overstates its market power, considering that [a significant percentage] of its revenues for pension administration services in Germany are generated by […]. The Notifying Party, however, stresses that […] in the German scenario, […]. Therefore, the Notifying Party submits that WTW's current market share hides the fact that market dynamics could change significantly if one of those […] abovementioned clients were to switch to another competitor or if any of the other German companies of a similar size were to consider outsourcing the administration of their pension schemes to a competitor.[1784]

(1477) Moreover, the Notifying Party claims that the Parties are not particularly close competitors since there are significant differences in the Parties' portfolio and strategies, showing that often they do not compete for the same client mandates. In addition and still with reference to closeness of competition, the Notifying Party criticizes the Commission's use of the Parties' tender data as a basis for its arguments on closeness of competition. According to the Notifying Party, the Commission's analysis would be unreliable as […]. The Notifying Party suggests that the loss analysis of WTW's opportunity data should be the focus of the assessment, and this assessment would show that […].[1785]

8.2.3.2. The Commission's assessment

(1478) As explained in this Section, and following the results of the phase 1 and phase 2 market investigation, the Commission considers that the Parties appear to exert important competitive constraints in Germany for the provision of pension administration services, not only on each other, but also on the remaining competitors. This is true both in light of (i) their high combined market share, post-Transaction, (ii) the degree of closeness of competition, and (iii) the high level of market concentration.

A. Market structure

(1479) First, as regards the provision of pension administration services in the national affected markets identified above, the Commission notes that the Transaction leads to very large combined market shares in Germany, whereas in the other affected markets, the Parties' combined market share is more modest. Although market shares

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1782 Form CO, paragraphs 2598-2604.
1783 Form CO, paragraphs 2616-2628.
1784 Reply to Article 6(1)(c) Decision, paragraphs 1225 and 1226.
1785 Reply to Article 6(1)(c) Decision, paragraphs 1244 and 1245.

are only a useful first indication of the market structure and of the respective positions of the Parties, the Commission considers that, with specific reference to Germany, the high combined market share, together with the significant concentration levels of the German market, would lead to a significant increase of market power of the Merged Entity post-Transaction, as opposed to the other affected markets identified.

(1480) More specifically:

(a) In **Belgium**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the Belgian market for pension administration services, with a [5-10]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Conac ([20-30]% market share), Marsh ([10-20]%), and Pensions Architects ([10-20]%). This market will have an HHI of around [1,000-1,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. The market structure was confirmed by the large majority of customers who responded to the phase 1 market investigation, and who submitted that, post-Transaction, a sufficient number of players would remain in the market as credible suppliers, such as Marsh, Conac, and AG Insurance.[1786] Moreover, the majority of competitors who responded to the phase 1 market investigation confirmed that the market is sufficiently competitive with several alternatives available.[1787] Regarding the overall impact on competition post-Transaction, the majority of customers submitted that it will be neutral on price, quality, choice, and innovation.[1788]

(b) In **Germany**: post-Transaction, the Merged Entity would reach very high (value) combined market share of [50-60]% in the German market for pension administration services, with an [5-10]% increment brought by Aon. According to settled case law,[1789] such high combined market shares may in themselves be evidence of the existence of a dominant position. Moreover, the number of significant competitors is limited to Marsh ([5-10]%), Lohoff ([5-10]%), and Lurse ([5-10]%), whose market shares are significantly lower. This market will have an HHI of around [2,500-3,000] post-Transaction and the delta HHI caused by the Transaction is around [500-1,000]. Lastly, a significant number of customers and competitors who replied to the phase 1 market investigation submitted that an insufficient number of providers would remain in Germany post-Transaction for pension administration solutions and, on a similar note, all customers who responded to the phase 2 market investigation see the market as concentrated, especially for large companies.[1790] Similarly, competitors who responded to the phase 2 market investigation argue that the market is concentrated especially for large companies.[1791] WTW is clearly the market leader and this leading position in the market is supported not only by its high market share ([40-50]%) and by the qualitative answers to the phase 1 and

1786 Replies to question 119 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1787 Replies to question 198 of questionnaire Q5 to Competitors.
1788 Replies to question 120 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1789 *See* footnote 523.
1790 Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 15-17.
1791 Non-confidential replies to phase 2 RFI – Competitors – PA – Germany, questions 19-21.

phase 2 market investigation, but also by the Parties' internal documents. For instance, Figure 28: [Internal document][Internal document] below shows that WTW is the market leader in terms of competitiveness and size, compared to other players active in the market.

Figure 28: [Internal document]

[Internal document]

Source: WTW's internal document.[1792]

Figure 29: [Internal document]

[Internal document]

Source: WTW's internal document.[1793]

Figure 29: [Internal document][Internal document] above shows WTW's revenues increase over the last 10 years in pension administration in Germany. WTW's revenues and, hence, its market power increased not only thanks to its […] main customers – […] – but also thanks to other customers in the German market, contrarily to the Notifying Party's arguments according to which WTW's market power stems only from the main […] clients mentioned above. Therefore, in view of these circumstances, the Transaction would lead to a significant impediment of effective competition by the creation of a dominant position in the market for pension administration services in Germany.

(c) In **Ireland**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the Irish market for pension administration services, with a [10-20]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Marsh ([30-40]% market share), Irish Life ([20-30]%), and Zurich ([10-20]%). This market will have an HHI of around [2,500-3,000] post-Transaction and the delta HHI caused by the Transaction is around [0-500], therefore unlikely to raise competition concerns. This market structure was confirmed by the large majority of customers who responded to the phase 1 market investigation, who submitted that, post-Transaction, a sufficient number of players would remain in the market as credible suppliers, such as Marsh, Irish Life, Invesco, Capita, and Hymans Robertson. Moreover, the majority of competitors who responded to the phase 1 market investigation confirmed that the market is sufficiently competitive with several alternatives available and none of them submitted that an insufficient number of providers would remain in the market post-Transaction.[1794] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, choice, and innovation.[1795]

(d) In **the UK**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the UK market for pension administration services, with a [5-10]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as

1792 WTW internal document on [Internal document] (Document ID 8009-826).

1793 WTW internal document on [Internal document] (Document ID 8009-826).

1794 Replies to question 119 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 198 of questionnaire Q5 to Competitors.

1795 Replies to question 120 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

Marsh ([10-20]% market share), Capita ([10-20]%), Equiniti ([5-10]%), and XPS ([5-10]%). This market will have an HHI of around [1,000-1,500] post-Transaction and the delta HHI caused by the Transaction is around [0-500], therefore unlikely to raise competition concerns. This market structure was confirmed by the large majority of customers who responded to the phase 1 market investigation, who submitted that, post-Transaction, a sufficient number of players would remain in the market as credible suppliers, such as Marsh, XPS, Hymans Robertson, and Barnett Waddingham. Moreover, the majority of competitors who responded to the phase 1 market investigation confirmed that the market is sufficiently competitive with several alternatives available and none of them submitted that an insufficient number of providers would remain in the market post-Transaction.[1796] Regarding the overall impact on competition post-Transaction, the majority of customers and competitors submitted that it will be neutral on price, quality, and innovation.[1797]

(1481) In light of the foregoing analysis and of the evidence in the Commission's file, as regards the structure of those markets, combined with the factors set out in the following sections below, the Commission considers that the market structure post-Transaction in the markets for pension administration in Belgium, Ireland, and the UK, is as such not to raise any significant competition concerns. In the market for pension administration in Germany, the market structure shows that, post-Transaction, the Merged Entity would hold a combined market share above 50% and that there would be a big gap between the Merged Entity and the other players in the market, therefore, suggesting that the Transaction will likely result in the creation of a dominant position.

B. Closeness of competition

B.1 Germany

(1482) As regards closeness of competition, the market investigation confirmed that the Parties are particularly close competitors in the market for pension administration in Germany. The majority of customers who responded to the phase 2 market investigation consider that Aon and WTW provide the same or very similar services, although one customer submits that WTW has a better and more sophisticated IT infrastructure for pension administration.[1798]

(1483) Moreover, the majority of customers who responded to the phase 2 market investigation consider that only Marsh can compete closely with the Parties, thanks to its size.[1799] Similarly, competitors who responded to the phase 2 market investigation see Aon and WTW as close competitors in Germany.[1800] Especially for large customers, the size and scale of organization of their providers are crucial; for instance, one competitor who responded to the phase 1 market investigation submitted "*Large customers usually have a lot of plans, a lot of subdivisions or companies, which makes delivery of services highly complicated, and very tight time lines. Because of their size, they will be able to negotiate a very low price, and you*

1796 Replies to question 119 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 198 of questionnaire Q5 to Competitors.

1797 Replies to question 120 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1798 Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 13-14.

1799 Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 13-14.

1800 Non-confidential replies to phase 2 RFI – Competitors – PA – Germany, question 17.

will need a lot of personnel to serve this client's needs, so you need to have a certain size to match these needs. Large customers also want to be served at once without delay, which puts a very high pressure on smaller consulting firms."[1801]

(1484) Additionally, when looking at the parameters of competition, such as knowledge of local regulatory requirements, IT infrastructure, track-record, price, scale of organization and experience with large and complex clients, the market investigation shows that the Big Three are perceived by the market as the most competitive players.[1802]

(1485) The Parties' closeness of competition with respect to the German market for pension administration is further shown in the tender data analysis (see Annex B for further details).

(1486) When considering Aon tender data for the period 2017-2019:[1803]

(a) The results show that [business secret - description of tenders].[1804]

(b) The only other named supplier, […], participated against Aon in [percentage] of tender value. However, the Commission notes that this is only connected to one single tender. Therefore, the Commission does not consider this supplier as a close competitor to Aon.

(c) The findings are confirmed when only 2019 is considered. While [business secret - description of tenders].

(1487) The participation analysis based on Aon tender data shows that, for the period 2017-2019 and 2019 only, in the pension administration market in Germany: (i) WTW is a particularly close competitor to Aon, (ii) only Marsh is comparable to WTW, and (iii) other suppliers are distant competitors with limited competitive interactions with Aon, and thus exert a limited competitive pressure on Aon.

(1488) The Commission also notes that it was not possible to carry out a reliable loss analysis […]. The Commission notes that the Notifying Party, in its Reply to the 6(1)(c) Decision, agrees with this assessment.

(1489) The Commission also carried out an assessment of WW tender data for pension administration in Germany. A participation analysis shows that, for the period 2017-2019:[1805]

(a) […].[1806]

(b) The second participant in terms of value was [business secrets - description of tenders].

(1490) The participation analysis based on WTW tender data therefore shows that in the pension administration market in Germany, Aon is a particularly close competitor to WTW.

1801 Replies to question 195 of questionnaire Q5 to Competitors (Document ID 3197).

1802 Replies to questions 107 and 111 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1803 Aon tender data includes […] tenders with information on participants, for the period 2017-2019.

1804 As noted by the Notifying Party in the Reply to the 6(1)(c) Decision, there is a significant number of tenders [business secrets - description of tenders].

1805 For 2019, the Commission notes that only […] tenders are available. This does not allow to carry out a reliable participation analysis.

1806 As noted by the Notifying Party in the Reply to the 6(1)(c) Decision, there is a significant number of tenders [business secrets - description of tenders].

(1491) In the Reply to the 6(1)(c) Decision, the Notifying Party's mentions that a loss analysis based on WTW data for pension administration shows that […]. However, the Commission disagrees for the following reasons:

(a) Although the number of observations in the loss analysis is limited ([…] observations for the period 2017-2019),[1807] the Commission notes that the loss rates indicate that […].

(b) […].

(c) […]

(d) Therefore, Aon actually appears as the most credible alternative to WTW.

(1492) In light of the above, the Commission considers that the Parties are particularly close competitors in the German market for pension administration, so that the Transaction could potentially give rise to significant price effects by removing the constraint pre-Transaction exerted by the Parties on each other and due to lack of choice in the market.

B.2 Other affected markets

(1493) As discussed above, in Belgium, Ireland, and the UK, the Parties' combined market share post-Transaction would not be above 30% in any of these affected markets for pension administration solutions. Based solely on the market shares submitted by the Notifying Party, it would appear that the Merged Entity would still face competition from a number of players and, in certain markets, such as in Belgium and Ireland, other players – Conac in Belgium, Marsh and Irish Life in Ireland – would hold a market share which is higher than the Parties' combined market share. The phase 1 market investigation results confirm that, in these countries, a number of alternative players capable of closely competing with the Parties and of fulfilling customers' needs would remain in the market post-Transaction. Among the others, customers mention most frequently Marsh across the three countries, AG Insurance and Conac in Belgium, Irish Life, Invesco, Capita, Hymans Robertson in Ireland, and XPS, Hymans Robertson, RPMI, Barnett Waddingham in the UK.[1808]

C. Switching

C.1 Germany

(1494) The Commission considers that switching provider of pension administration services in Germany is difficult. The majority of customers indicated in response to the phase 2 market investigation that it would take, on average, 12 months to switch provider of pension administration services.[1809] A certain number of competitors who responded to the phase 1 and the phase 2 market investigation also consider that switching would be difficult and it is a complex process.[1810] The majority of customers also confirmed not to have switched providers of pension administration services in the last five years[1811], and a significant number of those who indicated to

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[1807] The Commission notes that a loss analysis for 2019 would not be feasible given the small number of observations ([…] tenders with information on winners).

[1808] Replies to question 111 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1809] Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 20-21.

[1810] Replies to question 197 of questionnaire Q5 to Competitors; non-confidential replies to phase 2 RFI – Competitors – PA – Germany, questions 23-24.

[1811] Replies to question 110 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

have switched provider of pension administration services more recently added that the switching was done among the Big Three (*e.g.*, from WTW to Aon, from Aon to Marsh, or from Marsh to WTW).[1812] One German customer who responded to the phase 1 market investigation, for instance, indicated that switching would imply a "*huge administrative and technical effort*".[1813] Another customer who responded to the phase 1 market investigation stated that "*changing the administration of a pension plan requires a huge in-house effort to make sure service towards plan member*[s] *can continue on a swift basis, […] knowing the history of a pension plan, including consequent interpretation of plan rules guarantees fair treatment to members*".[1814]

(1495) Furthermore, the market investigation contradicted the Notifying Party's argument that many customers prefer local players. The large majority of customers in fact indicated not to have a preference either way.[1815]

C.2 Other affected markets

(1496) Similarly to Germany, the majority of customers who responded to the phase 1 market investigation argued that switching provider of pension administration solutions in Belgium, Ireland, and the UK is rather difficult. For the slight majority of them it would take up to one year to switch, while for a smaller sub-set it would take even longer (up to two years).[1816] The majority of competitors who responded to the phase 1 market investigation, however, consider switching neither easy nor difficult.[1817]

D. Likely reaction from competitors

D.1 Germany

(1497) The Parties' competitors do not appear to have the ability to counteract the loss of competition deriving from the Transaction in the market for pension administration in Germany.

(1498) All customers who responded to the phase 2 market investigation perceive the market as very concentrated, particularly for large companies and they argue that only the Big Three would be capable of competing, mentioning only in very limited instances other players as credible alternatives, such as Lohoff and Heubeck.[1818] Competitors who responded to the phase 2 market investigation also consider the market as concentrated, particularly for large companies, and they mention primarily the Big Three as credible suppliers, as well as Lurse and Funk.[1819]

1812 Replies to question 110.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1813 Replies to question 110.2 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions (Document ID 3728).

1814 Replies to question 115 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions (Document ID 5201).

1815 Replies to question 108 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1816 Replies to question 109 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1817 Replies to question 197 of questionnaire Q5 to Competitors.

1818 Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 13-14.

1819 Non-confidential replies to phase 2 RFI – Competitors – PA – Germany, questions 19-21.

D.2 Other affected markets

(1499) In Belgium, Ireland, and the UK, as discussed above, the phase 1 market investigation results confirm that a sufficient number of competitors would remain in the markets for pension administration with the capability to effectively compete with the Merged Entity post-Transaction.[1820]

E. Countervailing factors

E.1 Germany

(1500) With regard to the German market for pension administration, the Commission does not consider customers' countervailing power sufficiently strong to the extent of exercising competitive pressure on the Parties. Among the customers who responded to the phase 2 market investigation, while a small sub-set declared to have an in-house team for pension administration services, the majority of customers who responded to the phase 2 market investigation does not have an in-house team and does not intend to invest on building one, arguing that they would keep outsourcing these services, even if there were a 5-10% price increase from their external providers.[1821]

E.2 Other affected markets

(1501) In Belgium, Ireland, and the UK, the majority of competitors who responded to the phase 1 market investigation submitted that in-house teams are capable of exerting significant competitive pressure not only on the Parties but, more generally, on external providers of pension administration solutions. Therefore, the Commission considers that, in these countries, customers would appear to have a sufficient level of countervailing buyer power, as argued by the Notifying Party.[1822]

F. Barriers to entry and expansion

F.1 Germany

(1502) The Commission considers that, in the market for pension administration in Germany, barriers to entry and expansion are overall high. Almost all customers who responded to the phase 2 market investigation consider that barriers to entry are high, especially in light of the complex German legal and regulatory framework. One customer who responded to the phase 2 market investigation indicated "*Because the pension administration market is mainly dominated by a few big players, it's very likely that precisely these big companies can offer the most attractive pricing, due to economies of scale. For this reason, smaller providers do not have equal chances to gain market share. Therefore, we see a low amount of new companies entering the market and consequently a low level of market dynamics.*"[1823]

(1503) Similarly, competitors who responded to the phase 2 market investigation consider the barriers to enter the German market for pension administration to be high.[1824]

[1820] Replies to questions 111 and 119 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1821] Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 18-19.

[1822] Replies to question 193 of questionnaire Q5 to Competitors.

[1823] Non-confidential replies to phase 2 RFI – Customers – PA – Germany, questions 20-21 (Document ID 9223).

[1824] Non-confidential replies to phase 2 RFI – Competitors – PA – Germany, questions 23-24.

F.2 Other affected markets

(1504) Similarly to Germany, the majority of customers and competitors who responded to the phase 1 market investigation consider that barriers to entry and expansion are high in Belgium, Ireland, and the UK in the markets for pension administration and they mainly ascribe them to availability of an IT infrastructure and knowledge of local regulations.[1825]

G. Results of the market investigation on likely impact of the Transaction

G.1 Germany

(1505) In light of the foregoing, the Transaction would lead to significant horizontal non-coordinated effects in the form of higher prices, less choice, and worsened quality in the market for pension administration in Germany. This is because the Merged Entity would have fewer incentives to compete than those the Parties would have separately in a pre-Transaction scenario.

(1506) This view is supported by the respondents to the market investigation. Almost all customers who responded to the phase 2 market investigation confirmed to be concerned about the impact the Transaction would have on the market for pension administration in Germany and, more specifically, on price, quality, and choice.[1826]

(1507) Competitors who responded to the phase 2 market investigation also confirmed that competing would become much more difficult post-Transaction. One competitor argued that "*We expect that it will be harder for our company to hold on to our international clients that […] only serves in Germany, respectively Europe/DACH region. Nationally, we expect that there will be less competitors tendering for large clients. It will also be harder for us to hold clients, especially if the transaction has an impact on pricing and the parties merge their funds used for innovation*".[1827]

(1508) For the reasons outlined above, the Commission's assessment is that the Transaction will significantly impede effective competition by the creation of a dominant position in the market for pension administration in Germany.

G.2 Other affected markets

(1509) In light of the foregoing, the Commission considers that the Transaction would not raise any anticompetitive effects in the markets for pension administration in Belgium, Ireland, and the UK. These considerations are largely supported by the market investigation results. More specifically, the large majority of customers and competitors who responded to the phase 1 market investigation submitted that the markets would remain sufficiently competitive and the Transaction would have a neutral impact on the main parameters of competition, *i.e.*, price, quality, choice, and innovation.[1828]

8.3. Group pension products

(1510) The Parties' group pension products offering comprises the design, creation and provision of these products to corporations. These products are then provided by

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1825 Replies to question 115 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 194 of questionnaire Q5 to Competitors.

1826 Non-confidential replies to phase 2 RFI – Customers – PA – Germany, question 22.

1827 Non-confidential replies to phase 2 RFI – Competitors – PA – Germany, questions 25-28 (Document ID 7947).

1828 Replies to question 120 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 198 of questionnaire Q5 to Competitors.

corporations to their employees allowing, on the one hand, the accumulation of funds for the provision of retirement income and, on the other hand, for the provision of accumulated funds as retirement income to the beneficiaries of those pension products.

8.3.1. Relevant product markets

8.3.1.1. Commission's previous decisional practice

(1511) In its previous decisions,[1829] the Commission has considered whether pension products would constitute a separate product market within life insurance products, encompassing (i) products which allow accumulation of funds for the provision of retirement income and (ii) products which provide such retirement income to beneficiaries. Within the potential segment for pension products, the Commission has considered further distinctions between (i) group and individual products,[1830] (ii) DB and DC pension products, (iii) within DC pension products, between unit-linked and non-unit-linked products,[1831] or between accumulation and decumulation products,[1832] and (iv) within decumulation products, between variable and fixed annuities.[1833]

(1512) In its past decisions, the Commission has ultimately left open whether a separate market for pension products should be defined within life insurance products and whether, within pension products, additional segments should be identified as described above.

8.3.1.2. The Notifying Party's view

(1513) The Notifying Party considers that the provision of pension products is distinct from the markets for the provision of other life insurance products. The Notifying Party also argues that the provision of group pension products must be distinguished from the provision of individual pension products. The Notifying Party, however, submits that no further segmentation is warranted, mostly because there is full supply-side substitutability as the vast majority of group pension products providers can offer all types of pension products and, moreover, the Notifying Party registers increasing client demand for tailored products which makes all previously considered distinctions between pension products blurred.

8.3.1.3. The Commission's assessment

(1514) The Commission would consider that the market for pension products should be distinguished from other life insurance products. As the Commission observed in its

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[1829] Case M.8257 – *NN Group/Delta Lloyd*, paragraph 17; Case COMP/M.7478 – *Aviva/Friends Life/Tenet*, paragraph 27; Case COMP/M.6883 – *Canada Life/Irish Life*, paragraphs 13-15.

[1830] Group products are typically insurance products provided by corporations to their employees. Individual products are only purchased by individuals.

[1831] Unit-linked products are DC products which do not offer any form of guarantees. Non-unit-linked products are DC products which incorporate aspects of DB products such that they include certain guarantees in respect of the value of the capital accumulated over the period up to retirement.

[1832] Accumulation and decumulation refer to the two phases of pension products: (a) the accumulation phase is the period during which an active scheme member pays contributions into his/her pension, and (b) the decumulation phase is the period after the retirement age during which the retiree receives payment out of the pension via an annuity.

[1833] Fixed and variable annuities refer to the two types of decumulation products: (i) a customer who buys a fixed annuity is guaranteed a certain regular pension for the rest of his/her life while (b) a variable annuity offers no guaranteed level of benefits but is converted into a fixed annuity usually when the policyholder reaches a certain age.

market investigation in *Aviva / Friends Life / Tenet*, the majority of life insurance providers have different teams dedicated to pension products, on the one hand, and to pure protection products and savings and investment products, on the other hand.[1834] As the Commission also noted in its previous decisions, different regulatory and/or tax treatments also apply to pension products and other life insurance products, thus stressing their different characteristics.[1835] Moreover, the Commission also considers that group pension products should be considered separately from individual pension products. The market investigation in *Canada Life / Irish Life* illustrated that the prices, sales conditions and the regulatory regime applicable to pension products for individuals and those applicable to pensions products sold on a group basis are different.[1836]

(1515) For the purposes of this assessment, however, and also considering that the Parties do not provide individual pension products, the Commission considers that the exact product market definition can be left open, since the Transaction does not raise competition concerns irrespective of the exact product market definition.

8.3.2. Relevant geographic markets

8.3.2.1. Commission's previous decisional practice

(1516) In its previous decisions,[1837] the Commission has considered the geographic market for life insurance and its respective potential segments – thus including pension products – to be national in scope as a result of several elements, such as national distribution channels, national regulatory framework and fiscal constraints, and established national brands and market structures.

(1517) The Commission has ultimately left open the geographic market definition for life insurance and, therefore, for pension products in its past decisions.

8.3.2.2. The Notifying Party's view

(1518) The Notifying Party submits that, while the geographic market for life insurance might present some international aspects from a supply-substitutability point of view (once a life insurance company has been authorized to establish a business in one Member State, it is then possible to run it throughout the EEA), there is no reason to depart from the Commission's previous decisions. Therefore, the Notifying Party considers that the geographic market for life insurance and, hence, group pension products should be national in scope.

8.3.2.3. The Commission's assessment

(1519) The Commission, following its previous decisional practice and in agreement with the Notifying Party, would consider that the market for group pension products should be national in scope.

(1520) For the purposes of this assessment, however, the Commission considers that the exact geographic market definition can be left open, since the Transaction does not raise competition concerns irrespective of the exact geographic market definition.

1834 Case COMP/M.7478 – *Aviva/Friends Life/Tenet*, paragraph 15.

1835 Case M.8257 – *NN Group / Delta Lloyd*, paragraphs 13-14; case COMP/M.6883 – *Canada Life / Irish Life*, paragraph 15.

1836 Case COMP/M.6883 – *Canada Life / Irish Life*, paragraph 17.

1837 Case M.8257 – *NN Group/Delta Lloyd*, paragraph 16; case COMP/M.7478 – *Aviva/Friends Life/Tenet*, paragraph 30; case COMP/M.6883 – *Canada Life/Irish Life*, paragraphs 19-21.

8.3.3. Competitive assessment

(1521) As mentioned above, the Transaction does not give rise to any horizontally affected markets in relation to group pension products.

(1522) The market for the provision of group pension products is vertically related with the markets for the provision of investment consulting, investment management, retirement benefits consulting and pension administration services. More specifically, the markets for investment consulting, investment management, retirement benefits consulting, and pension administration are upstream markets and the market for the provision of group pension products is the downstream market. This is because, in order to manage the assets held under their group pension products and provide related advice, providers of group pension products source (either externally or in-house) investment consultancy, investment management, retirement benefits consulting and pension administration services.[1838]

(1523) The Transaction gives rise to vertically affected markets in (i) Ireland for the markets for group pension products and retirement benefits consulting, and (ii) the Netherlands for the markets for group pension products and investment consulting.

8.3.3.1. The Notifying Party's view

(1524) In relation to the markets for group pension products and retirement benefits consulting in Ireland, the Notifying Party considers that no competition concerns arise as the upstream market for retirement benefits consulting in Ireland is highly competitive and characterized by a high number of different players, such as Marsh, Invesco, APT, Irish Life, Trident, Milliman, Acuvest, Lane Clark & Peacock, Byrne Actuaries, and Meritas Financial Advisors. Similarly, the corresponding market for the provision of group pension products is highly competitive and the Merged Entity's combined market share will be just [0-5]%. Therefore, the Notifying Party argues that the Transaction will not lead to any customer or input foreclosure concerns in Ireland.[1839]

(1525) With reference to the market for group pension products and investment consulting in the Netherlands, the Notifying Party considers that no competition concerns arise as the upstream market for investment consulting in the Netherlands is highly competitive and characterized by a high number of different players, such as Marsh, Montae, Ortec, Sprenkels & Verschuren. Similarly, the corresponding market for the provision of group pension products is highly competitive and the Merged Entity's combined market share would not exceed 5%. Therefore, the Notifying Party argues that the Transaction will not lead to any customer or input foreclosure concerns in the Netherlands.[1840]

8.3.3.2. The Commission's assessment

(1526) The Commission considers that the Transaction does not give rise to any competitive concerns in relation to the (i) market for group pension products and retirement benefits consulting in Ireland, and (ii) market for group pension products and investment consulting in the Netherlands. For the purposes of this assessment, since the Merged Entity's market share would be above 30% only in the upstream market,

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1838 Form CO, paragraph 2685.

1839 Form CO, paragraphs 2715-2728.

1840 Form CO, paragraphs 2702-2714.

the Commission will carry out an analysis of the likelihood of an input foreclosure strategy post-Transaction.

(1527) More specifically:

(a) In **Ireland**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the upstream Irish market for retirement benefits consulting and [0-5]% in the downstream Irish market for the provision of group pension products. As discussed above, in the upstream Irish market for retirement benefits consulting, the new entity would face competition from a number of different competitors, such as Marsh ([30-40]% market share), Irish Life ([10-20]%), and Lane, Clark & Peacock ([0-5]%). The market shares show that Marsh is the largest competitor in the Irish market for retirement benefits consulting services and the large majority of customers and competitors who responded to the phase 1 market investigation submitted that, post-Transaction, a sufficient number of providers would remain in the market, mentioning, among the others, Marsh, as well as Lane, Clark & Peacock, and Irish Life.[1841] Therefore, the Commission does not consider that the Merged Entity would have any ability nor incentive to adopt a strategy of input foreclosure. In particular, the Merged Entity would have no ability to adopt such strategy since the upstream market is sufficiently competitive and the Parties' combined market share would remain well below 40% post-Transaction; moreover, the Merged Entity would have no incentive to adopt an input foreclosure strategy since its market share on the downstream market would be of only [0-5]%, which makes largely unlikely to recoup lost upstream margins if competitors were to be foreclosed at the upstream level.[1842]

(b) In **the Netherlands**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the upstream Dutch market for investment consulting and [0-5]% in the downstream Dutch market for the provision of group pension products. As discussed below, in the upstream Dutch market for investment consulting, the new entity would face competition from a number of different competitors, such as Sprenkels & Verschuren ([10-20]% market share), Ortec ([10-20]%), Marsh ([5-10]%), and Montae ([5-10]%). The large majority of customers and competitors who responded to the phase 1 market investigation submitted that, post-Transaction, a sufficient number of providers would remain in the market, mentioning, among the others, Marsh, as well as Sprenkels & Verschuren, Ortec, and KPMG.[1843] Therefore, the Commission does not consider that the Merged Entity would have any ability nor incentive to adopt a strategy of input foreclosure. In particular, the Merged Entity would have no ability to adopt such strategy since the upstream market is sufficiently competitive and the Parties' combined market share would be just above 30% post-Transaction; moreover, the Merged Entity would have no incentive to adopt an input foreclosure strategy since its market share on the downstream market would be of only [0-5]%,

1841 Replies to questions 89 and 96 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 177 of questionnaire Q5 to Competitors.

1842 Replies to question 125 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1843 Replies to question 27.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to question 105 of questionnaire Q5 to Competitors.

which makes largely unlikely to recoup lost upstream margins if competitors were to be foreclosed at the upstream level.[1844]

(1528) Based on the above, the Commission concludes that the Transaction does not raise any competitive concerns in relation to the vertically related markets for (i) group pension products and retirement benefits consulting in Ireland, and (ii) group pension products and investment consulting in the Netherlands.

9. INVESTMENT SOLUTIONS

(1529) The Parties' provision of investment solutions covers a broad range of services for institutional investors, which are generally considered to cover two segments, investment consulting services and investment management services. As will be explained in more detail in the following Sections, investment consulting services concerns purely advisory services, whereas investment management services also include investment advice implementation.

9.1. Investment consulting

(1530) Investment consulting concerns a purely advisory role of the consultant. Traditionally, institutional investors, such as pension schemes, employ investment consultants to give strategic advice on their long-term asset allocation (i.e. advice on the different types of investments and the mix and proportion of different asset classes to invest in), and on investment and asset manager selection (which involves researching, rating and recommending asset management products or investment strategies). Although investment consultants provide advice, the decisions to implement such advice are taken by the investors themselves. Investment consultants serve a purely advisory function.

9.1.1. Relevant product markets

9.1.1.1. Commission's previous decisional practice

(1531) The Commission assessed a potential market for investment consultancy services in its decision COMP/M.5597 *Towers Perrin/Watson Wyatt*, but ultimately left open whether this constituted a distinct relevant product market. The parties in that decision provided such services to institutional investors.[1845]

9.1.1.2. The Notifying Party's view

(1532) The Notifying Party is of the opinion that the market for investment consultancy services is distinct from other consulting or management markets.[1846]

(1533) Furthermore the Notifying Party considers that the question as to whether there is a distinct product market for investment consultancy services to pension schemes can be left open given that its competitive analysis applies irrespective of whether or not such a sub-segmentation is made.[1847]

(1534) The Notifying Party is moreover of the opinion, that a segmentation of the market into scheme size does not constitute a relevant and sensible segmentation and

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[1844] Replies to question 125 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1845] M.5597 - *Towers Perrin/Watson Wyatt*, paragraphs 84 to 85.
[1846] Form CO, paragraph 1547.
[1847] Form CO, paragraph 1548.

explains that the Parties do not make any segmentation by customer size in the ordinary course of business.[1848]

9.1.1.3. The Commission's assessment

(1535) The majority of customers that responded to the Commission's phase 1 market investigation and that provided an opinion, , stated that investment consulting services are provided together with investment management services.[1849] Competitors were of a different opinion in their majority.[1850] According to one customer, "*there is a growing trend for consultants to enter the space of investment management,*" and another one replied in that regard, "*there is a clear tendency that investment consultants do offer investment products along their consultancy tasks but as a client you can easily exclude that.*"[1851] However, for the purposes of this decision it can be left open, whether investment consultancy services and investment management services constitute distinct relevant product markets, as both in an overall market and in separate markets for investment consultancy services and investment management services no competition concerns arise.

(1536) The phase 1 market investigation also revealed that the majority of respondents that provided a view is of the opinion that investment consultancy providers serving institutional investors other than pension schemes are also capable of serving pension schemes,[1852] and that investment consultancy providers serving pension schemes are also capable of serving other institutional investors.[1853] The same holds true for the replies of competitors.[1854] Because of this and since the Parties' market shares and increments, as well as the market volumes in the Netherlands and Spain remain almost the same for services provided to all institutional clients and pension schemes the Commission considers that there is not sufficient evidence to conclude that investment consultancy services for pension schemes constitute a distinct relevant product market.

(1537) Concerning a market segmentation according to customer size or geographic footprint, the market investigation revealed mixed results. Among customers that provided an opinion, the majority stated that investment consulting services to large/or multinational customers are different from those to small/medium-sized customers.[1855] Customers mentioned higher complexity of investments of larger clients and different asset classes or investments for smaller and larger clients.[1856] Similarly, a majority of competitors that provided an opinion stated that investment consultancy services for large customers are different from investment consultancy

1848 Form CO, paragraph 1554.

1849 Replies to question 11 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1850 Replies to question 92 of questionnaire Q5 to Competitors.

1851 Replies to question 11 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1852 Replies to question 10 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1853 Replies to question 9 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1854 Replies to questions 93 and 94 of questionnaire Q5 to Competitors.

1855 Replies to question 12 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1856 Replies to question 12.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

services provided to small/medium-sized customers.[1857] However, a slight majority of customers that provided an opinion replied considered that skills, data availability and/or expertise to serve large customers are not different for small/medium-sized customers.[1858] One customer replied in that respect: "*Whatever the size of the client, the skills expected from an investment consultant should be the same. The size of the client should only have an impact on the range of financial instruments available*."[1859] Concerning the competitive landscape when asked to rate the strength of service providers, the outcome for large customers in the Netherlands and Spain was also similar to ratings from the overall market.[1860] With respect to these findings, the Commission particularly analysed feedback of customers with assets under management of above EUR 1 billion in its competitive assessment. A similar threshold of GBP 1 billion was used recently in the Investment Consultants Market Investigation Final Report of the UK's Competition & Markets Authority, to identify large clients of investment consultancy services to pension schemes.[1861] This threshold is in line with feedback received by the Commission in the market investigation.[1862] However, the Commission considers that the market investigation did not bring sufficient evidence to conclude that a separate market for large customers with assets under management of above EUR 1 billion should be defined. This is because the skills needed for large customers do not differ significantly from small/medium-sized customers, sufficient service providers will be available post-Transaction for the overall market as well as for large customers and the outcome of the competitive assessment remains the same for large customers.

(1538) In light of the above, the Commission considers that it can be left open whether the market for investment consulting services is a separate relevant product market or whether it belongs to a an overall market encompassing both investment consulting and investment management services. The Commission also considers that it can be left open whether, within the market for investment consulting services, a separate product market should be defined for large customers, since the Transaction does not raise competition concerns irrespective of the exact product market definition.

9.1.2. Relevant geographic markets

9.1.2.1. Commission's previous decisional practice

(1539) In its decision COMP/M.5597 *Towers Perrin/Watson Wyatt*[1863] the Commission has recognized that markets for provision of consultancy services have both national and international aspects. On the one hand, countries have different regulatory frameworks . On the other hand, to serve large multinationals, it might be necessary to be established in a number of jurisdictions and offer services across those jurisdictions, in which case purely national players might be unable to compete for

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1857 Replies to question 95 of questionnaire Q5 to Competitors.

1858 Replies to question 13 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1859 Replies to question 13.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1860 Replies to question 27.4 and 27.5 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1861 The CMA did not find it necessary to define separate markets with respect to clients' size. Competition & Markets Authority, Investment Consultants Market Investigation Final Report, paragraph 4.48 et seq., and Investment Consultants Market Investigation Appendices, paragraph 11 et seq.

1862 Replies to question 12.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1863 M.5597 - *Towers Perrin/Watson Wyatt*, paragraphs 86 to 88.

this class of business. The Commission ultimately left the exact geographic market definition open.

9.1.2.2. The Notifying Party's view

(1540) The Notifying Party is of the opinion, that the market for the provision of investment consulting services is national in scope.[1864] Firstly, the regulatory framework that applies to the retirement and investment industries differs from one country to another. From the demand side perspective, customers need investment advice that is tailored to each country's requirements.[1865] Secondly, from the supply-side perspective, service providers need specific knowledge of national legal frameworks, inter alia national taxation, accounting and capital adequacy rules.[1866] Thirdly, most contracts are national. Clients which need advice in various jurisdictions usually conclude separate contracts (which may be with the same or different firms) and have a dedicated team in each relevant country. Furthermore, local teams of multinational clients appoint investment consultants locally in each of the countries where they are present.[1867] Fourthly, large multinational companies with operations in several jurisdictions would not typically receive material benefits from contracting with the same firm across multiple jurisdictions.[1868] Finally, as a result of these market characteristics, only a small number of companies contract with just one firm for investment consulting services for all jurisdictions. [1869]

9.1.2.3. The Commission's assessment

(1541) The Commission's phase 1 market investigation clearly showed, that the majority of customers who responded source investment consultancy services nationally,[1870] although wider than national master agreements are not excluded.[1871] As reasons for the national dimension, customers mentioned differing pension schemes and pension plan designs, national regulation, the need of national expertise or presence in only one country.[1872] One respondent replied in that regard that it "*has some global agreements where we are to follow global/international guidelines. Other services we can buy locally for each country for the time being*," and another one stated that "*the situation per country such as the legislation, governance requirements and legal framework differs a lot per country, hence we select the best provider on a national basis*".[1873] The majority of competitors who responded to the phase 1 market investigation also confirmed that contracts are almost always national in scope.[1874] One competitor replied, that "*some clients enter into Master Service Agreements, providing a general framework at the global or EEA level, but with separate contracts being entered into at the national level (setting out local statements of*

1864 Form CO, paragraph 1556.
1865 Form CO, paragraph 1557.
1866 Form CO, paragraph 1558.
1867 Form CO, paragraph 1559 and 1561.
1868 Form CO, paragraph 1560.
1869 Form CO, paragraph 1564.
1870 Replies to question 14 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1871 Replies to question 14.2 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1872 Replies to question 14.2 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1873 Replies to question 14.2 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
1874 Replies to question 97 of questionnaire Q5 to Competitors.

activities in accordance with local legislation). Other clients may contract locally."[1875]

(1542) In light of the above, the Commission agrees with the Notifying Party and considers for the purposes of this Decision, that the geographic scope of the market for investment consulting services is national.

(1543) The Commission further considers that the ability to provide services on a broader geographical level to customers with a multinational presence, like offering wider than national master agreements as mentioned above, represents a competitive differentiating factor, rather than amounting to a separate relevant market, and, as such, it will be taken into consideration in the competitive assessment.

9.1.3. Competitive assessment

(1544) With regard to investment consulting services for all institutional clients, the Transaction results in horizontally affected markets in the Netherlands and in Spain. The detailed list of affected markets is outlined below in Table 35.

Table 35: Overview of the national affected markets for investment consulting by revenue to all institutional clients (2019)

Country	Aon	WTW	Combined
Netherlands	[10-20]%	[20-30]%	[30-40]%
Spain	[10-20]%	[20-30]%	[30-40]%

Source: Form CO, Table 6C.42 (INV)

(1545) This assessment does not change, when focusing only on investment consulting services for pension schemes, as displayed in the following Table 36.

Table 36: Overview of the national affected markets for investment consulting to pension schemes by revenue (2019)

Country	Aon	WTW	Combined
Netherlands	[10-20]%	[20-30]%	[30-40]%
Spain	[10-20]%	[20-30]%	[30-40]%

Source: Form CO, Table 6C.43 (INV)

(1546) If investment consulting were part of a wider product market of investment solutions that includes investment management services, additionally to investment consulting services, the Parties' combined market share would be [0-5] % in the Netherlands, thus it would not be an affected market either for investment solutions or for investment management services.[1876]

(1547) If investment consulting were part of a wider product market of investment solutions, that includes investment management services additionally to investment consulting services, the competitive assessment would not differ as the Parties are not active in the market for investment management services in Spain.

(1548) If the Commission were to identify a separate product market for investment consulting services provided to large customers, the competitive assessement would not be materially different for countries where the Parties' combined market share

1875 Replies to question 97.2 of questionnaire Q5 to Competitors.

1876 Notifying Party, Reply to RFI 71.

would be above 15% post-Transaction, namely Germany, Ireland, the Netherlands, Spain, and the UK.

(1549) For Germany, Ireland, the Netherlands, and Spain, this is proven by the fact that, as shown in Table 37 below, the Parties' revenues are broadly split across the various revenues sub-segments based on assets under management. The only exceptions would be represented by Spain, […], and by the Netherlands, where […].

Table 37: Revenues within the segment of Investment Consulting – revenue split by scheme size (Assets under Management (AUM)) in 2019

Company	% revenues split by AUM segment					revenues split by AUM segment (kEUR)				
	<50	50-100	100-400	400-1bn	>1bn	<50	50-100	100-400	400-1bn	>1bn
Germany										
Aon	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
WTW	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Ireland										
Aon	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
WTW	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Netherlands										
Aon	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
WTW	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Spain										
Aon	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
WTW	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Form CO, Table 6C.41 (INV)

(1550) In the four countries listed above, the Parties generate their highest proportion of revenues in different sub-segments to each other. This further suggests that the Parties may not be close competitors as they adopt different market strategies and focus on different customers' sub-segments.[1877]

(1551) Based on this the Commission considers it unlikely, that combined market shares of the Parties would be much higher in a narrower segment for large customers. Additionally, even in these narrower segments sufficient alternative service providers remain post-Transaction. The Commission therefore has no concerns for such a narrower segment.

(1552) The competitive assessment would not differ for the UK either. For the UK, Aon has provided market share estimates by sub-segment for its competitors, using the CMA's investment consultant market investigation to inform its estimates and survey data from […] to partially adjust estimates. WTW has also provided high level estimates of its own investment consulting revenues split according to customer assets under management. The market shares submitted by the Notifying Party for investment consulting to large customers with assets under management above 1 billion suggest that there would be no competition concerns even in a hypothetical market for large customers. The Parties' combined market share post-Transaction would amount to [20-30]% in the hypothetical segment for investment consulting services provided to customers with assets under management above 1 billion and Marsh would be the biggest competitor with [20-30]% market share. Other

1877 The Parties do not have data allowing them to reliably estimate the market size for segmented investment solutions markets in Germany, Ireland, the Netherlands and Spain. Such data cannot be constructed based on the Parties' knowledge, given the lack of visibility, and there is no third-party data available.

competitors would also be active in this potential segment in the UK, namely Hymans Robertson ([5-10]% market share), Lane Clark & Peacock and Redington (both with [5-10]% market share). The Commission therefore also has no concerns for such a narrower segment.

(1553) In this Section, based on the above, the Commission assesses the likelihood that the Transaction may result in anticompetitive effects in the affected markets for the provision of investment consulting services for all institutional clients as identified above.

9.1.3.1. The Notifying Party's view

(1554) The Notifying Party is of the opinion, that the Transaction will not give rise to any unilateral effects concerns in the market for investment consulting services for institutional investors, or any other plausible market. This is inter alia because of the modest combined market shares, strong current and potential competition and low barriers to entry.[1878]

9.1.3.2. The Commission's assessment

(1555) Following the results of the phase 1 market investigation, the Commission considers that the Transaction does not raise competition concerns on the affected national markets identified.

(1556) Across jurisdictions, the phase 1 market investigation revealed the following:

(1557) For customers who responded, knowledge of regulatory requirements is the most relevant parameter for competition, followed by quality of service, access to market data and track record. All of these criteria received ratings above four on a scale from one to five. Experience with large investment schemes and multinational presence only follow with ratings below four and three respectively.[1879] In the same vein, a majority of competitors considers that a network of national investment consulting providers would be able to serve multinational customers and fulfil their requirements/needs.[1880]

(1558) Furthermore, the majority of customers who responded replied that entering the market is either very difficult or difficult, with the need of a track record as the main barrier to entry, followed by technical expertise.[1881] Offering investment consulting services to large funds is considered similarly difficult.[1882] The majority of competitors' who responded considered barriers to entry as high.[1883] Offering investment consulting services to large funds is also considered as very difficult or difficult by the majority of competitors who responded.[1884] However, concerning their ability to switch service providers, the majority of customers who responded state that it would take six months or less.[1885] In the same vein, an overwhelming

1878 Form CO, paragraph 1587 et seq.

1879 Replies to question 18 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1880 Replies to question 100 of questionnaire Q5 to Competitors.

1881 Replies to question 19 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1882 Replies to question 20 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1883 Replies to question 110 of questionnaire Q5 to Competitors.

1884 Replies to question 111 of questionnaire Q5 to Competitors.

1885 Replies to question 24 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

majority of customers who responded indicated that they would be able to switch their provider of investment consulting services, if the Parties were to increase the price for the provision of investment consulting services by 5-10% post-Transaction. The same holds true for large customers with assets under management of above EUR 1 billion.[1886]

(1559) Accordingly, it follows that high barriers to entry do not prevent smaller service providers from attracting new customers.Therefore, customers will have access to alternative service providers post-Transaction, as numerous alternative service providers are already active in the market for investment consulting services, in the Netherlands and in Spain.[1887]

(1560) Concerning the Netherlands, the phase 1 market investigation provided the following results.

(1561) Post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the market of investment consulting services to all institutional clients, with a [10-20] % increment brought by Aon. The new entity would face competition from a number of different competitors, such as Sprenkels & Verschuren ([10-20]% market share), Ortec ([10-20]% market share) and Marsh ([5-10]% market share).[1888] Similarly, customers who responded to the phase 1 market investigation and rated the competitive strength of competitors identified largely the same competitors, albeit in a different order. Marsh was identified as the strongest service provider, followed by WTW, Aon as number three, KPMG as number four, Ortec as number five, and Sprenkels & Verschuren as number six.[1889] These results do not change significantly when considering customers with assets under management of above EUR 1 billion only.[1890]

(1562) Moreover, the majority of customers and competitors who provided an opinion in the phase 1 market investigation considers that, post-Transaction, a sufficient number of alternative investment consultants will remain available in the Netherlands.[1891] The same holds true for large customers with assets under management of above EUR 1 billion.

(1563) Consequently, the majority of customers that provided an opinion in the phase 1 market investigation expects a positive or neutral impact on *price*, *quality, choice of services and innovation*.[1892] The same holds true for large customers with assets under management of above EUR 1 billion, with the exception of a thin majority that expects a negative impact of the Transaction on choice of services. However, they still expect that a sufficient number of alternative investment consultants will remain available in the Netherlands post-Transaction. In this regard, one customer replied,

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1886 Replies to question 26 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1887 Form CO, Paragraph 1570 et seq.

1888 Form CO, Paragraph 1597.

1889 Replies to question 27.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1890 See paragraph 1474 above, why the Commission considers the threshold of EUR1 billion appropriate to distinguish large customers from other customers.

1891 The majority replied that they do not know. Replies to question 31 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions. Replies to question 116 of questionnaire Q5 to Competitors.

1892 The majority replied that they do not know. Replies to question 32.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

that he does not "*expect that this merger will have any effect on the four aspects […]. This is because there remain sufficient competitors in the Dutch market*."[1893] Similar replies were received from competitors in the phase 1 market investigation, although their replies are balanced with respect to the impact of the Transaction on choice of services.[1894]

(1564) Concerning Spain, the phase 1 market investigation provided the following results.

(1565) Post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the market of investment consulting services to all institutional clients, with an [10-20] % increment brought by Aon. The new entity would face competition from a number of different competitors, such as such as Marsh (market share of [10-20]%), followed by AFI ([10-20]%), CPPS ([10-20]%) and Novaster ([0-5]%).[1895] This market structure was largely confirmed by customers who responded to the phase 1 market investigation and rated the competitive strength of competitors with Marsh as the strongest service provider, followed by WTW, Aon as number three, KPMG as number four, Novaster as number five, and CPPS as number six.[1896] These results do not change significantly when considering customers with assets under management of above EUR 1 billion only.

(1566) Moreover, the majority of customers and competitors who provided an opinion in the phase 1 market investigation consider that, post-Transaction, a sufficient number of alternative investment consultants will remain available in Spain.[1897] The same holds true for large customers with assets under management of above EUR 1 billion.

(1567) Consequently, the majority of customers that provided an opinion in the market investigation expect a positive or neutral impact on the competition parameters price, quality, choice of services and innovation.[1898] The same holds true for competitors' replies in the market investigation.[1899] Similar replies were received from large customers with assets under management of above EUR 1 billion, with the exception of their expected negative impact of the Transaction on choice of services. However, as pointed out above, large customers still expect that a sufficient number of alternative investment consultants will remain available in Spain post-Transaction.

9.1.4. Conclusion

(1568) In view of the above, the Commission considers that the Transaction does not lead to a significant impediment of effective competition with respect to the markets for investment consulting services in the Netherlands and in Spain.

9.2. Investment management

(1569) In contrast to investment consulting, investment management is more than a purely advisory service, it also includes investment advice implementation, e.g., the

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1893 The majority replied that they do not know. Replies to question 32.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1894 The majority replied that they do not know. Replies to question 117.4 of questionnaire Q5 to Competitors.

1895 Form CO, Paragraph 1597.

1896 Replies to question 27.5 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1897 Replies to question 31 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions. Replies to question 116 of questionnaire Q5 to Competitors.

1898 Replies to question 32.5 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1899 Replies to question 117.5 of questionnaire Q5 to Competitors.

investment manager receives legal delegation from institutional investors to manage the assets/funds, deciding on their allocation and on the fund/manager selection. The investment manager constructs the investment portfolios and appoints and monitors the specialist fund managers to manage the investment portfolio in line with the investor's strategy.

(1570) This service can also be limited to the implementation of only part of the investment program (sometimes called "investment sleeves"). This allows the investor to work with other parties for other parts of the investment program or implement the strategy for those other parts themselves. The investment management service is also referred to as 'fiduciary management' or 'delegated investment consulting' in the UK (and other jurisdictions) or OCIO (Outsourced Chief Investment Officer) in the US.

9.2.1. Relevant product markets

9.2.1.1. Commission's previous decisional practice

(1571) In case M.9196, *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, the Commission considers that fiduciary management involves the provision of advice to pension scheme trustees in relation to one or more of the following: i. investment strategy: high level advice on the different types of investment that can be made; ii. strategic asset allocation: advice on the mix and proportion of different asset classes to invest in; and iii. asset manager selection: advice on which asset manager to invest funds with. Furthermore, fiduciary management also includes the legal delegation of some investment and decision-making powers by the client to the fiduciary manager so that the fiduciary manager can implement the client's preferred investment strategy. However, for the purpose of that Decision, the Commission left the exact product market definition for fiduciary management services to pension schemes open.[1900]

9.2.1.2. The Notifying Party's view

(1572) The Notifying Party believes that the relevant product market is the market for investment management services to all institutional investors (including pension schemes).[1901] The Notifying Party further argues, that in this respect, the same reasons as set out above in Section 9.1.1.2 for investment consulting services, equally apply to investment management markets, and that the question as to whether there is a distinct product market for investment management services to pension schemes can be left open, as there is no material competition concern irrespective of how the market is defined.[1902] Additionally, the Notifying Party does not distinguish between customers by "type" (as regards the services offered or in their reporting activities), and argues that all investment managers would be able to serve all kinds of institutional investors.[1903] Furthermore, the Notifying Party submits that a segmentation of the markets on the grounds of customer size does not represent market reality.[1904]

9.2.1.3. The Commission's assessment

(1573) As explained above for investment consulting services in recital (1538), according to the Commission's phase 1 market investigation, for the purposes of this decision it

1900 M.9196 - *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraphs 68 to 73.
1901 Form CO, paragraph 1830.
1902 Form CO, paragraph 1831.
1903 Form CO, paragraph 1831.
1904 Form CO, paragraph 1834.

can be left open, whether investment consultancy services and investment management services constitute distinct relevant product markets, as both in an overall market and in separate markets for investment consultancy services and investment management services no competition concerns arise.

(1574) The phase 1 market investigation also revealed, that the majority of respondents, that provided a view is of the opinion that investment management providers serving institutional investors other than pension schemes are also capable of serving pension schemes,[1905] and that investment management providers serving pension schemes are also capable of serving other institutional investors.[1906] The same holds true for the replies of competitors.[1907] Because of this and since the Parties' market shares and increments in the UK remain almost the same for services provided to all institutional clients and pension schemes, the Commission considers that there is not sufficient evidence to conclude that investment management services for pension schemes constitute a distinct relevant product market.

(1575) A market segmentation according to customer size or geographic footprint could be warranted according to the phase 1 market investigation. Among customers that provided an opinion in the market investigation, the majority stated that investment management services to large/or multinational customers are different from those to small/medium-sized customers.[1908] Larger customers have more complex investment management needs and are offered more customized services.[1909] However, one customers also explained that "*some firms target a particular category of customers (e.g. large or medium-sized) but their offerings are similar irrespective of the size of the client*."[1910] Similarly, a majority of competitors that provided an opinion stated that investment management services for large customers are different from investment management services for small/medium-sized customers.[1911] Additionally, a small majority of customers that provided an opinion replied that skills, data availability and/or expertise to serve large customers are different for small/medium-sized customers.[1912] One customer replied in that respect that "*basic investment management skills, data availability and expertise [are] important to fulfil legal requirements and [are] independent from the size. However, investment options differ substantially (e.g. special funds vs. OGAW funds) and therefore the level of complexity and resulting requirements differ*."[1913] However, concerning the competitive landscape, when asked to rate the strength of service providers, the outcome for large customers in the UK was similar to ratings from the overall

[1905] Replies to question 39 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1906] Replies to question 38 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1907] Replies to question 126 and 127 of questionnaire Q5 to Competitors.
[1908] Replies to question 40 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1909] Replies to question 40.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1910] Replies to question 40.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1911] Replies to question 128 of questionnaire Q5 to Competitors.
[1912] Replies to question 41 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.
[1913] Replies to question 41.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

market.[1914] With respect to these findings, the Commission particularly analysed feedback of customers with assets under management of or above EUR 1 billion in its competitive assessment. A similar threshold of GBP 1 billion was used recently in the Investment Consultants Market Investigation Final Report of the UK's Competition & Markets Authority, to identify large clients in the market for fiduciary management services to pension schemes.[1915] This threshold is in line with feedback the Commission received in its pre-notification calls and in the market investigation.[1916] However, the Commission considers that the market investigation did not bring sufficient evidence to conclude that a separate market for large customers with assets under management of above EUR 1 billion should be defined. This is because, sufficient service providers will be available post-Transaction for the overall market as well as for large customers and for large clients with assets under management of above EUR 1 billion the outcome of the competitive assessment remains the same. .

(1576) In light of the above, the Commission considers that it can be left open whether the market for investment management services is a separate relevant product market or whether it belongs to an overall market encompassing both investment consulting and investment management services. The Commission also considers that it can be left open whether, within the market for investment management services, a separate product market should be defined for large customers, since the Transaction does not raise competition concerns irrespective of the exact product market definition.

9.2.2. Relevant geographic markets

9.2.2.1. Commission's previous decisional practice

(1577) In case COMP/M.9196, *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, the Commission considered a national market for the supply of fiduciary management services to pension schemes. The Commission notes that according to the results of the market investigation, the majority of responding customers purchase fiduciary management services to pension schemes on a national basis, indicating that the geographic scope could be national. However, the exact geographic scope of the market for the supply of fiduciary management services to pension schemes was left open between national and EEA-wide.[1917]

9.2.2.2. The Notifying Party's view

(1578) The Notifying Party considers that the scope of the market for the provision of investment management services to institutional investors is national in scope,[1918] and argues to be in line with a market study of the UK's CMA.[1919] Firstly, according to the results of the CMA Market Investigation, most customers purchase investment management services to pension schemes on a national basis.[1920] Secondly, the CMA noted that the supply of investment management markets are heavily shaped by the

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1914 Replies to question 55.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1915 The CMA did not find it necessary to define separate markets with respect to clients' size. Competition & Markets Authority, Investment Consultants Market Investigation Final Report, paragraph 4.48 et seq., and Investment Consultants Market Investigation Appendices, paragraph 32 et seq.

1916 Non-confidential minutes of conference call with a customer, 8 September 2020, Document ID 297.

1917 M.9196 - *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, paragraphs 74 to 78.

1918 Form CO, paragraph 1836.

1919 CMA, Investment Consultants Market Investigation final report, 12 December 2018.

1920 Form CO, paragraph 1823.

country-specific regulatory and legal framework.[1921] Thirdly, it is very rare for multinational companies to contract with the same provider for investment management services across multiple jurisdictions.[1922] Fourthly, a large multinational would not derive any material benefits from contracting with just one provider for investment management services across several jurisdictions.[1923] Finally, only a small number of companies contract with just one firm for investment management services for all jurisdictions.[1924]

9.2.2.3. The Commission's assessment

(1579) The Commission's phase 1 market investigation clearly showed, that the majority of customers who responded source investment management services nationally.[1925] As reasons for the national dimension, customers mentioned differing pension schemes and pension plan designs, national regulation, the need of national expertise or presence in only one country.[1926] One respondent replied in that regard that "*investment manager engagements are usually specific to in-country pension plans*" and another one stated that "*different countries have different needs and priorities as well as legal requirements and customs.*"[1927] This outcome is supported by competitors who responded to the Commission's phase 1 market investigation. The largest share of respondents confirmed that contracts are almost always national in scope. However, a significant minority replied that some contracts are broader than national, e.g. EEA or global in scope.[1928] Like for investment consultancy services, one competitor stated that "*some clients enter into Master Service Agreements, providing a general framework at the global or EEA level, but with separate contracts being entered into at the national level*."[1929]

(1580) In light of the above, the Commission agrees with the Notifying Party and considers for the purposes of this Decision that the geographic scope of the market for investment management services is national.

(1581) The Commission further considers that the ability to provide services on a broader geographical level to customers with a multinational presence, like offering wider than national master agreements as mentioned above, represents a competitive differentiating factor, rather than amounting to a separate relevant market, and, as such, will be taken into consideration in the competitive assessment.

9.2.3. Competitive assessment

(1582) With regard to investment management services for all institutional clients, the Transaction results in a horizontally affected market in the UK. The market shares are displayed below in Table 38.

1921 Form CO, paragraph 1824.

1922 Form CO, paragraph 1825.

1923 Form CO, paragraph 1826.

1924 Form CO, paragraph 1828.

1925 Replies to question 42 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1926 Replies to question 42.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1927 Replies to question 42.2 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1928 Replies to question 130 of questionnaire Q5 to Competitors.

1929 Replies to question 130.2 of questionnaire Q5 to Competitors.

Table 38: Overview of the national affected markets for investment management by revenue to all institutional investors (2019)

Country	Aon	WTW	*Combined*
UK	[10-20]%	[10-20]%	*[20-30]%*

Source: Form CO, Table 6C.59 (INV)

(1583) This assessment does not change substantially, when focusing on investment management services for pension schemes only, as displayed in the following Table 39.

Table 39: Overview of the national affected markets for investment management by revenue to pension schemes (2019)

Country	Aon	WTW	*Combined*
UK	[10-20]%	[10-20]%	*[20-30]%*

Source: Form CO, Table 6C.60 (INV)

(1584) If investment management were part of a wider market of investment solutions that includes investment consulting services additionally to investment management services, the competitive assessment would not differ as the market for investment consulting in the UK is not an affected market, with combined market shares of [10-20] % for all institutional clients or [10-20] % for pension schemes only.[1930] However, a combined market of investment solutions in the UK would be an affected market, with market shares of [20-30]% for all institutional clients or [20-30] % for pension schemes only.[1931] Therefore, relevant results of the market investigation for such a market of investment solutions are also presented in the following.

(1585) If the Commission were to identify a separate product market for investment management services provided to large customers, the competitive assessement would not be materially different for the same reasons outlined above in relation to investment consulting services. In the UK, which is, for investment management solutions, the only affected market and the only market where the Parties' combined market share would be above 15% post-Transaction, the market shares submitted by the Notifying Party for investment management to large customers with assets under management above 1 billion suggest that there would be no competition concerns even in a hypothetical market for large customers. For the UK, Aon has provided market share estimates by sub-segment for its competitors, using the CMA's investment consultant market investigation to inform its estimates and survey data from […] to partially adjust estimates. WTW has also provided high level estimates of its own investment consulting revenues split according to customer assets under management. The Parties' combined market share post-Transaction would amount to [20-30]% in the hypothetical segment for investment management services provided to customers with assets under management above 1 billion and Marsh would be the biggest competitor with [20-30]% market share. Other competitors would also be active in this potential segment in the UK, namely Cambridge Associates and Cardano (both with [10-20]% market share), River and Mercantile ([10-20]% market share), Russel Investment ([10-20]% market share), and Blackrock ([5-10]% market share).

1930 Form CO, Table 6C.39 (INV) and Table 6C.40 (INV).
1931 Notifying Party, reply to RFI 71.

(1586) In this Section, based on the above, the Commission assesses the likelihood that the Transaction may result in anticompetitive effects in the affected markets for the provision of investment management services for all institutional clients as identified above.

9.2.3.1. The Notifying Party's view

(1587) The Notifying Party is of the opinion, that the Transaction will not give rise to any unilateral effects concerns in the market for investment management for institutional investors in the UK. Further, the Transaction will not give rise to any unilateral effects concerns in any other plausible market (including, without prejudice to the Parties' views on market definition, the segment for the provision of these services to pension schemes).[1932] In this respect the Notifying Party explains inter alia, that the combined market shares are modest, that the market is a very dynamic market, characterised by continuous growth, low barriers to entry and expansion, sophisticated customers, and a very long list of rival players. Post-Transaction, the Combined Entity will continue to face significant competitive pressure.[1933]

9.2.3.2. The Commission's assessment

(1588) Following the results of the phase 1 market investigation, the Commission considers that the Transaction does not raise competition concerns in the UK, the only affected national market identified.

(1589) Across jurisdictions, the phase 1 market investigation revealed the following:

(1590) For customers who responded, quality of service is the most relevant criterion when selecting a provider of investment management services, followed by knowledge of regulatory requirements, a service provider's track record coming next, followed by access to market data, experience with complex schemes and price. Experience with large schemes and multinational presence were only named as number eight and ten in the order of importance.[1934] All of these criteria received ratings above four on a scale from one to five, except for multinational presence which received a rating below four. In the same vein, among replying competitors the largest share considers that a network of national investment management providers would be able to serve multinational customers and fulfil their requirements/needs.[1935]

(1591) Furthermore, the majority of customers replied that entering the market is either very difficult or difficult, with the need of a track record as the main barrier to entry, followed by knowledge of regulatory requirements.[1936] Offering investment management services to large funds is considered similarly difficult by customers.[1937] Competitors' replies provided a similar view, with a majority expecting barriers to entry generally as high.[1938] Offering investment management services to large funds

1932 Form CO, paragraph 1848.

1933 Form CO, paragraph 1849 and 1850.

1934 Replies to question 45 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1935 Some competitors did not provide a clear view and stated that it depends on circumstances. Replies to question 133 of questionnaire Q5.

1936 Replies to question 46 and 46.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1937 Replies to question 47 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1938 Replies to question 142 of questionnaire Q5.

is also considered as very difficult or difficult by the majority of competitors.[1939] However, concerning their ability to switch service providers, the majority of customers state that it would take six months or less.[1940] In the same vein, an overwhelming majority of customers replied, that they would be able to switch their provider of investment management services, if the Parties were to increase the price for the provision of investment management services by 5-10% post-Transaction. The same holds true for large customers with assets under management of above EUR 1 bn.[1941]

(1592) Concerning specifically the UK, the phase 1 market investigation provided the following results.

(1593) Post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the market of investment management services to all institutional clients, with a [10-20] % increment brought by Aon. The new entity would face competition from a number of different competitors, such as Marsh (market share [20-30]%) and River and Mercantile (market share [10-20]%), Russell Investment (market share [10-20]%), BlackRock (market share [5-10]%) and Cambridge Associates (market share [5-10]%).[1942] This market structure was largely confirmed by competitors who responded to the phase 1 market investigation and rated the competitive strength of competitors with Aon, WTW and Marsh as equally strong and number one in the market, followed by Blackrock, Legal & General as number three, River & Mercantile as number four, Russell Investment as number five and Cambridge Associates as number six.[1943] Similarly, customers rate the competitive strength of Marsh, WTW, Aon and Blackrock as high and leading the competitive landscape. These results only change slightly when considering customers with assets under management of above EUR 1 billion only.[1944]

(1594) Moreover, the majority of customers who provided an opinion in the phase 1 market investigation considers that, post-Transaction, a sufficient number of alternative investment management providers will remain available in the UK.[1945] The same holds true for large customers with assets under management of above EUR 1 billion. Similarly, the majority of competitors that provided an opinion, replied that a sufficient number of competitors will remain post-Transaction.[1946]

(1595) Consequently, the majority of customers that provided an opinion expects a positive or neutral impact on the competition parameters price, quality, choice and innovation.[1947] The same holds true for large customers with assets under management of above EUR 1 billion. In this regard, one customer replied, that

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1939 Replies to question 143 of questionnaire Q5.

1940 Replies to question 52 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1941 Replies to question 54 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1942 Form CO, paragraph 1854.

1943 Some customers replied that they do not know. Replies to question 137.4 of questionnaire Q5 to Competitors.

1944 Replies to question 55.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1945 Replies to question 60 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1946 Replies to question 147 of questionnaire Q5 to Competitors.

1947 Some customers replied that they do not know. Replies to question 61.4 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

"*investment management services are offered by several providers incl. insurance companies, banks and specialized niche providers. Big consultant companies like WTW and AON are only a (smaller) part of a very large market*."[1948] Similar replies were received from competitors in the market investigation, with the exception, that their replies are balanced with respect to the impact of the Transaction on choice.[1949]

(1596) Concerning an investment solutions market, that includes investment consulting services additionally to investment management services, the Merged Entity would hold a (value) combined market share of [20-30]% in the market of investment management services to all institutional clients, with a [5-10] % increment brought by WTW. In such a market, the new entity would face competition from a number of different competitors, such as Mercer (market share [20-30]%), River and Mercantile (market share [5-10]%), Russel Investment (market share [5-10]%), Cambridge Associates (market share [0-5]%), Lane Clark & Peacock (market share [0-5]%) and Blackrock (market share [0-5]%). This market structure is similar to the structure of investment management services, as presented above under recital (1582). Additionally, for investment consulting services, customers rated the competitive strength of Marsh above 4 and for Hymans, Redington, Isio, KPMG and Lane Clark & Peacock above 3, in a scale from 1 to 5.[1950] These results do not change significantly when considering customers with assets under management of above EUR 1 billion only. Moreover, the majority of customers who provided an opinion in the phase 1 market investigation considers that, post-Transaction, a sufficient number of alternative investment consultants will remain available in the UK.[1951] The same holds true for large customers with assets under management of above EUR 1 billion. Similarly, the majority of competitors that provided an opinion, replied that a sufficient number of competitors for investment consulting services will remain post-Transaction in the UK.[1952] Consequently, the majority of customers that provided an opinion in the market investigation expects a positive or neutral impact on the competition parameters price, quality, choice and innovation for investment consulting services.[1953] The same holds true for large customers with assets under management of above EUR 1 billion, with the exception of the Transaction's impact on choice of services, where a majority expects negative effects. However, as pointed out above, large customers still expect that a sufficient number of alternative investment consultants will remain available in the UK post-Transaction. Therefore, even if a wider market for investment solutions, including investment management and investment consulting services, would be warranted, the competitive assessment would result in the same outcome as for investment management services alone.

9.2.4. Conclusion

(1597) In view of the above, the Commission considers that the Transaction does not lead to a significant impediment of effective competition with respect to the market for investment management services in the UK.

1948 Replies to question 61.4.1 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1949 Replies to question 148 of questionnaire Q5 to Competitors.

1950 Replies to question 27.6 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1951 Replies to question 31 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1952 Replies to question 116 of questionnaire Q5 to Competitors.

1953 Replies to question 32.6 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

10. HEALTH & WELFARE BENEFITS SOLUTIONS

(1598) Health and welfare benefits ("H&B") services are a form of management consultancy. They include the provision of services to employers to help them analyse, design, purchase, implement, manage, and administer the H&B plans they make available to their employees. Employee benefits are a form of non-monetary compensation provided to employees by companies. H&B services are generally split between (i) consulting and (ii) administration services.

(1599) H&B consulting services providers generally assess and evaluate a client's current H&B plans and benchmark them against similar companies in their sector. They help clients purchase the most competitive H&B plan available on the market, acting as an intermediary between the client and health insurance providers. Additionally, H&B consultants often help employers verify that their H&B plans comply with local health and social security rules.

(1600) H&B administration services are typically outsourced IT and administrative services relating to H&B plans. They include online or offline support to employees or employers, and related communication tools for employee enrolment to health and welfare plans as well as claims handling and case management. The purpose of these services is to assist employers and employees to manage their welfare benefits more efficiently.

(1601) For the purposes of the present assessment, and since the Transaction gives rise to affected markets only for H&B consulting services, this Section will focus primarily on these activities.

10.1. Health & welfare benefits consulting

10.1.1. Relevant product markets

10.1.1.1. Commission's previous decisional practice

(1602) In its past decisional practice, the Commission has not assessed whether H&B consulting and H&B administration should be considered as two separate product markets. The Commission, however, has in the past defined separately retirement benefits consulting services and pension administration services,[1954] acknowledging that each of these services requires different skills and is, to a large extent, offered by different providers.

(1603) Furthermore, in its past decisional practice, the Commission has not concluded as to whether H&B consulting is a relevant product market distinct from retirement benefits consulting. In *Marsh & McLennan/Sedgwick*[1955], the Commission considered a relevant market comprising both retirement and employment benefits consulting, which included advice and administration services focusing on pension and other benefits schemes for corporate clients. The Commission considered retirement and employment benefits consulting as a separate market within human resources consulting, taking into account the specific set of skills, qualifications and technical resources required to provide retirement and employment benefits consulting services. A further segmentation between retirement and employment (*i.e.*, health and welfare) benefits consulting was not considered at the time. In *Aon Corporation/Hewitt Associates*,[1956] similarly, the Commission left the question open.

1954 Case No. COMP/M.5597 – *Towers Perrin/Watson Wyatt*, paragraphs 10-13.
1955 Case No. IV/M.1307 – *Marsh & McLennan/Sedgwick*, paragraphs 24-25.
1956 Case No. COMP/M.5951 – *AON Corporation/Hewitt Associates*, paragraph 12.

10.1.1.2. The Notifying Party's view

(1604) The Notifying Party considers that, while companies providing H&B consulting may also provide H&B administration services, the two sets of services are distinguishable. While H&B administration services are typically outsourced IT and administrative services, H&B consulting services imply that their providers are capable of assessing and evaluating a client's current H&B plans and benchmarking these plans against similar companies in their sector.[1957]

(1605) Furthermore, the Notifying Party considers that H&B consulting services should be assessed separately from retirement benefits consulting, since they are usually provided by separate teams to separate clients and the competitive landscape in each market is different. Moreover, the Notifying Party argues that any further segmentation of the H&B consulting market would not be appropriate. In particular, the Notifying Party observes that it would not be justified the identification of a separate market for H&B services provided to large multinational customers on a global scale, consisting in consulting, coordination, and management services, as these services would merely be an extension of the Parties' country-specific H&B consulting offerings; they are add-on services made available to customers that choose to contract the Parties in more than one country but they would not substantially amount to different services compared to those provided by the Parties nationally. The Notifying Party, therefore, argues that these services are offered by the Parties to differentiate their national H&B offerings from those of rival brokers, and clients would not hire the Parties because they may be able to offer these add-on services but based on their capabilities in each country and in relation to the specific features of each national H&B market.[1958]

10.1.1.3. The Commission's assessment

(1606) The Commission agrees with the Notifying Party that H&B consulting services should be considered as a separate product market from H&B administration services. The majority of customers who responded to the phase 1 market investigation submitted that they source these services separately and they are aimed at fulfilling different needs they may have; moreover, customers also mentioned that not all providers of H&B consulting services provide H&B administration services and *vice versa*.[1959] The Transaction does not give rise to any affected markets for H&B administration services at EEA-level or at national level, hence, for the purposes of this Decision, the Commission will focus below on H&B consulting services.

(1607) The Commission agrees with the Notifying Party that H&B consulting services should be considered as a separate product market from retirement benefits consulting services. This finding was supported by the phase 1 market investigation results, considering that the large majority of customers who responded to the phase 1 market investigation said that they source H&B consulting services separately from retirement benefits consulting services.[1960]

1957 Form CO, paragraphs 2798-2799.

1958 Reply to Article 6(1)(c) Decision, paragraphs 1280 to 1288.

1959 Replies to question 139 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1960 Replies to question 138 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

(1608) In the context of the phase 1 market investigation, certain market respondents claimed that, within the H&B consulting market, a separate segment should be identified for H&B services provided to large multinational customers on a global scale and consisting, primarily, in consulting, coordination, and management services of H&B plans at worldwide level.[1961]

(1609) The Commission further investigated this claim in the context of its phase 2 market investigation, by contacting the Parties' largest multinational customers sourcing from the Parties, among the others, H&B consulting services in multiple jurisdictions. Following the results of the phase 2 market investigation, as outlined below, the Commission concludes that there is no sufficient evidence to argue in favour of the identification of a separate product market for H&B services provided at global level to large multinational companies, contrarily to certain claims brought forward by a number of market respondents in the context of the phase 1 market investigation. More specifically, the large majority of customers who responded to the phase 2 market investigation, hence the Parties' largest customers with presence in multiple jurisdictions where they source H&B consulting services, declared that they source these services from the same provider supplying them with H&B consulting services at national level.[1962] Additionally, the majority of customers who responded to the phase 2 market investigation submitted that the fee that they pay for the provision of these H&B services at global level is either very low or non-existent, *i.e.*, these services are provided for free since the actual fees paid by customers are paid for and calculated on the basis of services provided nationally.[1963] Moreover, the majority of customers who responded to the phase 1 market investigation, which was addressed to all customers of the Parties for H&B consulting solutions, observe that H&B services provided by brokers to large customers are either similar to those provided to small and medium-sized customers or they cannot identify the differences in the type of services provided.[1964] When asked about the possibility to identify a specific set of services provided at global level in relation to H&B consulting, multinational customers who replied to the phase 1 market investigation, despite acknowledging the preference for brokers who cover more than one country, they stress that it is essential to choose a broker with sufficient knowledge of national regulations and understanding of local needs, confirming that these services are largely nationally-based and that the relevant parameter of competition is the national expertise. One customer, for instance, submitted "*At Group level, [...] aims at covering more countries respecting the local regulations and needs of each country. Where it is not possible to have a unique H&W* [Health and Welfare] *plan, we cover the local need with multiple local H&W* [Health and Welfare] *service agreements and each country chooses the most suitable one according to its needs*".[1965] Hence, the Commission considers that the provision of services in relation to H&B consulting on a global scale is a differentiating competitive factor rather than a separate product market.

[1961] Replies to question 130 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions; replies to questions 208.1 and 210 of questionnaire Q5 to Competitors.

[1962] Replies to questions 3 and 3.1 of questionnaire 21 to Customers for Global Benefits Services.

[1963] Replies to question 4 of questionnaire Q21 to Customers for Global Management Services.

[1964] Replies to question 140 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1965] Reply to question 130 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions (Document ID 5166).

(1610) In light of the above, the Commission considers that the market for H&B consulting is a separate relevant product market and no further segmentation would be appropriate.

10.1.2. Relevant geographic markets

10.1.2.1. Commission's previous decisional practice

(1611) The Commission has previously considered that the markets for the provision of management consultancy services have both national and international aspects, but left the question on the exact geographic scope of the market open.[1966]

10.1.2.2. The Notifying Party's view

(1612) The Notifying Party considers that the geographic market for H&B consulting should be defined nationally. The Notifying Party argues that clients hire consultants for their local experience and expertise to assist them in setting up competitive and reliable health covers for their employees to protect a critical company asset. The quality of this service is of great importance and depends crucially on consultants' local capabilities and client relationships in each EEA country (or any other country). When selecting an H&B consultant for a particular country, clients normally seek tailor-made solutions for the national market, as well as expertise regarding the national H&B regulations, the national market standard that employers offer their employees in terms of health and welfare benefits, and the insurance offering in the specific country. The Notifying Party claims that local expertise is indispensable to properly assess the offer of insurance carriers. Moreover, the Notifying Party notes that the provision of H&B consulting is tailored strictly to the local legal and regulatory framework and, for cultural and historical reasons, the national health and social security rules vary substantially from country to country.

10.1.2.3. The Commission's assessment

(1613) The Commission agrees with the Notifying Party and considers that the geographic market for H&B consulting should be national in scope. The large majority of customers who responded to the phase 1 market investigation consider that the scope of these services is national and largely reliant on the local legal and regulatory framework. The majority of customers, moreover, specify that they set up individual H&B plans in each country and these plans are administered in each country separately.[1967] The overwhelming majority of competitors who responded to the phase 1 market investigation added that contracts for the provision of H&B consulting services are national in scope.[1968]

10.1.3. Competitive assessment

(1614) With regard to H&B consulting services, the Transaction results in horizontally affected markets in Denmark, Italy, and Norway. The detailed list of affected markets is outlined below.

1966 Case No. IV/M.1307 – *Marsh & McLennan/Sedgwick*, paragraph 27; Case No. COMP/M.5951 – *AON Corporation/Hewitt Associates*, paragraphs 15-17.

1967 Replies to question 132 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1968 Replies to question 217 of questionnaire Q5 to Competitors.

Table 40: Overview of the national affected markets for H&B consulting by revenue (2019)[1969]

Country	Aon	WTW	*Combined*
Denmark	[10-20]%	[20-30]%	*[30-40]%*
Italy	[20-30]%	[10-20]%	*[30-40]%*
Norway	[10-20]%	[5-10]%	[20-30]%

Source: Form CO, Table 6E.4 (H&B)

(1615) In this Section, the Commission assesses the likelihood that the Transaction may result in anticompetitive effects in the affected markets for the provision of H&B consulting services as identified above.

10.1.3.1. The Notifying Party's view

(1616) The Notifying Party considers that the Transaction does not raise any anticompetitive effects in the affected markets identified considering that the H&B consulting national markets are fragmented and competitive. Moreover, the Notifying Party argues that the Merged Entity will still be subject post-Transaction to constraints exerted by H&B insurers which compete with the Parties by providing solutions directly to clients and, finally, the ease of entry, repositioning and expansion due to talent mobility makes the Transaction even more unlikely to raise competition concerns.

10.1.3.2. The Commission's assessment

(1617) Following the results of the phase 1 market investigation, the Commission considers that the Transaction does not raise competition concerns in the affected national markets identified.

(1618) More specifically:

(a) In **Denmark**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the Danish market for H&B consulting services, with a [10-20]% increment brought by Aon. The new entity would face competition from a number of different competitors, such as Söderberg & Partners ([20-30]% market share), APC Forsikringsmægler ([10-20]%), and Marsh ([10-20]%). This market will have an HHI of around [1,000-2,000] post-Transaction and the delta HHI caused by the Transaction is around [500-1,000]. The market structure was confirmed by the majority of customers who responded to the phase 1 market investigation and mentioned Marsh and Söderberg & Partners as very close competitors to the Parties.[1970] Moreover, the majority of customers who responded to the phase 1 market investigation consider that, post-Transaction, a sufficient number of alternative players would remain in the market and they submitted that the Transaction will have a neutral impact on the market.[1971]

(b) In **Italy**: post-Transaction, the Merged Entity would hold a (value) combined market share of [30-40]% in the Italian market for H&B consulting services, with an [10-20]% increment brought by WTW. The new entity would face

1969 Some percentages may not add up due to rounding.

1970 Replies to question 152 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

1971 Replies to questions 161 and 162 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

competition from a number of different competitors, such as Marsh ([20-30]% market share), and Gruppo Assiteca ([5-10]%). This market will have an HHI of around [1,500-2,000] post-Transaction and the delta HHI caused by the Transaction is around [0-500]4. The market structure was confirmed by the majority of customers who responded to the phase 1 market investigation and mentioned Marsh and Gruppo Assiteca as very close competitors to the Parties.[1972] Moreover, the majority of customers who responded to the phase 1 market investigation consider that, post-Transaction, a sufficient number of alternative players would remain in the market and they submitted that the Transaction will have a neutral impact on the market. [1973]

(c) In **Norway**: post-Transaction, the Merged Entity would hold a (value) combined market share of [20-30]% in the Norwegian market for H&B consulting services, with a [5-10]% increment brought by WTW. The new entity would face competition from a number of different competitors, such as Gabler Pensjonstjeneste ([10-20]% market share), Marsh ([10-20]%), and Söderberg & Partners ([10-20]%). This market will have an HHI of around [500-1,000] post-Transaction and the delta HHI caused by the Transaction is around [0-500]. The market structure was confirmed by the majority of customers who responded to the phase 1 market investigation and mentioned Marsh and Söderberg & Partners as very close competitors to the Parties.[1974] Moreover, the majority of customers who responded to the phase 1 market investigation consider that, post-Transaction, a sufficient number of alternative players would remain in the market and they submitted that the Transaction will have a neutral impact on the market. [1975]

(1619) In light of the above, the Commission concludes that the Transaction does not raise competition concerns in any of the affected national markets identified above for H&B consulting services.

11. CONCLUSION OF THE COMPETITIVE ASSESSMENT

(1620) Based on the above Sections, the Commission considers that the Transaction will likely result in a significant impediment to effective competition in the following markets:

(a) commercial risk brokerage for LMCs for the following risk types, at global level: property & casualty, FinPro and cyber;

(b) commercial risk brokerage for non-LMCs, for the following risk types: property & casualty (the Netherlands) and cyber (Spain);

(c) commercial risk brokerage for all customers, including LMCs, for the following risk types, at global level: Aerospace Manufacturing and Space;

[1972] Replies to question 152 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1973] Replies to questions 161 and 162 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1974] Replies to question 152 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

[1975] Replies to questions 161 and 162 of questionnaire Q3 to Customers in Investment, Retirement, and Health and Welfare Benefits Solutions.

(d) treaty non-life reinsurance brokerage and facultative non-life reinsurance brokerage, both at global level; and

(e) pension administration in Germany.[1976]

12. COMMITMENTS

12.1. Analytical framework for the assessment of the commitments

(1621) When a concentration raises competition concerns because it would significantly impede effective competition in the internal market or a significant part thereof, the Parties may seek to modify the concentration so as to remove the significant impediment to effective competition identified by the Commission, with a view to having the concentration declared compatible with the internal market pursuant to Article 8(2) of the Merger Regulation.

(1622) In assessing whether or not commitments are likely to remove its competition concerns, the Commission must consider all relevant factors, including, inter alia, the type, scale and scope of the commitments with reference to the structure and particular characteristics off the markets in which the Commission has identified a significant impediment to effective competition.[1977]

(1623) The commitments must eliminate the competition concerns entirely and must be comprehensive and effective in all respects.[1978] The commitments should also be proportionate to the competition concerns identified and entirely eliminate it.[1979] Furthermore, the commitments must be capable of being implemented effectively within a short period of time, as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.[1980]

(1624) Under the Merger Regulation, the Commission must show that a concentration would significantly impede effective competition on the internal market or in a substantial part of it. By contrast, it is for the Parties to propose appropriate commitments. The Commission only has the power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment to effective competition in all relevant markets in which competition concerns were identified.

(1625) The basic aim of commitments is to ensure competitive market structures. Accordingly, commitments which are structural in nature, such as the commitment to sell a business unit, are, as a rule, preferable from the point of view of the Merger Regulation's objective, inasmuch as such commitments prevent, durably, the competition concerns which would be raised by the merger as notified, and do not, moreover, require medium or long-term monitoring measures.[1981] The business to be divested has to include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel

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1976 Whether the Transaction gives rise to a significant impediment to effective competition in the retirement benefits consulting market in Germany is left open, as any such concerns would be neverthless remedied.

1977 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, 2008/C 267/01 (OJ C 267, 22.10.2008, p. 1) ("Commission Notice on Remedies"), paragraph 9.

1978 Merger Regulation, recital 30; Commission Notice on Remedies, paragraph 9.

1979 Merger Regulation, recital 30.

1980 Commission Notice on Remedies, paragraph 9.

1981 Commission Notice on Remedies, paragraph 15.

which is currently employed or which is necessary to ensure the business' viability and competitiveness.[1982] The business to be divested has to be viable as such. Therefore, the resources of a possible or even presumed future purchaser are not taken into account by the Commission at the stage of assessing the remedy. The situation is different if already during the procedure a sale and purchase agreement with a specific purchaser is concluded whose resources can be taken into account at the time of the assessment of the commitment.[1983]

(1626) Pursuant to Article 10(2) of the Merger Regulation, the Commission has to take a clearance decision as soon as the serious doubts referred to in the decision initiating proceedings are removed as a result of the commitments submitted by the Parties. This rule applies to commitments proposed in phase 2 proceedings before the Commission has issued a Statement of Objections.[1984]

(1627) It is against this background and the standard set out in the Commission Notice on Remedies that the Commission has assessed the viability, workability, effectiveness and ability of the proposed commitments to entirely eliminate the competition concerns identified.

12.2. Procedure

(1628) In order to render the Transaction compatible with the internal market and with the EEA Agreement in relation to the areas of competitive concern, *i.e.* commercial risk brokerage, reinsurance brokerage, retirement benefits consulting and pension administration, the Notifying Party has modified the Transaction pursuant to the first paragraph of Article 8(2) of the Merger Regulation by submitting commitments. The Notifying Party submitted a first set of commitments on 9 April 2021 (the "Initial Commitments"). The Initial Commitments were market tested by the Commission on 12 April 2021. Subsequently, in order to address concerns based on the responses received during the market test, the Notifying Party submitted an amended set of commitments on 12 May 2021 (the "Final Commitments").

(1629) This Section will assess the commitments by area of competitive concerns.

12.3. Commercial risk brokerage

12.3.1. Description of the Initial Commitments

(1630) The Initial Commitments for commercial risk brokerage consists of three parts:

- (a) **CR LMC Territorial Remedy**: divestment of WTW's entire commercial risk brokerage country organisations in France, Germany, the Netherlands and Spain and WTW's entire EEA commercial risk brokerage property & casualty and FinPro business with LMCs headquartered in these countries supplemented by additional personnel and contracts in the UK and elsewhere in the EEA as described in more detail below;
- (b) **CR Cyber Specialty Remedy**: divestment of WTW's cyber commercial risk brokerage business based in the UK, including a transfer of renewal rights for WTW's UK cyber commercial risk brokerage customers;
- (c) **CR AMS Remedy**: divestment of WTW's global aerospace manufacturing and space commercial risk brokerage businesses.

1982 Commission Notice on Remedies, paragraph 25.
1983 Commission Notice on Remedies, paragraph 30.
1984 Commission Notice on Remedies, paragraph 18.

The three parts (the "CRB remedy package") will be divested to the same purchaser. The CRB remedy package represents a GWP of USD […] and a turnover of around USD […] in 2019.[1985]

(1631) According to the Notifying Party, the part of the CRB remedy package addressing the CRB markets for LMCs aims at bolstering an existing commercial risk broker to increase its capabilities to compete effectively in the markets for LMCs, primarily by transferring broker expertise, customers and offices in four jurisdictions to enhance their owned network as well as strengthening suitable purchaser's UK LMC business for Cyber and FinPro risks. To this end, the Parties committed to divest the entire CRB package to a single purchaser. The remedy therefore needs to be viewed together with the capabilities of a suitable purchaser and is aimed at providing broker expertise, customers and additional EEA offices to allow such suitable purchaser to expand in the CR LMC markets.[1986]

(1632) Specifically, the CRB remedy package contains the elements described below.

(1633) The CR LMC Territorial Remedy includes:

(a) All legal entities incorporated in France, Germany the Netherlands and Spain that are exclusively or predominantly related to the CR LMC Territorial Remedy;

(b) WTW's entire CRB EEA FinPro and property & casualty business with LMCs headquartered in the four aforementioned countries;

(c) All licenses held by the legal entities;

(d) Transfer of all customer contracts entered into by the transferred legal entities as well as transfer of renewal rights for three large UK FinPro customers;

(e) Approximately […] employees[1987] based in France, Germany, the Netherlands and Spain;

(f) An additional […] employees (brokers) based in the UK serving LMCs included in the remedy;

(g) […] employees based in the UK primarily responsible for servicing the UK FinPro customers whose contracts' renewal rights are included in the CR LMC Territorial Remedy;

(h) […] employees in each of Italy, Poland and Portugal at the option of the purchaser; and

(i) All relevant tangible and intangible assets as well as know-how used exclusively or primarily in the CR LMC Territorial Divestment Business.

(1634) The CR Cyber Specialty Remedy includes:

(a) A team of […] employees from WTW's Cyber Specialty business;

(b) Transfer of renewal rights[1988] for WTW's UK cyber commercial risk brokerage customers; and

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1985 Annex B to the Form RM.

1986 Form RM – CR LMC & Cyber, paragraph 23.

1987 In the Final Commitments, the number of employees was revised to […] employees, due to inadvertent inclusions of personnel related to non-divested business (see reply to question 3 of RFI 70 dated 6 May 2021).

(c) all relevant tangible and intangible assets as well as know-how used exclusively or primarily in WTW's commercial risk brokerage business for cyber risk in the UK.

(1635) The CR AMS Remedy includes:

(a) A team of […] employees from WTW's business in the UK, the US, Canada, France, Italy, Norway, Malaysia, Spain and Sweden;

(b) Transfer of all customer contracts which are exclusively or primarily related to the WTW's space commercial risk brokerage activities globally;

(c) Transfer of renewal rights for WTW's aerospace manufacturing customers to renew their respective insurance products that cover the risks associated with the damage and liability arising out of the manufacture of aerospace products; and

(d) All relevant intangible assets and know-how used exclusively or primarily in WTW's global commercial risk brokerage businesses for aerospace manufacturing and space.

(1636) Customer contracts and renewal rights include all other available customer specific information related to such contracts, including but not limited to copies of customer records, pre-tendering and tendering documents, customer reports, claims, transactional data, customer insurance policies and historical records for a period of time as agreed with the purchaser, subject to local regulatory requirements and industry practice.

(1637) To maintain the structural effect of the divestment, the Initial Commitments include a non-compete clause of […] for transferred contracts, and a non-compete clause of the longer of […] and the first renewal for transferred renewal rights and for a further period of […] thereafter, by which the Merged Entity commits not to solicit from the purchaser the scope of the work covered by the customer contracts the renewal rights of which will be divested for each relevant customer.

(1638) To preserve the viability and competitiveness of the divestments, the Initial Commitments include an undertaking by the Merged Entity not to solicit, hire, employ or engage key personnel that transfers as part of the divestment, and an undertaking not to solicit all other personnel that transfers as part of the divestment, both for a period of […].

(1639) For the purchaser of the divestment to be an effective competitor in a short amount of time, the Initial Commitments include a transitional service agreement covering central support services, including data analytics, with a duration of […], which can be extended at the request of the purchaser and following a positive opinion from the monitoring trustee.

(1640) The Initial Commitments provide that the purchaser of the CRB remedy package will meet the following criteria:

(a) The purchaser shall be independent and unconnected to the Notifying Party.

1988 Transfer of renewal rights concerns the transfer of the right to invite WTW's customers to renew their respective insurance products as well as all other available client specific information, including but not limited to copies of, customer records, pre-tendering documents, customer reports, transactional data, clients insurance policies and historical records.

(b) The purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the divestment business as a viable and active competitive force.

(c) The acquisition of the divestment business by the purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns, nor give rise to a risk that the implementation of the commitments will be delayed.

(d) The purchaser shall have an operating commercial risk brokerage business with a proven track record in serving large customers for complex risks.

(e) The purchaser shall have credible presence in the UK covering at least the risk categories of property & casualty and FinPro.

(f) The purchaser shall have an infrastructure to integrate the CR LMC Territorial Remedy, with the geographic reach allowing it to serve internationally the divested large multinational customers at least for the two risk types, property & casualty and FinPro, with proven capabilities in those countries where the divested large multinational customers require support.

(g) The purchaser shall have an operating commercial non-life insurance brokerage business with a proven track record in serving large customers for complex risks.

(h) The purchaser shall have the presence, infrastructure and required licences in the UK necessary to incorporate the CR Cyber Specialty Remedy and capacity to absorb employees currently based in Ipswich, Leeds, London, and Manchester.

(i) The purchaser shall have claims handling capabilities suitable for aerospace manufacturing risk.

(j) The purchaser shall have capacity to absorb employees who will have to be relocated as their respective offices/the legal entities who they work for will not transfer.

(k) The purchaser shall hold required licenses to operate the divestment businesses or demonstrate ability to acquire them in a timely manner in those countries where the licenses do not transfer with the divestment business.

(l) The purchaser shall have own brokerage platforms/data bases that allow to integrate the opportunity and customer data to be transferred as part of the divestment business.

12.3.2. Responses to the market test

(1641) Overall, the results of the market test of the CRB remedy package were positive.[1989] For each of the markets for which the CRB remedy package aims to address concerns, namely the commercial risk brokerage markets for LMCs that source their worldwide needs from the EEA for property & casualty, FinPro and cyber risk types, the commercial risk brokerage markets for non-LMCs for property & casualty risk in

1989 In a letter dated 25 June 2021, the UK Competition and Markets Authority expressed the concern that customer feedback received in the market test may be unreliable as they fear retaliation by the Parties. In the course of its Phase II investigation, the Commission asked customers about the Parties' outreach and reviewed the Parties' communication logs, and did not find evidence of customer feedback being affected.

the Netherlands and cyber risk in Spain, and the commercial risk brokerage market for aerospace manufacturing and space risk types for all customers, the majority of customers and competitors responding to the market investigation consider that the remedy package in the hands of a suitable purchaser would effectively remove the identified competitive concerns.[1990]

(1642) A majority of customers (both LMCs and non-LMCs) and competitors providing an informative response to the Commission's market test consider that the proposed divestment business for commercial risk brokerage will allow the purchaser to compete effectively for customers of their size and geographic footprint.[1991] Furthermore, a majority of customers that responded to the market test (both LMCs and non-LMCs) considered the commercial risk brokerage divestment business, in the hands of a suitable purchaser, as a potential supplier of brokerage services for them.[1992] Finally, customers and competitors that responded to the market test also considered that the divestment business includes sufficient customers, personnel and support services to be a viable competitor in the long term.[1993]

(1643) A majority of customers and competitors that responded to the market test indicated that the transitional services agreement that is provided for in the Initial Commitments is of appropriate scope for the divestment business to become operational in the hands of a suitable purchaser.[1994] Customers that replied to the market test most commonly indicated that […] would be a suitable duration for such agreement, while competitors that replied to the market test most commonly suggested a slightly longer duration of […].[1995]

(1644) Concerning the transfer of renewal rights, not all customers that replied to the Commission's market test were familiar with this method of transferring business in the commercial risk brokerage industry. However, of those that were able to provide an informative response, the majority considered that it is an effective method to transfer customer relationships for all risk types for which the Initial Commitments propose the transfer of renewal rights.[1996]

(1645) While the majority of competitors that responded to the market test indicated that they have not been involved in a transaction that took place as a transfer of renewal rights, the Parties' largest competitors were involved in such transactions.[1997] The majority of competitors that were able to provide an informative response to the Commission's market test considered that transfer of renewal rights are an effective method to transfer customer relationships for all risk types for which such method is proposed in the Initial Commitments. However, several competitors indicated in the narrative responses that the transfer of renewal rights is only effective with

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1990 Replies to question 5 of questionnaire R1 to commercial risk brokerage Customers and to question 4 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

1991 Replies to question 6 of questionnaire R1 to commercial risk brokerage Customers and question 5 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

1992 Replies to question 7 of questionnaire R1 to commercial risk brokerage Customers.

1993 Replies to question 8 of questionnaire R1 to commercial risk brokerage Customers and question 9 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

1994 Replies to question 10 of questionnaire R1 to commercial risk brokerage Customers and question 12 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

1995 Replies to question 10 of questionnaire R1 to commercial risk brokerage Customers and question 12 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

1996 Replies to question 12 of questionnaire R1 to commercial risk brokerage Customers.

1997 Replies to question 6 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

appropriate restrictive covenants such as non-compete clauses.[1998] This is in line with the fact that a considerable amount of competitors that replied to the Commission's market test consider that the transfer of renewal rights may affect the customer retention of the divestment business. In light of this, several competitors again highlighted the importance of restrictive covenants in the narrative responses.[1999]

(1646) Concerning the non-compete clause, customers that responded to the Commission's market test most commonly indicated that they consider […] to be a suitable duration, with […] being the second most common answer. Competitors indicated that a longer non-compete period would be appropriate, and most commonly answered […]. Several customers explained that the non-compete period should not be too long so as to allow sufficient choice in the markets. For the subsequent non-solicitation period, customers that replied to the market test most commonly indicated […] as an appropriate duration, while competitors again most commonly suggested a longer duration of […].[2000]

(1647) Concerning the non-hire clause for key personnel and the non-solicitation clause for all other personnel, customers that responded to the Commission's market test most commonly indicated that […] would be a suitable duration, with […] as the second-most common answer. Competitors that replied to the market test again most commonly suggested a longer duration of […].[2001]

(1648) The Initial Commitments will result in a situation where some customers will be served by the purchaser in one region, and by the Merged Entity in other regions. Of those LMCs affected by a split, a sizable minority consider that this arrangement would not work and that they would consolidate as soon as possible. Moreover, an additional half of the LMCs that responded prefer services by one broker. The remaining LMCs consider the split unproblematic or that it would work well in practice. Competitors gave mixed answers on this issue. While some considered it may affect viability, others indicated that it is common industry practice to be served by multiple brokers.[2002]

(1649) The large majority of customers and competitors that replied to the Commission's market test considered that the purchaser criteria included in the Initial Commitments in relation to commercial risk brokerage are appropriate for identifying a suitable purchaser.[2003] Both customers and competitors that responded to the market test considered Gallagher to be the most suitable purchaser for the divestment business relating to commercial risk brokerage, followed by Lockton and Howden.[2004]

(1650) Concerning the geographic reach of a suitable purchaser, LMCs that responded to the market test most commonly indicated that the purchaser should have presence in the United Kingdom and the United States. The next most commonly identified

1998 Replies to question 6 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

1999 Replies to question 7 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2000 Replies to question 14 of questionnaire R1 to commercial risk brokerage Customers and question 8 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2001 Replies to question 15 of questionnaire R1 to commercial risk brokerage Customers and question 13 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2002 Replies to question 16 of questionnaire R1 to commercial risk brokerage Customers and question 14 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2003 Replies to question 17 of questionnaire R1 to commercial risk brokerage Customers and question 29 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2004 Replies to question 19 of questionnaire R1 to commercial risk brokerage Customers and question 30 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

jurisdictions are China, Switzerland, Brazil, Canada, Italy, and Australia. The majority of customers that replied to the Commission's market investigation indicated that they prefer an owned office in the location that they identified. A clear minority of respondents indicated that they need global presence without specifying specific jurisdictions, and that no possible purchaser was likely to have such network.[2005]

(1651) The UK Competition and Markets Authority (the "CMA") submitted letters on 19 and 30 April 2021 summarising its position on the Initial Commitments.[2006] In its letters, the CMA expressed concerns with the CRB remedy package concerning the markets for commercial risk brokerage for LMCs that source their worldwide needs in the EEA for property & casualty and FinPro risk types. The CMA's concerns include (i) the geographic reach of the proposed remedy, (ii) the extent of UK assets included, (iii) the fact that the business is not stand-alone, and (iv) the risks involved in a remedy that depends on the capabilities of the purchaser. On 25 June 2021, the CMA sent a letter reiterating its concerns.[2007]

12.3.3. The Commission's assessment of the Initial Commitments

(1652) Based on the feedback of the market test of the First Commitments, the Commission considers that, while overall positive, improvements are required to address shortcomings in the CRB remedy package.

(1653) Concerning the overall aim of the remedy relating to commercial risk brokerage to LMCs, namely the bolstering of an existing competitor to credibly compete for LMCs, the Commission considers that the market test feedback supports that such a solution may be suitable to address the Commission's competition concerns provided that the remedy package is taken up by a suitable purchaser.

(1654) Concerning scope of the remedy, the Commission considers that there are two main issues to address: (i) the issue of splitting customer contracts and (ii) the issue of geographic reach of the purchaser.

(1655) First, concerning the issue of splitting of customer contracts, the Commission considers that in light of the share of customers that have indicated that they could not work with such a split, this may cause a viability issue for the divestment business due to customer attrition. The Commission noted that (i) a significant number of customers would be affected by a split between the remedy taker and WTW in the same risk type, and (ii) that for many customers individually, a large portion of their GWP placed would be retained by the Merged Entity. Therefore, the number of customers affected by such split should be reduced and additional protective clauses put in place.

(1656) Second, concerning the issue of geographic reach, the Commission considers that achieving sufficient geographic coverage to satisfy the needs of LMCs is key for the purchaser to be an effective competitor for these customers. The ultimate geographic reach of the purchaser after the acquisition of the CRB remedy package is strongly dependent on the identity of the purchaser, and as such, the scope of the remedy is strongly dependent on the identity of the purchaser, as the CRB remedy package does not constitute a stand-alone business.

2005 Replies to question 21 of questionnaire R1 to commercial risk brokerage Customers.

2006 Letter from the CMA to the case team dated 19 April 2021 (Document ID 12992) and letter from the CMA addressed to the Director General and Commissioner dated 30 April 2021 (Document ID 13251).

2007 Letter from the CMA to the case team dated 25 June 2021 (Document ID 13666).

(1657) The identity of the potential purchaser is even more important based on the market test feedback that only few purchasers are considered suitable by customers, i.e. primarily Gallagher, Lockton and Howden.[2008] Furthermore, depending on the identity of the customer and its existing geographic footprint, the remedy may also need to be revised to include additional assets in key geographic locations to supplement this footprint.

(1658) Finally, the market test feedback also identified the need for technical improvements, most notably on the durations of the non-compete and non-solicitation clauses for customers, and the non-hire and non-solicitation clauses for key personnel and personnel respectively. The Commission considers that such improvements are especially important considering the risk of customer attrition identified (as described above) and the environment of high talent mobility in the commercial risk brokerage industry.[2009]

12.3.4. Description of the Final Commitments

(1659) Following the results of the market test of the Initial Commitments relating to commercial risk brokerage, the Commission communicated the summary of the observations made by respondents as well as its own assessment to the Parties.

(1660) In order to address the shortcomings identified by the Commission on the basis of the results of the market test, the Notifying Party submitted the Final Commitments, which contained the following key improvements to the Initial Commitments with respect to commercial risk brokerage.

(1661) The scope of the CR LMC Territorial Remedy has been expanded with the following main additions:

(a) WTW's entire property & casualty and FinPro contracts with LMCs headquartered in France, Germany, the Netherlands and Spain serviced in the US, Brazil and, at the option of the Purchaser, in either Hong Kong or Singapore.

(b) Additional WTW LMC FinPro contracts and brokers in the UK, as well as additional personnel in the UK.

(c) Additional brokers in key strategic locations, namely, Brazil, Italy and, at the option of the purchaser, Singapore or Hong Kong.

(d) Inclusion of health & welfare benefits businesses in France, Germany and Spain.

(1662) Furthermore, the following technical improvements have been introduced to the entire commercial risk brokerage divestment business:

(a) The non-compete clause is extended from […] to […] for transferred contracts and the longer of […] and the first renewal for transferred renewal rights, followed by a subsequent […] non-solicitation period.

(b) The undertaking not to solicit, hire, employ or engage key personnel that transfers as part of the divestment, and an undertaking not to solicit all other personnel that transfers as part of the divestment, have both been extended from […] to […].

2008 Replies to question 19 of questionnaire R1 to commercial risk brokerage Customers and question 30 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2009 Put forward by the Notifying Party, e.g. in the Form CO, paragraphs 180-188.

(c) Provision of incentive packages to key personnel.

(d) Provision of the right to use brand names for a transitional period of […].

(1663) Finally, the Notifying Party commits to divest the entire commercial risk brokerage divestment business to Gallagher in the Final Commitments.[2010]

(1664) The CRB remedy package as described in the Final Commitments represent a GWP of USD […] and a turnover of USD […].[2011]

12.3.5. Assessment of the Final Commitments

12.3.5.1. Removal of competition concerns

(1665) The Commission recalls that, to be acceptable, commitments must eliminate the competition concerns entirely and must be comprehensive and effective in all respects. In the case of divestiture commitments, the business to be divested has to be viable as such. In the viability assessment, the resources of the purchaser can only be taken into account by the Commission at the time of the assessment of the commitment if already during the procedure a sale and purchase agreement with a specific purchaser has been concluded.

(1666) In light of the fact that the Notifying Party entered into a binding sales agreement with Gallagher on 12 May 2021, and in light of the provisions set out in paragraph 30 of the Remedies Notice, the Commission will take into account Gallagher's existing assets and capabilities when assessing the Final Commitments. For the avoidance of doubt, the Commission notes that a full assessment of Gallagher as suitable purchaser and the compliance of the sales agreement with the Commitments will be carried out in a separate purchaser approval procedure pursuant to paragraph 25 of the Commitments.

(1667) The Final Commitments provide for the divestment of WTW's full commercial risk brokerage organisations in France, Germany, the Netherlands and Spain, complemented by additional contracts and/or brokers in key location globally, namely the UK, the United States, Italy, Portugal, Poland, Brazil and, at the option of the purchaser, Hong Kong or Singapore. Additionally, WTW's full global commercial risk brokerage businesses for aerospace manufacturing and space risks is divested. The divestment business needs to be seen together with Gallagher's existing capabilities.

(1668) As described in Section 6.3.1, Gallagher is an existing broker with presence in several locations across the world, as well as dedicated teams to serve LMCs that source their worldwide needs from the EEA. The elements that form part of the divestment business will bolster Gallagher's capabilities, presence in key locations and market position with LMCs that source their worldwide needs from the EEA to provide an additional option for these LMCs, as set out below.

(1669) In this respect, Gallagher has an existing footprint of owned or majority-owned offices in 28 countries. Its network of partner offices extends to more than 150 countries. Gallagher has an especially strong presence in the US, where it is headquartered and has approximately 500 sales and service locations, and in the UK, where it has around 5,000 employees in around 70 offices. Furthermore, Gallagher

[2010] Aon entered into a binding sales agreement with Gallagher on 12 May 2021.

[2011] Annex B to the Form RM. Of the turnover, EUR […] relates to commercial risk brokerage, and EUR […] to health and welfare benefits.

has existing central groups in the US and UK that are focused on servicing LMCs.[2012]

(1670) However, outside of the UK, Gallagher has a very limited footprint of owned offices in the EEA. The commercial risk brokerage divestment business provides Gallagher with a solid footprint in the EEA, by divesting offices in France, Germany, the Netherlands and Spain. Therefore, with the acquisition of the commercial risk brokerage divestment business, Gallagher will have a solid footprint in several key EEA countries, which will further enable it to serve LMCs that source their worldwide needs from the EEA. This is further enabled by the passporting regime in the EEA, which allows brokers to conduct business throughout the EEA based on the brokerage license of any EEA country.

(1671) In light of the importance of a broker's geographic footprint to provide commercial risk brokerage services to LMCs that source their worldwide needs from the EEA for risk types property & casualty and FinPro, and to a certain extent cyber (as discussed in Section 6.3.4.1), the Commission has also assessed the suitability of the purchaser's, *i.e.* Gallagher's, footprint with the divestment business.

(1672) The Commission has assessed which other countries are of critical importance for serving LMCs that source their worldwide needs from the EEA by (i) reviewing the countries, outside of those for which offices are divested, in which the divested customers place most GWP[2013] and (ii) market testing which countries customers identify as most important for a broker to have a presence.

(1673) The table below shows which countries were identified as most important for satisfying LMCs' international needs based on the above two analyses. In each of these countries, Gallagher either has a (majority) owned office, or is strengthened by the divestment of contracts and / or brokers that serve LMCs that source their worldwide needs from the EEA.[2014]

2012 Gallagher's response to the Commission's request for information, dated 1 June 2021.

2013 Analysis of Annex 10 to the Notifying Party's reply to RFI 56.

2014 The only exception is China, where Gallagher has a partner office. However, in the Chinese market it is customary for brokers to serve customers via partner offices. For instance, Aon itself serves customers in China through a joint venture.

Table 41: Countries identified as most important for broker presence based on market test feedback and analysis of divested customer commercial risk placements (excluding countries where full WTW country organisation is divested).

Country	Gallagher presence absent remedy	Elements included in remedy
US	[…][2015]	EEA customer contracts
UK	[…][2016]	WTW Cyber organisation and FinPro brokers and customers
Italy	[…]	CRB brokers and customer contracts
Switzerland	[…]	-
Canada	[…]	-
Brazil	[…][2017]	CRB brokers and EEA customer contracts
Hong Kong	[…]	CRB brokers and EEA customer contracts at the option of the purchaser[2018]
Sweden	[…]	-
Australia	[…]	-
China	[…]	-

Source: Gallagher's response to the Commission's request for information, dated 1 June 2021.

(1674) As is shown in the table above, with the acquisition of the commercial risk brokerage divestment business, Gallagher's footprint will be significantly strengthened, and will cover all locations that were most commonly considered important by LMCs that source their worldwide needs from the EEA. Based on the available information, Gallagher can therefore be expected to be a suitable supplier for the majority of LMCs that source their worldwide needs from the EEA. Furthermore, Gallagher's footprint will be supported by a strong UK presence, including for specialty risks, and dedicated service organisations for LMCs in the UK and US.

(1675) For those countries that were less often indicated as important by LMCs that source their worldwide needs from the EEA, Gallagher has a presence, either through an owned office or a partner office, in the large majority of them, as Gallagher's total presence spans more than 150 countries across the world. While owned offices may be preferred by LMCs that source their worldwide needs from the EEA, the Commission considers that the availability of such owned offices in all key locations, supplemented by partner offices in the majority of other jurisdictions, will enable Gallagher to credibly compete for LMCs that source their worldwide needs from the EEA. This conclusion is in line with the fact that the majority of customers indicated in the market test that partner offices are a workable solution. Furthermore, even

2015 As described above, Gallagher has a strong presence in the US, where it is headquartered and has a large number of locations, and in the UK, where it is has a large number of locations and brokers, of which a significant amount are focused on the London market.

2016 See above.

2017 Gallagher has existing reinsurance brokerage presence and has concrete plans to expand by establishing and owned presence in commercial risk brokerage.

2018 The Final Commitments provide that the purchaser can select either brokers and EEA customer contracts in Hong Kong or in Singapore.

Aon, while having a more extensive owned network, serves […] countries through a correspondent network.[2019] This shows that for locations that are considered less important by customers, a correspondent office can suffice, as long as it is supported by a strong owned network and the required capabilities in the most important locations around the world. The remedy strengthens Gallagher's network in these key locations, and strengthens its capabilities and market presence with LMCs by the transfer of personnel, data and contracts.

(1676) As regards the concern of the remedy including sufficient UK assets, in addition to Gallagher's significant UK presence, the Commission has reviewed the responses of UK LMCs to its market investigation. A primary concern expressed by UK customers over the course of the investigation, relates to brokers having adequate international presence,[2020] rather than capabilities in the UK, where multiple broker options are available. Inclusion of additional UK assets would therefore not address this concern.

(1677) The Commission notes that the Final Commitments eliminate the entirety or a significant amount of WTW's increment for each of the markets where competition concerns have been identified within commercial risk brokerage. The table below shows WTW's increment for commercial risk brokerage markets for which the Commission raised competitive concerns with and absent the Final Commitments.

Table 42: Effect of the commercial risk brokerage divestment on the Merged Entity's market share in commercial risk brokerage markets of competitive concern.

Market	Increment brought by WTW absent remedy	Proportion of WTW increment divested with CRB remedy package
Commercial risk brokerage for aerospace manufacturing risk (global)	[10-20]%	[90-100]%
Commercial risk brokerage for space risk (global)	[10-20]%	[90-100]%
Commercial risk brokerage for property & casualty risk for non-LMCs in the Netherlands	[0-5]%	[90-100]%
Commercial risk brokerage for cyber risk for non-LMCs in Spain	[20-30]%	[90-100]%
Commercial risk brokerage for LMCs for property & casualty risk	[10-20%]	[50-60%]
Commercial risk brokerage for LMCs for FinPro risk	[5-10%]	[40-50%]
Commercial risk brokerage for LMCs for cyber risk	[5-10%]	[70-80%]

Source: Notifying Party market share estimates, Commission's market reconstruction and Notifying Party's reply to RFI 69

2019 Reply to the 6(1)(c) Decision, paragraph 252.

2020 Replies to questions 54.1 and 145.1 of questionnaire Q1 to Customers.

(1678) As can be seen in the table, the remedy divests the full increment for commercial risk brokerage markets not related to LMCs. For the three markets for LMCs that source their worldwide needs from the EEA, a significant part of WTW's increment is divested. This considerable divestment will be combined with Gallagher's existing business to further bolster its position in this market.

(1679) While weaker than the Big Three, Gallagher is considered by LMCs that responded to the Commission's market investigation to be the fourth strongest broker in the LMC commercial risk brokerage markets for property & casualty and FinPro risk and is also considered among the strongest brokers outside of the Big Three for cyber risk.[2021] The remedy will considerably strengthen Gallagher's presence and capabilities in these markets. Gallagher has a broad geographic network, but it relies far more on partner offices than the networks of the Big Three. Outside of the Big Three, Gallagher's network was considered as the most able to compete effectively with the Merged Entity by LMCs that responded to the Commission's market investigation for property & casualty, FinPro and cyber risk types, albeit at a distance to Marsh's network.[2022] The remedy package strengthens Gallagher's geographic footprint globally and particularly in the EEA by adding owned offices and broking personnel serving LMCs in locations that were identified as important for LMCs.

(1680) As will be discussed in the Section on viability, the Commission also considers that the remedy design, while not covering the entire increment, is considerably less complex than a carve-out of WTW's business with LMCs that source their worldwide needs from the EEA in all relevant countries. The current remedy design, consisting of four full country organisations (including risk types for which the Commission did not find concerns) and supplementary assets is significantly simpler and therefore bears less viability risks.

(1681) The remedy design transfers broker expertise and customer relationships (contracts / renewal right and relevant historic data), which will give Gallagher a head start in building a track record serving LMCs. Additionally, LMC related data and data-related capabilities are included within the remedy.[2023] This will build upon Gallagher's existing capabilities concerning LMCs. Today, Gallagher has two central service organisations based in the UK and US, which coordinate global services to LMCs.

(1682) Finally, market test feedback confirmed the suitability of the commercial risk brokerage divestment to remove concerns in all relevant commercial risk brokerage markets. For each of the markets for which the CRB remedy package aims to address concerns, namely the commercial risk brokerage markets for LMCs that source their worldwide needs from the EEA for property & casualty, FinPro and cyber risk types, the commercial risk brokerage markets for non-LMCs for property & casualty risk in the Netherlands and cyber risk in Spain, and the commercial risk brokerage market for aerospace manufacturing and space risk types for all customers, the majority of

2021 Replies to question 26 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty, question 25 of questionnaire Q9 to commercial risk brokerage Customers for FinPro and question 9 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

2022 Replies to question 24 of questionnaire Q7 to commercial risk brokerage Customers for property & casualty, question 23 of questionnaire Q9 to commercial risk brokerage Customers for FinPro and question 23 of questionnaire Q10 to commercial risk brokerage Customers for cyber.

2023 Additionally, for data analytics services provided from centralized teams (which only support a small minority of placements) a transitional services agreement is offered to the purchaser, see Form RM – CR LMC & Cyber, paragraph 101.

customers and competitors responding to the market investigation consider that the Initial Commitments in the hands of a suitable purchaser are suitable to effectively remove competitive concerns.[2024] Additionally, both customers and competitors that responded to the market test considered Gallagher to be the most suitable purchaser for the divestment business relating to commercial risk brokerage.[2025]

(1683) As described in Section 12.3.4, the Final Commitments further improve the scope of the remedy as compared to the Initial Commitments. This therefore further strengthens the conclusion that the remedy package is suitable. Furthermore, as analysed above, the assets included in the Final Commitments complement Gallagher's existing business. Gallagher has an owned presence in close to 30 countries globally today, and serves LMCs to some extent. The remedy strengthens Gallagher's global presence in the countries that were identified as important for EEA LMCs around the world. It also provides Gallagher with considerable market presence with LMCs, by the transfer of customers, which it is lacking today. Finally, the staff serving those customers that is transferred will equip Gallagher with the capabilities, relationships and track record to attract further business from LMCs.

(1684) Therefore, based on the available information and in line with the Commission Notice on Remedies, the Final Commitments in relation to commercial risk brokerage strengthen an existing competitor,[2026] by providing geographic reach, capabilities and a strengthened market position to Gallagher. The remedy addresses the Commission's concerns raised in the market investigation, namely: (i) it eliminates the entirety or a significant proportion of the horizontal overlap in the commercial risk brokerage markets where competitive concerns were identified; (ii) it expands the geographic presence of a tier two broker to cover the jurisdictions considered important by EEA LMCs, allowing Gallagher to compete for these accounts credibly; and (iii) it provides Gallagher with the capabilities, relationships and track record through the transfer of broking personnel to continue serving the LMC customers transferred and attract new LMC business in the future.

(1685) Based on the above, the Commission considers that the Final Commitments remove competition concerns on the markets for commercial risk brokerage for LMCs that source their worldwide needs from the EEA for property & casualty, FinPro and cyber risk types, the commercial risk brokerage markets for non-LMCs for property & casualty risk in the Netherlands and cyber risk in Spain, and the commercial risk brokerage market for aerospace manufacturing and space risk types.

12.3.5.2. Viability of the Final Commitments

(1686) The Commission considers that the commercial risk brokerage divestment business described in the Final Commitments is a viable remedy.

(1687) The divestment business includes WTW's entire commercial risk brokerage country organisations in France, Germany, the Netherlands and Spain, and not only the part of the organisations for the risk types for which the Commission identified competition concerns. As WTW's commercial risk brokerage businesses are integrated businesses covering all risk types, this reduces any carve-outs required and benefits the viability of the remedy. Divesting only individual risk types in each

2024 Replies to question 5 of questionnaire R1 to commercial risk brokerage Customers and to question 4 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

2025 Replies to question 19 of questionnaire R1 to commercial risk brokerage Customers and question 30 of commercial risk and reinsurance brokerage Competitors.

2026 Commission Notice on Remedies, paragraph 22.

country would create additional dependencies of the divestment business on central services rendered by the Merged Entity, and would require to detangle existing organisational structures.

(1688) With respect to the commercial risk brokerage market for LMCs that source their worldwide needs from the EEA for cyber risk, the commercial risk brokerage remedy includes WTW's entire cyber specialty team based in the UK. The team sits within the FinPro division of WTW's commercial risk brokerage business, but functions as a separate business.[2027]

(1689) Finally, with respect to the commercial risk brokerage markets for aerospace manufacturing and space risks, WTW's entire global businesses are divested.

(1690) The commercial risk brokerage divestment business also constitutes a profitable business. In 2019, the commercial risk brokerage divestment business generated a revenue of over USD […] and an EBITDA of over USD […], representing an EBITDA margin of over [a significant percentage].[2028]

(1691) The revenues and EBITDA for each of the four individual country organisations included in the CRB remedy package are shown in the table below.

Table 43: Revenues and EBITDA for the four WTW country organisations included in the CRB remedy package for 2018, 2019 and 2020

Country	Revenue (million USD)			EBITDA (million USD)		
	FY 2018	FY 2019	FY 2020	FY 2018	FY 2019	FY 2020
France	[…]	[…]	[…]	[…]	[…]	[…]
Germany	[…]	[…]	[…]	[…]	[…]	[…]
Netherlands	[…]	[…]	[…]	[…]	[…]	[…]
Spain	[…]	[…]	[…]	[…]	[…]	[…]

Source: Annex B to the Form RM.

(1692) […]. As discussed above, the overall CRB remedy package is profitable and has margins of over [a significant percentage], and the entire package will be divested to one purchaser, *i.e.* Gallagher. This benefits viability, as it will present Gallagher with a sizeable business which offer scale benefits. It will also make Gallagher far more credible to EEA clients than if it were to buy only parts of the package, thereby making it more likely to retain customers and win new customers.

(1693) The Commission notes that part of WTW's personnel in the Spanish organisation left in 2020 to set up a new brokerage company called Deasterra.[2029] However, so far only minimal business has been lost to Deasterra ([a very small percentage] of 2019 GWP for Cyber and [a very small percentage] of 2019 GWP for FinPro).[2030]

(1694) The commercial risk brokerage divestment business only relies on limited central support services, most of which are of a corporate back-office nature. Gallagher, as an existing commercial risk broker, has such services available. Central services used by the commercial risk brokerage business include data and analytics services, accounting and settlement, general administrative services, and operational

2027 Form RM – CR LMC & Cyber, paragraph 51.
2028 Form RM; annex B.
2029 Memorandum with recent developments in the commercial risk broking industry submitted by the Notifying Party on 12 February 2021.
2030 Reply to RFI 44 dated 19 February 2021.

administrative support.[2031] The Final Commitments include a transitional service agreement to support the transitional period required by the purchaser to set up these activities in house. The market test confirmed the suitability of the scope and duration of this transitional service agreement.[2032] For any transitioning that can be considered complex, such as IT services, and therefore can run into delays, the transitional service agreement provision provides that it can be extended on request of the purchaser and with a positive opinion of the monitoring trustee. This therefore mitigates the risk of any delay in the transitioning of critical IT (or other) services.

(1695) The results of the market test support the conclusion that the commercial risk brokerage divestment business is viable. A majority of customers (both LMCs and non-LMCs) and competitors providing an informative response to the Commission's market test consider that the proposed divestment business for commercial risk brokerage will allow the purchaser to compete effectively for customers of their size and geographic footprint.[2033]

(1696) Based on the information provided by Gallagher at this stage of the procedure, the Commission considers it likely that Gallagher is capable of running the divestment business in a viable manner. Gallagher is an existing commercial risk broker, active around the world and across risk types. Gallagher has in excess of 30,000 employees globally. Therefore, Gallagher is expected to have the expertise to run the divestment business for commercial risk brokerage in a viable manner, as well as the scale to successfully integrate it. Furthermore, Gallagher had annual revenues in excess of USD 7 billion in 2020, as well as earnings in excess of USD 800 million. Gallagher is therefore expected to have the financial resources required to run the divestment business for commercial risk brokerage in a viable manner.[2034]

(1697) One concern raised in the market test of the Initial Commitments by customers related to the geographic split of customer contracts between the remedy taker and the Merged Entity. In the Final Commitments, the customer contracts of divested customers include additional geographies: most importantly the US, but also Brazil and, at the option of the purchaser, Singapore or Hong Kong. These additions largely address the concern as is discussed below.

(1698) For customers headquartered in the four countries where country organisations are divested, only for a minority of LMCs will any GWP be retained at all by the Merged Entity. In most cases where GWP is retained, only a modest amount of GWP is retained. The Final Commitments therefore largely solve the issue that was present in the Initial Commitments for these customers. In light of the fact that a majority of customers did not consider such a regional split unworkable (and competitors indicating that it occurs more often), the Commission considers that the Final Commitments address this concern in a proportionate manner.

(1699) Conversely, for customers based outside of these four countries, typically only a modest part of GWP is transferred to the remedy taker, limiting the effects of any

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[2031] Form RM – CR LMC & Cyber, paragraph 110.

[2032] Replies to question 10 of questionnaire R1 to commercial risk brokerage Customers and question 12 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

[2033] Replies to question 6 of questionnaire R1 to commercial risk brokerage Customers and question 5 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

[2034] Gallagher's 2020 annual report, retrieved from https://s28.q4cdn.com/872121257/files/doc_financials/2020/ar/AJG-2020-Annual-Report.PDF. Last accessed on 11 June 2021.

geographic split.[2035] Any viability issues that would occur from customer attrition are therefore not expected to have a significant effect on the viability of the divestment business.

(1700) Finally, the Final Commitments also provided for longer non-compete clauses, further protecting the purchaser from any potential customer attrition as a result of this issue. Additionally, a large majority of customers that responded to the Commission market test indicated that a geographic split of contracts is not unworkable.[2036] The Commission therefore concludes that the split concern raised in the market test has been addressed effectively and proportionally in the Final Commitments.

(1701) The extended durations of the non-compete and non-solicitation clauses for customers and the non-hiring and non-solicit clauses for personnel are in line with the suggested durations received from customer and competitor feedback in the market test.

(1702) Based on the above, the Commission concludes that the commercial risk brokerage divestment business constitutes a viable remedy.

12.3.6. Conclusion on the commitments for commercial risk brokerage

(1703) Based on the assessment above, the Commission concludes that the Final Commitments regarding commercial risk brokerage are sufficient in scope and suitable to remove entirely the significant impediments to effective competition to which the Transaction would otherwise give rise in (i) commercial risk brokerage for LMCs for property & casualty, FinPro and cyber risk types, (ii) commercial risk brokerage for non-LMC for property & casualty risk in the Netherlands and cyber risk in Spain and (iii) commercial risk brokerage for aerospace manufacturing and space risk types, and that therefore the Final Commitments render the Transaction compatible with the internal market and the EEA Agreement with respect to these markets.

12.4. Reinsurance brokerage

12.4.1. Description of the Initial Commitments

(1704) The Initial Commitments for reinsurance brokerage consist of the divestment of WTW's entire reinsurance brokerage activities on global level, consisting of (i) treaty reinsurance brokerage (Willis Re) and (ii) facultative reinsurance brokerage (Global Fac).

(1705) More specifically, the Initial Commitments for reinsurance brokerage comprise:

(a) All Willis Re's legal entities together with related assets and personnel

(b) All licences held by Willis Re's legal entities

(c) A team of approximately […] employees

(d) Transfer of customer contracts for legal entities transferred as part of the reinsurance brokerage remedy, and transfer of renewal rights for contracts part of share legal entities that will be retained by the Notifying Party

(e) All relevant tangible and intangible assets and know-how used exclusively or primarily in WTW's reinsurance brokerage activities.

2035 Reply to RFI 69.

2036 Replies to question 16 of questionnaire R1 to commercial risk brokerage Customers.

(f) Offices leased which are exclusively or primarily related to WTW's reinsurance brokerage activities.

(1706) To maintain the structural effect of the divestment, the Initial Commitments include a non-compete clause of […] for transferred contracts, and a non-compete clause of the longer of […] and the first renewal for transferred renewal rights.

(1707) To preserve the viability and competitiveness of the divestments, the Initial Commitments include an undertaking not to solicit, hire, employ or engage key personnel that transfers as part of the divestment, and an undertaking not to solicit all other personnel that transfers as part of the divestment, both for a period of […].

(1708) For the purchaser of the divestment to be an effective competitor in a short amount of time, the Initial Commitments include a transitional service agreement with a duration of […], which can be extended at the request of the purchaser following a positive opinion from the monitoring trustee.

(1709) The Initial Commitments provide that the purchaser of the divestment for reinsurance brokerage will meet the following criteria:

(a) The purchaser shall be independent and unconnected to the Notifying Party.

(b) The purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the divestment business as a viable and active competitive force.

(c) The acquisition of the divestment business by the purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns, nor give rise to a risk that the implementation of the commitments will be delayed.

(d) The purchaser shall be active in reinsurance brokerage.

(e) The purchaser shall have the licenses in all regions where the divestment business is active, or be able to obtain them in a timely manner.

(f) The purchaser shall have the ability to integrate the personnel that will transfer as part of the divestment business globally, including in cases where no office facilities are transferred.

(1710) The divestment business excludes Willis Re's offices in China and Hong Kong, which make up a very small proportion of WTW's reinsurance brokerage personnel ([a very small percentage]) and revenues ([a very small percentage]).[2037]

(1711) The divestment business excludes WTW's enabling facultative reinsurance placements, which are facultative reinsurance placements on behalf of corporate insureds (rather than insurers) in an integrated transaction with a primary commercial risk placement. Such placements are performed by WTW's commercial risk brokers and not by personnel divested as part of the reinsurance brokerage divestment business. In the Commission's market definition, such services do not fall under facultative reinsurance brokerage, but should be considered part of the services rendered to corporate clients in commercial risk brokerage. Enabling facultative reinsurance placements that fall within the scope of the divestment business for commercial risk brokerage are included in that divestment.

[2037] […]. See Form RM, paragraph 9 and 10.

(1712) The divestment business for reinsurance brokerage represents a GWP of USD […] and a revenue of USD […] in 2019.[2038]

12.4.2. Responses to the market test

(1713) Overall, the results of the market test were positive. The large majority of respondents to the market test considered that the scope of the remedy for reinsurance brokerage is sufficient to address competitive concerns in the markets for treaty and facultative non-life reinsurance brokerage.[2039] The large majority of respondents considered that in the hands of a suitable purchaser, the reinsurance brokerage remedy would form an effective competitor both for treaty and facultative reinsurance brokerage.[2040] Furthermore, a large majority of customers indicated that they would consider the divestment business a credible supplier.[2041]

(1714) As for commercial risk brokerage, the majority of respondents to the market test indicated that transfer of renewal rights form an effective way to transfer business in the reinsurance brokerage sector. However, several indicated that such renewal rights transfers do need to be accompanied by a non-compete clause to protect the viability of the divestment business.[2042]

(1715) The large majority of the respondents to the market test confirmed that the scope of the transitional services agreement proposed in the Initial Commitments with respect to reinsurance brokerage is sufficient. Furthermore, when asked for the appropriate duration for such agreement, customers most commonly indicated that […] would be a suitable duration. For competitors that responded to the market investigation, answers were mixed between […].[2043]

(1716) The large majority of respondents to the market test considered that the non-hiring provisions (for key personnel) and non-solicit provisions (for other personnel) with relation to reinsurance brokerage are suitable to protect the viability and competitiveness of the reinsurance brokerage divestment business. When asked for the appropriate length of such provisions, the majority of respondents indicated that […] would be appropriate. However, in the narrative comments, several competitors point out the significant extent of talent mobility in the industry, and indicated that a longer protection for the divestment business may therefore be necessary.[2044]

(1717) The large majority of respondents to the market test indicated that the type of non-compete provisions proposed in the Initial Commitments are sufficient to protect the competitiveness and viability of the reinsurance brokerage divestment business. When asked for what the appropriate duration for such a non-compete provision would be, both customers and competitors that replied to the market test most commonly indicated […]. Several customers indicated that the non-compete duration should not be unnecessarily long, as choice in the reinsurance brokerage market is

2038 Annex B to the Form RM.

2039 Replies to question 6 of questionnaire R2 to insurers and reinsurers and to question 18 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2040 Replies to question 5 of questionnaire R2 to insurers and reinsurers and to question 19 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2041 Replies to question 4 of questionnaire R2 to insurers and reinsurers.

2042 Replies to question 7 of questionnaire R2 to insurers and reinsurers and to question 20 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2043 Replies to question 10 of questionnaire R2 to insurers and reinsurers and to question 22 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2044 Replies to question 11 of questionnaire R2 to insurers and reinsurers and to question 23 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

limited, and an unnecessarily long non-compete provision would restrict choice further.[2045]

(1718) Several respondents to the market test indicated that Willis Re's China and Hong Kong offices are attractive assets. A significant amount of customers and competitors that responded to the market test indicate that a local asset is required to effectively transact business on behalf of Chinese cedents and with Chinese reinsurance companies. Furthermore, several respondents expect the Chinese reinsurance market, which is small today, to grow in the future.[2046] Despite this, only a minority of respondents consider that inclusion of the China and Hong Kong offices are important to the viability of the reinsurance brokerage divestment business.[2047]

(1719) A large majority of respondents to the market test of the Initial Commitments indicate that the purchaser criteria included in the Initial Commitments are suitable to identify a suitable purchaser for the reinsurance brokerage divestment business.[2048] When asked whether a suitable purchaser should also be active in commercial risk brokerage, only a minority of respondents considered this to be necessary.[2049]

(1720) Furthermore, the majority of respondents to the market test consider that the reinsurance brokerage divestment business is likely to attract a suitable purchaser. When asked which purchasers would be suitable, customers that reply to the market test most commonly named Gallagher.[2050]

12.4.3. The Commission's assessment of the Initial Commitments

(1721) Based on the feedback from the market test on the Initial Commitments concerning reinsurance brokerage, the Commission considers that the Initial Commitments have the appropriate scope to address competitive concerns in the markets for treaty and facultative reinsurance brokerage. However, the market test feedback identified the need for some technical improvements, most notably to the durations of the non-compete clause for customers, and the non-hire and non-solicitation clauses for key personnel and personnel respectively.

12.4.4. Description of the Final Commitments

(1722) Following the result of the market test of the Initial Commitments relating to reinsurance brokerage, the Commission communicated the summary of the observations made by respondents and its assessment thereof to the Parties.

(1723) In order to address the comments made by the Commission as a result of the market test, the Notifying Party submitted the Final Commitments, which contained the following improvements to the Initial Commitments with respect to reinsurance brokerage:

2045 Replies to question 12 of questionnaire R2 to insurers and reinsurers and to question 21 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2046 Replies to question 14 of questionnaire R2 to insurers and reinsurers and to question 26 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2047 Replies to question 13 of questionnaire R2 to insurers and reinsurers and to question 25 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2048 Replies to question 16 of questionnaire R2 to insurers and reinsurers and to question 34 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2049 Replies to question 17 of questionnaire R2 to insurers and reinsurers and to question 35 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2050 Replies to question 19 and 21 of questionnaire R2 to insurers and reinsurers and to question 36 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

(a) The non-compete clause is extended from […] for transferred contracts and the longer of […] and the first renewal for transferred renewal rights.

(b) The undertaking not to solicit, hire, employ or engage key personnel that transfers as part of the divestment, and an undertaking not to solicit all other personnel that transfers as part of the divestment, have both been extended from […].

(c) Provision of incentive packages to key personnel.

(d) Provision of the right to use brand names for a transitional period of […].

(1724) Finally, the Notifying Party commits to divest the reinsurance brokerage divestment business to Gallagher in the Final Commitments.

12.4.5. Assessment of the Final Commitments

12.4.5.1. Removal of competition concerns

(1725) The Final Commitments consist of the Parties committing to divest WTW's entire global treaty and facultative reinsurance brokerage businesses.

(1726) The divestment of the reinsurance brokerage business on the basis set out in the Final Commitments would effectively address all of the Commission's concerns by removing the overlap between the Parties.[2051]

(1727) The vast majority of respondents to the market test did not raise concerns about the scope of the remedies regarding reinsurance brokerage. The main concerns raised concerned the durations of non-compete and non-hiring clauses, which have been addressed in the Final Commitments.[2052]

(1728) The Commission therefore concludes that the Final Commitments are sufficient to remove the competition concerns identified with regard to the markets for treaty and facultative non-life reinsurance brokerage.

12.4.5.2. Viability of the Final Commitments

(1729) The Commission considers that the reinsurance brokerage divestment business is a viable remedy.

(1730) Concerning treaty reinsurance brokerage, the reinsurance brokerage divestment business includes the entirety of Willis Re. Willis Re is largely a stand-alone business, and operates under separate leadership and organisational structure.[2053] The remedy also includes Willis Re's life reinsurance brokerage activities (for which the Commission did not identify competition concerns). These are an integral part of the business, thereby avoiding the need for a carve-out which benefits the viability of the remedy.

(1731) Concerning facultative reinsurance brokerage, the reinsurance brokerage divestment business includes WTW's Global Fac organisation. Global Fac sits within WTW's commercial risk brokerage organisation, but consists of discrete teams only dedicated to facultative reinsurance brokerage.[2054]

[2051] Apart from the exclusions noted above, *i.e.* the China and Hong Kong offices and enabling facultative reinsurance placements.

[2052] Replies to question 6 of questionnaire R2 to insurers and reinsurers and to question 18 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

[2053] Form RM – Reinsurance, paragraph 33.

[2054] Form RM – Reinsurance, paragraph 42.

(1732) Moreover, the reinsurance brokerage divestment business comprises a highly profitable business with revenues of USD […] and an EBITDA of […] in 2020, an EBITDA margin of [a significant percentage].[2055]

(1733) Willis Re and Global Fac […]. In addition, Global Fac uses […].[2056] The purchaser is likely to have such services in-house and a transitional services agreement to support the purchaser for a transitional period, until it has set up such services in-house, is included in the Final Commitments. The market test feedback confirmed that the scope and duration of the transitional service agreement are appropriate.[2057]

(1734) The purchaser of the reinsurance brokerage divestment business, i.e. Gallagher, is already active in treaty and facultative reinsurance brokerage, and so is familiar with the markets. Gallagher's reinsurance brokerage activities (Gallagher Re) span facultative and treaty reinsurance brokerage across a variety of risk types. Furthermore, Gallagher Re has offices in multiple locations globally.[2058] Based on the information provided by Gallagher at this stage of the procedure, the Commission considers that Gallagher is likely to be able to operate the reinsurance brokerage divestment business in a viable manner.

(1735) The market test feedback supports the conclusion that the reinsurance brokerage divestment business is viable. The large majority of respondents considered that in the hands of a suitable purchaser, the reinsurance brokerage remedy would form an effective competitor both for treaty and facultative reinsurance brokerage.[2059] Furthermore, a large majority of customers indicated that they would consider the divestment business a credible supplier.[2060]

(1736) Finally, the feedback of the market test did not suggest that the exclusion of Willis Re's China and Hong Kong offices will have a major impact on the viability of the remedy. While the offices were identified as attractive assets, they only constitute a very small part of the reinsurance brokerage divestment business ([a very small percentage] of personnel and [a very small percentage] of revenues). Only a minority of respondents to the market test considered that inclusion of the China and Hong Kong offices are important to the viability of the reinsurance brokerage divestment business.[2061]

(1737) Based on the above, the Commission concludes that the reinsurance brokerage divestment business constitutes a viable remedy.

12.4.6. Conclusion on the commitments for reinsurance brokerage

(1738) Based on the assessment above, the Commission concludes that the Final Commitments regarding reinsurance brokerage are sufficient in scope and suitable to remove entirely the significant impediments to effective competition to which the Transaction would otherwise give rise in treaty and facultative non-life reinsurance brokerage globally, and that therefore the Final Commitments render the Transaction

2055 Annex B to the Form RM.

2056 Form RM – Reinsurance, paragraphs 39 and 46.

2057 Replies to question 10 of questionnaire R2 to insurers and reinsurers and to question 22 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2058 See https://www.ajg.com/us/insurance/reinsurance/, accessed on 2 June 2021.

2059 Replies to question 5 of questionnaire R2 to insurers and reinsurers and to question 19 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

2060 Replies to question 4 of questionnaire R2 to insurers and reinsurers.

2061 Replies to question 13 of questionnaire R2 to insurers and reinsurers and to question 25 of questionnaire R3 to commercial risk and reinsurance brokerage competitors.

compatible with the internal market and the EEA Agreement with respect to these markets.

12.5. Suitability of Gallagher as a purchaser for the commercial risk brokerage divestment business and the reinsurance brokerage divestment business

(1739) In this Section, the Commission assesses, on a preliminary basis, whether Gallagher could be considered a suitable purchaser of the commercial risk brokerage divestment business and the reinsurance brokerage divestment business (together, the "Gallagher Divestment Business") within the meaning of paragraphs 22 and 23 of the Final Commitments. In this Decision, the Commission does not make a final assessment of whether Gallagher is a suitable purchaser. The final assessment of whether Gallagher is a suitable purchaser will be made separately and after adoption of this Decision, as provided for in paragraph 25 of the Final Commitments, following the submission by the Notifying Party of a fully documented and reasoned proposal.

(1740) The Commission also does not assess whether any agreements between the Notifying Party and Gallagher (including any ancillary agreements) are consistent with this Decision and the Final Commitments, including their objective to bring about a lasting structural change in the market. This assessment will also be made separately and after adoption of the Decision, as provided for in paragraph 25 of the Final Commitments.

(1741) With respect to the agreements between the Notifying Party and Gallagher, the Commission notes that the Notifying Party has signed several agreements with Gallagher. However, those agreements were signed before the Notifying Party submitted the Final Commitments. Amendments may therefore be required following the Commission's review of the agreements during the purchaser approval process.

(1742) The Commission considers that Gallagher appears to be, at the present stage of the proceedings, a suitable purchaser of the Gallagher Divestment Business. As noted in Sections 12.3.5 and 12.4.5, the Commission considers that the complementarity between Gallagher's existing commercial risk brokerage and reinsurance brokerage business and footprint and the divested assets benefits the effectiveness of the Final Commitments. For both reinsurance brokerage and commercial risk brokerage, Gallagher was identified as the most suitable purchaser by both customers and competitors that responded to the Commission's market test.[2062]

(1743) *Prima facie* and subject to further review, Gallagher appears to meet the purchaser criteria set out in paragraph 23 of the Final Commitments:

(a) Gallagher has an existing commercial risk brokerage business and serves large customers for complex risk, as well as an existing reinsurance brokerage business.

(b) As set out in Section 12.3.4, Gallagher has a credible presence in the UK covering the risk types property & casualty, FinPro and cyber.

(c) As set out in Section 12.3.4, Gallagher has an existing international geographic footprint that will be strengthened by the acquisition of the Gallagher Divestment Business.

[2062] Replies to question 19 of questionnaire R1 to commercial risk brokerage Customers, question 21 of questionnaire R2 to reinsurance brokerage Customers, and questions 30 and 41 of questionnaire R3 to commercial risk and reinsurance brokerage Competitors.

(d) Gallagher is likely to have the capacity to absorb personnel of the Gallagher Divestment Business that will transfer without office space, and has previous experience doing so from the acquisition of the divestments made in case M.9196 – *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*. Similarly, Gallagher holds brokerage licenses in various jurisdictions around the world, and is likely to be able to acquire additional ones as needed.

(e) Gallagher, as part of its existing commercial risk brokerage business, has own brokerage platforms and databases to integrate transferred customer data, as well as existing global coordination capabilities. Additionally, Gallagher has an existing commercial risk brokerage business for risk types aerospace manufacturing and space, which will equip it with the necessary claims handling capabilities.

(1744) Gallagher, as an existing player in the commercial risk brokerage and reinsurance brokerage markets, appears, *prima facie*, to have the incentive and ability to maintain and develop the Gallagher Divestment Business as a viable and effective competitive force, subject to further assessment and review of the sales and purchase (and ancillary) agreements.

(1745) While Gallagher, as required in the purchaser criteria set out in paragraph 23 of the Final Commitments, is active in both commercial risk brokerage and reinsurance brokerage today, it has modest market shares in the markets for which assets are included in the Gallagher Divestment Business, namely (i) commercial risk brokerage for LMCs for risk types property & casualty, FinPro and cyber, (ii) commercial risk brokerage for non-LMC for risk type property & casualty in the Netherlands and cyber in Spain, (iii) commercial risk brokerage for risk types aerospace manufacturing and space (iv) treaty reinsurance brokerage and (v) facultative reinsurance brokerage. As such, the sale of the Gallagher Divestment Business to Gallagher is unlikely to cause *prima facie* competition concerns.

(1746) Based on the above, it appears, in particular in light of the positive feedback on the market test, that Gallagher would be *prima facie* a suitable purchaser of the Gallagher Divestment Business. However, without the full assessment of the purchaser and the sale and purchase agreements (and ancillary agreements), the Commission is not in a position at this stage to conclude whether Gallagher would be a suitable purchaser of the Gallagher Divestment Business and whether the Gallagher Divestment Business is sold in a manner that is compliant with the Final Commitments.

12.6. Retirement benefits consulting and pension administration in Germany

12.6.1. Description of the Initial Commitments

(1747) The Initial Commitments for retirement benefits consulting (“RBC”)[2063] and pension administration (“PA”) in Germany consist of the sale of Aon’s entire RBC, PA as well as investment solutions business in Germany. Specifically, the following elements will be included:

[2063] As set out in Section 8.1, the Commission has left open whether the Transaction gives rise to a significant impediment to effective competition on the market for RBC in Germany. This Section will therefore (i) assess whether the remedy would address such concerns if they were to exist and (ii) illustrate that the inclusion of Aon’s German RBC business in the remedy is needed, in any event, to ensure the viability of the divestement business.

(a) […] personnel located across […] offices in Germany and […], of which […] key personnel.

(b) The contracts, agreements, leases, commitments and understandings related to Aon's RBC, PA and investment solutions businesses.

(c) All relevant tangible and intangible assets.

(d) Customer, credit and other records.

(e) Licenses, permits and authorisations.

(1748) To maintain the structural effect of the divestment, the Initial Commitments include a non-compete clause of […] for transferred contracts.

(1749) To preserve the viability and competitiveness of the divestments, the Initial Commitments include an undertaking not to solicit, hire, employ or engage key personnel that transfers as part of the divestment, and an undertaking not to solicit all other personnel that transfers as part of the divestment, both for a period of […].

(1750) For the purchaser of the divestment to be an effective competitor in a short amount of time, the Initial Commitments include a transitional service agreement with a duration of […], which can be extended at the request of the purchaser and following a positive opinion from the monitoring trustee.

(1751) The Initial Commitments provide that the purchaser of the divestment for RBC and PA in Germany will meet the following criteria:

(a) The purchaser shall be independent and unconnected to the Notifying Party.

(b) The purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the divestment business as a viable and active competitive force.

(c) The acquisition of the divestment business by the purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns, nor give rise to a risk that the implementation of the commitments will be delayed.

(d) The purchaser shall be active in RBC and PA with access to PA software comparable to Aon's

(e) The purchaser shall have capacity to absorb Aon's […] team in […].

(f) The purchaser shall have capacity to absorb the Personnel which sits in the same offices space as the personnel to be retained by Aon in Germany.

(1752) The divestment excludes a limited number of international consolidation and actuarial customer contracts that relate to customers for whom the primary relationship sits outside of Germany, under which a limited amount of international consolidation and actuarial work is performed in Germany, which is a small portion of the total international consolidation and actuarial business for those customers. These account for c. [a very small percentage] of Aon's German RBC and PA business.

12.6.2. Responses to the market test

(1753) Overall, the feedback to the market test was positive. A large majority of respondents to the market test indicated that the Initial Commitments concerning RBC and PA in Germany are sufficient to effectively remove competitive concerns.[2064]

(1754) Concerning viability, a large majority of market participants that gave an informative response to the market test of the Initial Commitments, indicated that inclusion of Aon's German rewards and/or health and welfare benefits consulting business (markets for which the Commission did not identify competitive concerns) is not required for the viability of the divestment business.[2065] Furthermore, a large majority of respondents consider that the Initial Commitments include sufficient customers, personnel and support services for the divestment business, in the hands of a suitable purchaser to be an effective competitor in the German RBC and PA markets. In line with this, a large majority of respondents that gave an informative response expect the divestment business to retain its customers.[2066]

(1755) The vast majority of market participants responding to the Commission's market test indicated that the scope of the transitional service agreement offered with the divestment business is sufficient for a purchaser to take up operations effectively. In terms of duration, respondents most commonly indicated that 24 months would be a suitable duration for such a transitional service agreement.[2067]

(1756) Concerning software required to operate the divestment business, a slight majority of respondents indicated that global actuarial consolidation software is not required to effectively compete in the RBC market. Contrarily, a slight majority did consider that pension administration software is required to compete effectively in the PA market. A majority of market participants that provided an informative response to the market test indicated that suppliers typically have their own proprietary systems available.[2068] The large majority of respondents considered that a transitional service agreement would be a suitable means of transferring the required data from Aon's to the purchaser's systems, and respondents most commonly indicated that 24 months would be an appropriate duration for such agreement.[2069]

(1757) A slight majority of market participants that responded to the market investigation consider that the integration of Aon's […] team in […] could pose challenges to a purchaser without a presence in […]. However, the majority of those consider that Aon's support would be sufficient to overcome such difficulties.[2070]

2064 Replies to questions 4 and 5 of questionnaire R4 to retirement benefits and pension administration market participants.

2065 Replies to question 6 of questionnaire R4 to retirement benefits and pension administration market participants. Health and Welfare benefits consulting is an activity that is related to retirement benefits consulting, and is conducted from the same Aon offices in Germany

2066 Replies to questions 7 and 8 of questionnaire R4 to retirement benefits and pension administration market participants.

2067 Replies to question 10 of questionnaire R4 to retirement benefits and pension administration market participants.

2068 Replies to question 11 of questionnaire R4 to retirement benefits and pension administration market participants.

2069 Replies to question 12 of questionnaire R4 to retirement benefits and pension administration market participants.

2070 Replies to question 13 of questionnaire R4 to retirement benefits and pension administration market participants.

(1758) Concerning the non-hire commitment for key personnel and non-solicit commitment for personnel, market participants responding to the market test most commonly answered that an appropriate duration for such clause would be either […] or […]s.[2071] For the non-compete provisions (for customers of the divestment business), market participants responding to the market test most commonly indicated that […] is an appropriate duration.[2072]

(1759) The majority of respondents to the Commission's market test did not consider that temporary sub-leasing of office space by the Notifying Party to the remedy taker would form an implementation risk. However, in the narrative responses some respondents indicate that such period should be restricted in time to avoid any adverse effects on the remedy taker's independence.[2073]

(1760) The large majority of market participants that provided an informative response to the market test indicated that the purchaser criteria are appropriate to identify a suitable purchaser and confirmed that the purchaser should be active in both RBC and PA. In the narrative comments, several indicated the importance of the purchaser both having international presence, as well as experience with the German market.[2074]

12.6.3. The Commission's assessment of the Initial Commitments

(1761) Based on the feedback from the market test on the Initial Commitments concerning RBC and PA, the Commission considers that the Initial Commitments have the appropriate scope to address competitive concerns in the markets for PA in Germany, as well as potential competition concerns in the market for RBC in Germany. However, the market test feedback identified the need for some technical improvements, most notably to the durations of the non-compete clause for customers, and the non-hire and non-solicitation clauses for key personnel and personnel respectively. The market test also raised the points that the period for which the Merged Entity and the remedy taker share offices should be restricted in time, and that a suitable purchaser should have experience in RBC and PA relating to German customers and internationally.

12.6.4. Description of the Final Commitments

(1762) Following the result of the market test of the Initial Commitments relating to RBC and PA, the Commission communicated the summary of the observations made by respondents and its assessment thereof to the Parties.

(1763) In order to address the comments made by the Commission as a result of the market test, the Notifying Party submitted the Final Commitments, which contained the following improvements to the Initial Commitments with respect to RBC and PA in Germany:

(a) The non-compete clause is extended […] for transferred contracts.

2071 Replies to question 14 of questionnaire R4 to retirement benefits and pension administration market participants.

2072 Replies to question 15 of questionnaire R4 to retirement benefits and pension administration market participants.

2073 Replies to question 17 of questionnaire R4 to retirement benefits and pension administration market participants.

2074 Replies to questions 19 and 20 of questionnaire R4 to retirement benefits and pension administration market participants.

(b) The undertaking not to solicit, hire, employ or engage key personnel that transfers as part of the divestment, and an undertaking not to solicit all other personnel that transfers as part of the divestment, have both been extended […].

(c) The purchaser criteria have been extended to include: experience and expertise in both (i) servicing German retirement customers and (ii) providing retirement benefits consulting and pension administration services outside of Germany.

(d) Any sharing of offices between the Notifying Party and the purchaser has been limited to at most […].

(e) Provision of incentive packages to key personnel.

(f) Provision of the right to use brand names for a transitional period of […].

12.6.5. Assessment of the Final Commitments

12.6.5.1. Removal of competition concerns

(1764) The Final Commitments consist of the Parties committing to divest Aon's entire German RBC and PA businesses.

(1765) The divestment of the RBC and PA businesses on the basis set out in the Final Commitments would effectively address all of the Commission's concerns by removing any relevant competitive overlaps between the Parties.

(1766) The large majority of respondents to the market test did not raise concerns about the scope of the remedies regarding RBC or PA. The main concerns raised concerned the durations of non-compete and non-hiring clauses and the purchaser criteria, which have been addressed in the Final Commitments.

(1767) The Commission therefore concludes that the Final Commitments are sufficient to remove the competition concerns identified with regard to the marketfor PA in Germany, as well as potential competition concerns in the market for RBC in Germany.

12.6.5.2. Viability of the Final Commitments

(1768) The Commission considers that the German retirement solutions divestment business is a viable remedy.

(1769) The German retirement solution divestment business constitutes Aon's entire retirement benefits consulting and pension administration businesses. In addition, the divestment business also includes Aon's entire German investment solutions business (a market for which the Commission did not identify competitive concerns), benefiting the viability of the divestment business.

(1770) The Commission left open whether the Transaction gives rise to a significant impediment to effective competition in the RBC market in Germany. However, regardless of whether this is the case, the Commission considers that the inclusion of Aon's German RBC business in the retirement solutions remedy is crucial for its viability for the reasons set out below.

(1771) *First,* the two businesses are entangled and share personnel and a legal entity ([…]). The Notifying Party stressed this aspect when presenting a first remedy concept to the Commission in a meeting on 21 January 2021. In the remedy package for retirement solutions, that consisted of Aon's German RBC and PA businesses, the Notifying Party indicated that it had only included RBC because it was integrated with the PA business.

(1772) *Second,* Aon currently does not offer PA services to clients on a stand-alone basis, but it offers these services only to clients that source other services, primarily RBC services. Aon indicated that for all […] new clients it acquired since 2017, other services were offered in addition to PA, and in particular RBC.[2075] There are currently only […] clients in Germany to which Aon supplies PA services on a stand-alone basis.[2076]

(1773) Based on the above, the Commission considers that any divestment of Aon's PA business should include the RBC business to be viable.

(1774) The German retirement solutions divestment business does not include Aon's rewards and M&A consulting business. These businesses are separate from Aon's RBC and PA businesses and the large majority of respondents to the Commission's market test confirmed that the exclusion does not pose a viability concern.[2077]

(1775) The German retirement solutions divestment business is a profitable business; it generated revenues of EUR […] in the financial year ending 2019 and achieved an EBITDA margin of [a significant percentage] during that period.[2078]

(1776) The German retirement solutions divestment business uses centralised services that are primarily of a general administrative nature, such as purchasing, contract, human resources, finance, compliance and IT. A purchaser would likely already have these functions available, and the Final Commitments provide for a transitional service agreement to allow the purchaser to set up these functions in-house.[2079] Market test feedback confirmed the suitability of the scope and duration of the transitional services agreement.[2080]

(1777) The divestment business does not include Aon's PA software. The market test indicated that it is necessary for the purchaser to have PA software to compete in the German PA market. However, a majority of market participants that provided an informative response to the market test indicated that suppliers typically have their own proprietary systems available.[2081] This has been included as a purchaser criterion in the Final Commitments. Additionally, the large majority of respondents considered that a transitional service agreement would be a suitable means of transferring the required data from Aon's to the purchaser's systems.[2082]

(1778) The German retirement solutions divestment business excludes a number of customer contracts relating to international consolidation and actuarial customers for whom the primary relationship for these business lines sits outside Germany, under which a limited amount of international consolidation and actuarial work is performed in Germany, typically for local subsidiaries of these customers. However, these contracts only concern a very small proportion of Aon's German RBC

2075 Form CO, paragraph 2465.

2076 Form CO, paragraph 2479.

2077 Replies to question 6 of questionnaire R4 to retirement benefits and pension administration market participants.

2078 Form RM Germany RBC and PA, paragraph 76.

2079 Form RM Germany RBC and PA, paragraph 32.

2080 Replies to question 10 of questionnaire R4 to retirement benefits and pension administration market participants.

2081 Replies to question 11 of questionnaire R4 to retirement benefits and pension administration market participants.

2082 Replies to question 12 of questionnaire R4 to retirement benefits and pension administration market participants.

revenues (approximately [a very small percentage]) and do therefore not affect the viability of the divestment business.[2083]

(1779) The German retirement solutions divestment business include a team that is located in […]. In case the purchaser does not have any existing presence in […], Aon offers the following support to the purchaser to transfer the personnel: (i) transferring the […] team to a separate (newly established) […] legal entity and transferring the shares in that entity to the Purchaser; or (ii) assisting the Purchaser in setting up its own legal entity in […] and transferring the […] team to that entity. The majority of respondents to the market test consider that Aon's support would be sufficient to overcome any potential difficulties with the transfer of this team.[2084]

(1780) As the personnel of the German retirement solutions business is located in offices that are also used by other Aon's businesses, the Final Commitments provide for a sub-leasing agreement for a transitional period while the purchaser obtains alternative office space. The majority of respondents to the Commission's market test did not consider that temporary sub-leasing of office space by the Notifying Party to the remedy taker would form an implementation risk.[2085] However, to further limit any such risk, the Final Commitments limit the time of such sub-leasing agreements to […].

(1781) Market test feedback supports the conclusion that the German retirement solutions divestment business is viable. A large majority of respondents consider that the Initial Commitments include sufficient customers, personnel and support services for the divestment business, in the hands of a suitable purchaser to be an effective competitor in the German RBC and PA markets. In line with this, a large majority of respondents that gave an informative response expect the divestment business to retain its customers.[2086]

(1782) Based on the above, the Commission concludes that the German retirement solutions divestment business constitutes a viable remedy.

12.6.6. Conclusion on the commitments for retirement benefits consulting and pension administration in Germany

(1783) Based on the assessment above, the Commission concludes that the Final Commitments regarding RBC and PA in Germany are sufficient in scope and suitable to remove entirely the significant impediments to effective competition to which the Transaction would otherwise give rise in the market for PA in Germany, as well as any potential competition concerns in the market for RBC in Germany, and that therefore the Final Commitments render the Transaction compatible with the internal market and the EEA Agreement with respect to these markets.

13. CONDITIONS AND OBLIGATIONS

(1784) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure

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2083 Form RM Germany RBC and PA, paragraph 32.

2084 Replies to question 13 of questionnaire R4 to retirement benefits and pension administration market participants.

2085 Replies to question 17 of questionnaire R4 to retirement benefits and pension administration market participants.

2086 Replies to questions 7 and 8 of questionnaire R4 to retirement benefits and pension administration market participants.

that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(1785) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(1786) In accordance with the basic distinction described in recital (1784) as regards conditions and obligations, this Decision should be made conditional on the full compliance by the Notifying Party with Section B (including Schedules 1 to 5) of the Final Commitments submitted by the Notifying Party on 12 May 2021 and all other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Final Commitments is attached as an Annex (Annex C) to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Aon plc acquires sole control of Willis Towers Watson Public Limited Company within the meaning of Article 3(1)(b) of the Merger Regulation is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B of Annex C.

Article 3

Aon plc shall comply with the obligations set out in the Sections A, C, D, E, F, G and H of Annex C.

Article 4

This Decision is addressed to:

Aon plc
One Liberty Plaza, 165 Broadway, Suite 3201
New York, NY 10006
United States of America

Done at Brussels, 9.7.2021

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

Annex A: Market shares for large customers in Commercial Risks

Contents

1. INTRODUCTION AND OUTLINE

(1) This Annex to the Commission's Decision presents the analysis of market shares for large multinational customers ("LMCs"). In particular, as discussed in Section 6.1.4.2 and Section 6.2.1 of the Decision, LMCs designate those companies headquartered in the EEA and/or sourcing in this geography at least a significant proportion of their insurance needs, with a global turnover equal to or higher than EUR 1 billion and requiring insurance needs in more than 5 countries. In the meantime, as discussed in section 6.3.1 of the Decision, for those specific risks and LMCs, the Commission considers a global scope for the sourcing of brokerage services by LMCs.

(2) This Annex is structured as follows:

(a) Section 2 presents the Commission's market reconstruction for EEA LMCs carried out in pre-notification and Phase I, and further refined during Phase II. In order to carry out its market reconstruction, the Commission collected customers' data from the Parties and the main third-party brokers listed as competitors by the Notifying Party in the Form CO (referred to as Third-party Brokers in this annex). In total, together with the Parties, the Commission's market reconstruction includes customers' data from 10 brokers.

(b) Section 3 presents the Commission's assessment of the market reconstruction submitted by the Notifying Party in the Reply to the 6(1)(c) Decision and in several submissions in Phase II.

(c) Section 4 presents the Commission's assessment of the market reconstruction submitted by the Notifying Party in Phase I, which considers the Fortune 500 companies headquartered in the EEA.

(3) Throughout this Annex, reference is made to the submissions of an economic nature made by the Notifying Party. These include the following submissions:

(a) Large Customers White Paper, "Competition for 'large' clients in the commercial risk industry", dated 29 October 2020 (also called the 'Wallet' analysis).

(b) Annex 2 of the Notifying Party's Reply to the Article 6(1)(c) Decision, "Commercial risk: market reconstruction for large customers", 11 January 2021;

(c) Notifying Party's submission on Finaccord, "Commercial Risks solutions: submission on Finaccord data", dated 28 January 2021;

(d) Notifying Party's submission "Large clients numerators and updated market share estimates", dated 08 February 2021;

(e) Notifying Party's submission "Reconciliation between data in RFIs 17/33 and Parties' large client market share estimates", dated 10 February 2021;

(f) Notifying Party's submission "Follow-up submission on the Parties large client market share estimates", dated 19 February 2021;

(g) Several replies to Commission's RFIs: Reply to RFI17, Reply to RFI23, Reply to RFI33, Reply to RFI36, Reply to RFI43, Reply to RFI47.

2. THE COMMISSION'S MARKET RECONSTRUCTION

2.1. The Commission's market reconstruction indicates a large combined share of the Parties for large customers

(4) During pre-notification and Phase I, the Notifying Party mentioned that it was not possible to provide market shares for LMCs in commercial risk insurance brokerage. To assess the competitive landscape for LMCs, the Commission therefore carried out a market reconstruction analysis. The Commission collected data on revenues and GWP for large customers (that is, companies with a turnover exceeding EUR 1 billion)[1] from the Parties and from the main third-party brokers listed in the Form CO. The Commission considers that market shares for companies with a turnover exceeding EUR 1 billion is a suitable proxy for market shares for LMCs. In fact, most companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated to have insurance needs in more than 5 countries. Conversely, the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less.[2]

(5) In particular, the Commission requested from Third-party Brokers the following information on each customer (consolidated at the parent company level) for which the broker generated in excess of EUR 500K in revenues for commercial risk overall ("the EUR 500K revenue threshold"), in either 2017, 2018, or 2019:

(a) Customer name, region and country;

(b) Turnover of the customer for 2017, 2018 and 2019, if known;

(c) Revenue from customer for commercial risk overall and per risk type for 2017, 2018 and 2019 per customer in EUR

(d) GWP for commercial risk overall and per risk type for 2017, 2018 and 2019 per customer in EUR.

(e) The risk types covered included: (i) Commercial risk overall, (ii) Aircraft operators, (iii) Aerospace manufacturers, (iv) Property & Casualty (excluding Construction), (v) Energy, (vi) Marine, (vii) FinPro (excluding Cyber), (viii) Credit & Political, (ix) Construction, (x) Cyber, (xi) Space.

(6) The Parties provided the requested customer data in the Reply to RFI 17 ("RFI 17 data") in pre-notification. The customer data was updated in Phase II with the Reply to RFI 33 (see Section 2.2).

(7) In terms of methodology, in order to collect customer data in a consistent way across the Parties and Third-party Brokers, the Commission used a criterion common to all brokers. The Commission therefore considered a revenue threshold of EUR 500K for commercial risk brokerage overall. As discussed in detail in Section 2.2, the Commission considers that the revenue threshold of EUR 500K in commercial risk brokerage allows to have a reliable picture of the market structure for large customers. Nevertheless, as also discussed in that section, a robustness check with an EUR 300K threshold has also been carried out.

(8) As described in the main body of the Decision (see Section 6.1.4.2 for further details), the market for LMCs is relevant for Property & Casualty risk (P&C),

1 For the purposes of the present Annex, large customers are defined as EEA headquartered companies with an annual turnover exceeding EUR 1 billion.

2 Replies to question 1.2 and question 21 of questionnaire Q1 to Customers.

Financial and Professional risk (FinPro), and Cyber risk (Cyber). In particular, LMCs are defined as those companies headquartered in the EEA and/or sourcing in this geography at least a significant proportion of their insurance needs, with a global turnover equal to or higher than EUR 1 billion and requiring insurance needs in more than five countries. For those specific risks and LMCs, the Commission considers a global scope for the sourcing of brokerage services.

(9) As explained in the main body of the Decision (Sections 6.1.2-6.1.3), the Commission considers that the direct channel and captives/risk retention do not belong to the same market as brokerage services.[3] Therefore, The Commission did not include these two channels in its market reconstruction.

(10) The Commission noted the following in relation to the data provided:

(a) One of the Third-party Brokers was not able to indicate the country of incorporation/headquarters of its clients. In order to address this issue, the Commission has taken a conservative approach by assigning these clients to both the global level and the EEA-level.[4] Therefore, the market shares of this broker are overstated in the EEA. However, the Commission notes that this broker was active mainly in Credit & Political risk (C&P) and it does not affect significantly the market shares for large customers in P&C, FinPro, and Cyber.

(b) In some risk types, the Commission noted the presence of negative values for GWP across the period 2017-2019. These negative values are essentially related to (i) cancellations of policies from previous years, (ii) returns of previous extra payments (iii) return payments due to changes in payment schedule and (iv) data entry errors.[5] The Commission treated these negative values as zeros (thus disregarding them) in the analysis. The Parties agreed with this approach in pre-notification and Phase I.[6]

(c) Some brokers provided GWP and/or revenues for a category called "Other", in addition to the risk types listed by the Commission (see paragraph (5)(e)). For example, WTW data lists an unallocated part of the commercial risk. Such items were grouped into "Other" and were excluded from the analysis for particular risk types. The Commission notes that excluding this category "Other" reduces the total GWP placed globally for Commercial Risk by only 8 percent. Therefore, this is unlikely to affect materially the Commission's findings.

(d) As mentioned by WTW (see Annex 3 of the Reply to RFI 17), WTW records turnover data at the subsidiary level (and not at the parent group level). WTW has attempted to aggregate the turnover of all subsidiaries belonging to the same parent group together. However, around 60% of WTW's EEA revenues are generated from customers that do not have a global client ID number

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3 See Sections 6.1.2-6.1.3 of the main body of the Decision for the assessment of the arguments of the Notifying Party on the inclusion of the direct channel and captives in the product market (Notifying Party's submission called "RFI 17 – Comments – 201022", submitted on 22 October 2020 as part of its Reply to RFI 17; Reply to the 6(1)(c) decision, paragraph 147).

4 In practice, the entire globally placed Gross Written Premium (GWP) of clients of this third-party broker is taken into account for the analyses at both the EEA level and global level.

5 Reply to follow up questions on RFI 17, dated 13/11/2020. Reply to RFI36.

6 Reply to follow up questions to RFI 17, dated 13/11/2020. The Commission notes that in the context of the customer data provided in the Replies to RFI 17 and to RFI 33, the impact of these negative values is limited, as pointed by the Parties in their submission Reply to RFI 36, paragraph 2.10 for Aon and paragraph 4.8 for WTW.

linking subsidiary companies with their respective parent company (see Annex 4 of the Reply to RFI 17, dated 15 October 2020). As a result, it was not possible for WTW to aggregate a substantial part of the revenues at the parent company level. Therefore, the Commission considers that the market share of WTW in the market reconstruction is likely understated (see also Section 2.2.5).

(e) Finally, for the risk type aerospace manufacturing, the data provided by Aon and some Third-party Brokers did not distinguish between the market for aircraft operators and the market for aerospace manufacturing, but only provided an aggregated view including both markets. However, this does not affect the Commission's analysis since no market for LMCs is defined for aerospace manufacturing.

(11) As regards the scope of the Commission's market reconstruction, the total global GWP in commercial risk for large customers collected from the above-mentioned brokers was compared to the corresponding figure collected from all other brokers approached during the course of the Commission's market investigation. Since the respondents in the market investigation did not make a distinction between large customers headquartered in the EEA and in other geographies, the comparison is made by considering all large customers in the Commission's market reconstruction (that is, independently of their location). The results indicate that these additional brokers play a minor role and almost do not serve LMCs. In particular, only a small number of LMCs were served by such brokers, and adding these other brokers would therefore increase the market size of commercial risk between 0.81% and 1.44%, depending on the year considered (1.24% across all years).[7] On this basis, the Commission concludes that the market reconstruction is comprehensive and does not suffer from potential biases due to omitted data.

(12) Table 1 below reports the market shares in 2019 in GWP for the markets for the provision of risk insurance brokerage services to large EEA-customers in P&C, FinPro, and Cyber. As mentioned in paragraph (6), the customer data submitted in pre-notification (RFI 17) was updated in Phase II with the Reply to RFI 33. As discussed in more details in Section 2.2, the Commission requested from the Parties in Phase II additional data covering all their customers (that is, independently of the revenue threshold of EUR 500K in commercial risks brokerage). In their Reply to RFI 33, the Parties also made additional updates on the customer data submitted in the Reply to RFI 17. Table 1 reports both the market shares based on the data provided in pre-notification (Reply to RFI 17) and in Phase II (Reply to RFI 33).

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[7] One broker only provided revenues for its large customers, but not the corresponding GWP. The Commission considered this broker by supplementing the figures. In particular, the revenues in every year were divided by a factor of […] – which corresponds to the yield for very large customers submitted in Fig. 24 of the Parties' memorandum on large customers.

Table 1. Market shares for EEA LMCs (2019, GWP)

Risks	Data source	Aon	WTW	Combined	3rd broker	4th broker	Other brokers combined
Cyber	RFI 17	[60-70]%	[5-10]%	**[60-70]%**	[30-40]%	[0-5]%	[0-5]%
	RFI 33	[60-70]%	[5-10]%	**[70-80]%**	[20-30]%	[0-5]%	[0-5]%
FinPro	RFI 17	[40-50]%	[5-10]%	**[50-60]%**	[30-40]%	[5-10]%	[0-5]%
	RFI 33	[50-60]%	[5-10]%	**[50-60]%**	[30-40]%	[0-5]%	[0-5]%
Property & casualty	RFI 17	[40-50]%	[20-30]%	**[60-70]%**	[20-30]%	[5-10]%	[0-5]%
	RFI 33	[50-60]%	[10-20]%	**[70-80]%**	[20-30]%	[0-5]%	[0-5]%

Source: Commission's analysis of data submitted by the Parties (RFI 17, RFI 33) and third-party brokers. Results are similar for 2017 and 2018 (the analysis for 2017 and 2019 was feasible only with the RFI 17 data; data for 2017 and 2018 were not provided in the Reply to RFI 33).

2.2. The critiques of the Notifying Party do not undermine the robustness of the Commission's market reconstruction

(13) In Phase II, the Commission carried out additional analyses to assess the robustness of its market reconstruction by taking into account the comments made by the Notifying Party in different submissions. These additional analyses confirm the robustness of the Commission's market reconstruction.

(14) The Commission describes below its assessment of the critiques made by the Notifying Party. In particular, the Commission collected additional data and carried out the following sensitivity analyses:

(a) First, the Commission did not identify any material issues with the data provided by third-party brokers (Section 2.2.1).

(b) Second, the 6(1)(c) market reconstruction was carried out based on updated data from the Parties (provided in the Reply to RFI 33, "RFI 33 data"). Based on this data, the Commission considers that the market reconstruction using the EUR 500K revenue threshold for commercial risk brokerage allows to have a representative picture of the market structure for large customers in the EEA (Section 2.2.2).

(c) Third, the Commission's analysis confirms the robustness of its market reconstruction to a lower revenue threshold, of EUR 300K for commercial risk brokerage revenue (Section 2.2.3).

(d) Fourth, more generally, the Commission assessed the potential bias due to the use of a revenue threshold to collect data for large customers, and adjusted the market shares for large customers in the EEA accordingly. This analysis also confirms the robustness of the Commission's market reconstruction (Section 2.2.4).

(e) Fifth, the Commission's analysis of additional customer data provided by WTW in the context of the remedy proposal shows that the market reconstruction actually understates the strength of WTW for large customers in the EEA (Section 2.2.5).

2.2.1. The critique of the Notifying Party on the quality of the data provided by Third-party Brokers is not justified

(15) As regards the quality of the data provided from Third-party Brokers, the Notifying Party mentions that the Commission's market reconstruction is unlikely to lead to accurate results vis-à-vis competitors due to data-processing issues. In particular, according to the Notifying Party:[8]

(a) Third-party Brokers were given only a few working days and at the same time were asked to reply to a list of other qualitative and quantitative questions; the Notifying Party considers that Third-party Brokers did not respond fully and comprehensively to the Commission's request.

(b) Third-party Brokers had no incentives to raise potential issues with their data in order to avoid additional data-processing work.

(16) However, the Commission notes that the data collection exercise from Third-party Brokers started in pre-notification and continued during Phase I.[9] After sending the data request to Third-party Brokers, the Commission engaged with all of them in several email exchanges to verify the accuracy of the data provided and addressed in detail all methodological questions that the Third-party Brokers raised.[10] Furthermore, most of the Third-party Brokers requested an extension of the deadline in order to provide all requested data. Overall, the Commission did not notice any material issue with the data from Third-party Brokers used in the market reconstruction.

(17) The Notifying Party also mentions that the response rate to the Commission's data request should be poor.[11] However, the Commission notes that that all Third-parties Brokers contacted responded to the Commission's data request.

(18) In the Notifying Party's view, the responses from Third-party Brokers would not be complete and comprehensive, in particular due to potential issues in aggregating the customers' data at the level of the global-parent company, which would overstate the combined position of the Parties.[12] However, the Commission notes that none of the contacted Third-party Brokers mentioned issues relating to the aggregation of records in their customer databases. The fact that Third-party Brokers did not indicate any significant hurdle to collect the data for customers generating sales above EUR500K in commercial risk brokerage can actually be explained by their limited presence in the provision of insurance brokerage to large customers, as compared to Aon, WTW, and Marsh. In contrast, as mentioned in paragraph (10)(d), WTW faced significant issues in aggregating turnover of all subsidiaries belonging to the same parent group together. Therefore, contrary to the Notifying Party's view, the Commission considers that the market share of WTW in the market reconstruction is likely understated (see also Section 2.2.5).

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8 Reply to the 6(1)(c) Decision, paragraph 147.

9 The Commission notes that the examples given by the Parties in footnotes 132 and 133 of the Reply to the 6(1)(c) Decision cannot serve as basis for the critique of the Commission's approach. Question 5 of the market investigation questionnaire was not a basis for collection of the relevant data for the market reconstruction exercise. This question only asked for additional information for other third party brokers not considered in the market reconstruction (see paragraph (11)).

10 See, amongst others, documents 10583, 10517, 10422, 10408, 10438, 10439, 10613 and 10412.

11 Notifying Party's submission called "RFI 17 – Comments – 201022", submitted on 22 October 2020 as part of its Reply to RFI17.

12 Notifying Party's submission called "RFI 17 – Comments – 201022", submitted on 22 October 2020 as part of its Reply to RFI17. Reply to the 6(1)(c) Decision, paragraph 147.

(19) The Commission also notes that according to Article 14 of the Merger Regulation, the Commission may impose fines where the undertaking concerned intentionally or negligently supplies incorrect or misleading information in response to a Request for Information. This applies to the Parties as well as Third-party Brokers.

(20) Based on the above, the Commission considers that the Notifying Party's critique on the lack of reliability of the data from Third-party Brokers is not justified.

2.2.2. The Commission's market reconstruction is representative to assess the market structure for large customers

(21) In terms of methodology, the Notifying Party mentions that there is a mis-match between the large customers captured in the market reconstruction and the definition of LMCs applied in the 6(1)(c) Decision.[13] In particular, according to the Notifying Party, the market reconstruction is designed to capture data on large accounts with individual brokers (due to the focus on customers generating more than EUR 500K revenues with a broker in commercial risk brokerage per year) rather than large customers, and commercial risk broker revenues from client accounts are not well correlated with client turnover.[14]

(22) According to the Notifying Party, the commercial risk brokerage revenue generated by customers is not a good proxy for large customers since:[15,16]

(a) [A high percentage] of Aon's large customers generated less than EUR 100K in revenue with Aon in 2019. In contrast, only [a small percentage] of customers generated more than EUR 500K EUR in revenue in 2019;

(b) [A significant percentage] of WTW's large customers generated less than EUR 100K in revenue with WTW in 2019. In contrast, only [a small percentage] of customers generated more than EUR 500K in revenue in 2019.

(23) The Commission disagrees with the Notifying Party for the following reasons, and considers that the market reconstruction provides a reliable picture of the market structure for the provision of commercial risk brokerage to large customers.

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13 In the 6(1)(c) Decision and in the main body of the Decision, the Commission used the cumulative criteria of (i) having risks to be insured in more than 5 countries, and (ii) a worldwide turnover of more than EUR 1 billion as proxies for EEA LMCs.

14 Reply to the 6(1)(c) Decision, paragraph 147 and paragraphs 150-154. See also Notifying Party's submission called "RFI 17 – Comments – 201022", submitted on 22 October 2020 as part of its Reply to RFI17. See also the Notifying Party's submission "Large clients numerators and updated market share estimates", dated 08 February 2021, paragraphs 2.3-2.5.

15 Reply to RFI 33, in particular: "RFI33 – Methodology note", dated 26 January 2021, Figure 1 for Aon, and "EC RFI 33 – WTW", dated 26 January 2021, Figure 1 for WTW.

16 The argument made in the Reply to RFI33 is based on updated datasets for customers. In the Reply to the 6(1)(c) Decision, paragraph 151, the Notifying Party made a similar argument based on customers data provided in the Reply to RFI17, mentioning that: "*[a high percentage] of Aon's "large" customers (as defined by the Commission) do not meet the EUR 0.5 million turnover threshold and are therefore not included in the Commission's market reconstruction. These customers account for approximately [a significant percentage] of GWP placed by Aon's 'large' customers. Conversely, approximately [a significant percentage] of Aon's GWP captured by the criteria specified by the Commission in its RFI 17 request is attributable to customers that are not 'large' as defined in the Decision. Similarly, it is estimated that [a high percentage] of WTW's "large" customers (as defined by the Commission) do not meet the EUR 0.5 million turnover threshold. Those customers account for approximately [a significant percentage] of the GWP placed by WTW's 'large' customers in 2019. Moreover, approximately [a small percentage] of WTW's GWP captured by the criteria specified by the Commission in its RFI 17 request is attributable to 'small' clients (less than EUR 1 billion in turnover).*"

(24) First, as regards the geographical needs of LMCs defined in the Decision (that is, having insurance needs in more than five countries), the Commission notes that the Parties are not able to identify the geographical coverage for insurance needs for their large customers.[17] Therefore, it is also not possible for the Commission to capture such geographical scope of insurance needs given the lack of data available. Nevertheless, despite this data limitation, both the Commission and the Notifying Party (in its own market reconstruction, see Section 3) consider that such data limitation does not prevent to carry out a reliable market reconstruction for large customers.

(25) In particular, most companies responding to the market investigation with a turnover exceeding EUR 1 billion indicated to have insurance needs in more than 5 countries. Conversely, the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less. On that basis, the Commission considers that market shares for large customers (that is, companies with a turnover exceeding EUR 1 billion) is a reliable proxy for market shares for LMCs (that is, companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries).[18]

(26) Second, the Commission notes that using a revenue threshold approach was necessary to collect data that are consistent across the Parties and the Third-party Brokers, on the basis of an objective criterion. As acknowledged by the Notifying Party,[19] getting turnover for each customer in a systematic way is challenging and requires significant effort and resources. Therefore, asking Third-party Brokers to identify their large customers based on the EUR 1 billion turnover threshold for each of their customers would not be feasible.

(27) Third, whilst occurrences cannot be excluded where a LMCs only place a small GWP, there is generally a high degree of correlation between large accounts and large customers, allowing to have a reliable picture of the market structure for large customers. As discussed below in more details, the Commission has refined its market reconstruction during the Phase II investigation by collecting additional data, and the analysis shows that customers generating more than EUR 500K revenue in commercial risk brokerage allows to capture a high proportion of the GWP placed by large customers (almost [a high percentage] for Aon and almost [a high percentage] for WTW). In contrast, the Notifying Party's analysis (see paragraph (22) above) is carried out in terms of count. Since market shares are calculated in terms of GWP, the Commission considers that its approach is more reliable than the approach of the Notifying Party.

(28) In RFI 33, dated 25 January 2021, the Commission asked the Parties to expand the market reconstruction data collected during pre-notification in RFI 17 (and used subsequently in the 6(1)(c) Decision). In particular, RFI 33 asked the Parties to include the turnover, commercial risk brokerage revenues, GWP (overall for commercial risk brokerage and by segment), and location of customers, for each of their customers in 2017, 2018 or 2019, and, unlike RFI 17, not only for customers generating more than EUR 500K revenue in commercial risk brokerage. To summarize, the data submitted in the Reply to RFI 33 allows to capture all customers

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17 Reply to the 6(1)(c) Decision, Annex 2, "Commercial risk: market reconstruction for large customers", dated 11 January 2021, for example paragraph 2.16 and paragraph 3.2.

18 Replies to question 1.2 and question 21 of questionnaire Q1 to Customers.

19 Reply to RFI 17, Annex 1 and Annex 4.

of the Parties and is therefore more comprehensive than the data submitted in the Reply to RFI 17.[20]

(29) Similar to the Parties, the Commission used the data provided in RFI 33 ("RFI 33 data") to assess the relation between large customers in terms of GWP and the level of revenues generated by these customers with brokers. However, in contrast to the Parties, instead of focusing on the count of large customers (see paragraph (22) above), the Commission considered the GWP of large customers and assessed the distribution of large customers' GWP across various revenue categories. The Commission considers that an analysis in terms of GWP is more relevant than the count analysis provided by the Parties since market shares are measured in terms of GWP.

(30) Figure 1 (for Aon) and Figure 2 (for WTW) show two clear patterns:

(a) The higher is the revenue generated in commercial risk brokerage from a set of customers, the higher is the share of the GWP of the large customers captured in the revenue category. For example, in Aon's data, considering customers generating more than EUR 1 billion revenue allows to capture more than [a significant percentage] of the GWP of large customers, while only [a small percenatge] approximately of the GWP of non-large customers is captured. A similar consideration applies to WTW data.

(b) The lower is the revenue generated in commercial risk brokerage from a set of customers, the higher is the share of the GWP of the non-large customers captured in the revenue category.[21] For example, in Aon's data, considering customers generating less than EUR 50k revenue allows to capture approximately [a significant percentage] of the GWP of non-large customers, while less than approximately [a very small percentage] of the GWP of large customers is captured. A similar consideration applies to WTW data.

(31) Based on the above analysis, the Commission concludes that there is a robust relation between the level of revenues generated and the GWP of large customers. In other words, focusing on customers generating high revenues allows to capture a large share of the GWP from large customers, therefore to provide a reliable picture of the market structure for large customers.

Figure 1: […]

[…]

Source: Commission's analysis based on RFI 33 data

Figure 2: […]

[…]

Source: Commission's analysis based on RFI 33 data

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20 In addition, Aon's advisors increased the proportion of customers covered form [a high percentage] to [a high percentage] of revenues in the dataset and relied on a more comprehensive external database (from Dun & Bradstreet) to identify turnover of the customers (Reply to RFI 33, Annex 2, paragraph 2.4 and footnote 11). WTW's advisors also performed additional manual cleaning of the datasets, in light of submissions to other competition authorities (Reply to RFI 33, Annex 5, footnote 1).

21 The Commission notes that the labels on the x–axis represent the upper bound of revenue categories in the increments of EUR 50K. For example, the first bar represents the revenue category of EUR 0-50K, the second bar EUR 50K–100k. The Commission also notes that the spike in of both bars in the category above EUR 1billion is expected since this constitutes a residual category.

(32) As regards the specific revenue threshold of EUR 500K, the Commission also used the RFI 33 data to assess its representativeness for the GWP of large customers. Figure 3 (for Aon) and Figure 4 (for WTW) below show the proportion of the GWP of large customers that is captured when a particular revenue threshold is chosen.

(a) For example, in Figure 3, choosing a revenue threshold of EUR 100K and considering all customers above this revenue threshold (represented by the third bar in Figure 3) would result in capturing of [a very high percentage] of large customers GWP. However, such revenue threshold would also capture almost [a high percentage] of the GWP of non-large customers.

(b) By considering the revenue threshold of EUR 500K, as used in the market reconstruction, the Commission's analysis captures a high proportion of the GWP placed by large customers: [a high percentage] of the GWP placed by LMCs for Aon and [a high percentage] for WTW.[22] Moreover, the threshold of EUR 500K also allows to mitigate the impact of non-large customers, by decreasing the proportion of their GWP captured: less than [a significant percentage] for Aon and around [a significant percentage] for WTW. Given the high share of the captured GWP for large customers and the limited share of the captured GWP for non-large customers, the Commission considers that its market reconstruction is a reliable approximation of the market structure for the large customers. In addition, the Commission has also further refined its market reconstruction with some adjustments allowing to take into account any potential bias arising from the GWP of non-large customers captured with the EUR 500K threshold (see Section 2.2.4).

(33) Based on the above, the Commission finds that considering customers generating more than EUR 500K revenue in commercial risk brokerage provides a reliable picture of the market structure and market shares for large customers since it allows to capture a large share (almost [a high percentage]) of the GWP placed by large customers for Aon and a large share (almost [a high percentage]) for WTW.

Figure 3: […]

[…]

Source: Commission's analysis of RFI 33 data

Figure 4: […]

[…]

Source: Commission's analysis of RFI 33 data

2.2.3. The Commission's market reconstruction is robust to alternative revenue thresholds and to the critique of the Notifying Party on large customers splitting their requirements among brokers

(34) The Notifying Party claimed that clients splitting their broking requirements between several brokers would be under-represented in the Commission's market reconstruction. According to the Notifying Party, compared to large brokers, smaller

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22 A similar result can be inferred from the Reply to the 6(1)(c) Decision, paragraph 151. According to the Notifying Party, [a significant percentage] of the GWP of large customers for Aon and [a significant percentage] for WTW are not captured by the EUR 500K revenue threshold, based on customer data provided in the Reply to RFI 17. As a consequence, this implies that [a high percentage] of the large customers' GWP of Aon and [a high percentage] for WTW are included in the Commission's market reconstruction carried out in the 6(1)(c) Decision.

brokers would generate a greater proportion of their revenues from clients that spend less than EUR 500K with them. Because these revenues and the associated GWP are not captured in the Commission's market reconstruction, the market shares would understate the shares of competitors (in particular, smaller competitors) and overstate the Parties' shares.[23]

(35) The Commission disagrees with the Notifying Party for the following reasons:

(36) First, the Commission notes that the Notifying Party did not explain why large customers splitting their broking requirements would be more prevalent in the case of small rather than large brokers. The Commission considers that, if large customers split their brokerage needs independently of the identity of the broker, then the split of broking requirements by large customers should not create any bias against the Parties.

(37) Second, the Commission carried out a robustness analysis by decreasing the revenue threshold to EUR 300K. If the Commission's market reconstruction omitted a significant portion of large customers that split their broking needs, decreasing the threshold should result in a significant increase in the market share of Third-party Brokers and a significant decrease in the market share of the Parties. In contrast, if the splitting of broking needs is independent of the identity of the broker or if the splitting of broking needs is not important for large customers in general, only a small change should be observed in the market shares of competitors. As discussed below, using a EUR 300K revenue threshold leads to market shares that are similar to the market reconstruction with the EUR 500K revenue threshold. This finding indicates that the Notifying Party's critique on large customers splitting their requirement among brokers does not affect the market shares from the Commission's market reconstruction.

(38) To collect information on the GWP of customers generating in excess of EUR 300K in commercial risk brokerage revenues with brokers, the Commission relied on the RFI 33 data for the Parties. For Aon, such information was readily available. For WTW, entries for clients below the revenue threshold of EUR 500K did not include information on the headquarters' location of the listed clients. The Commission has therefore asked to WTW in RFI 40 to supplement the information on the headquarter location of clients generating revenue between EUR 300K and 500K.

(39) In addition, the Commission has collected additional data on GWP from a major Tier-2 broker for all its customers generating in excess of EUR 300K in revenues in either 2017, 2018 or 2019. This data was also used for all other Tier-2 brokers captured in the market reconstruction to extrapolate the increase in the GWP of large customers when the revenue threshold was decreased from EUR 500K to 300K. In essence, the Commission has compared the GWP based on the EUR 300K revenue threshold to the GWP based on the EUR 500K revenue threshold. A ratio of the two GWP figures was calculated for each risk type/year combination.[24] For each of the remaining Tier-2 brokers, the ratios were used to scale up the original GWP (that is, with the EUR 500K threshold). For these Tier-2 brokers, the scaled-up GWP figures are then the estimated (extrapolated) GWPs corresponding to the EUR 300K revenue threshold.

23 Reply to the 6(1)(c) Decision, paragraph 147. See also Notifying Party's submission called "RFI 17 – Comments – 201022", submitted on 22 October 2020 as part of its Reply to RFI17.

24 For example, separate ratios would be calculated for the P&C segment in the EEA in 2019, 2018, and 2017. A similar consideration applies for FinPro and Cyber.

(40) As regards the third Tier-1 broker, the Commission used a similar methodology, but based on Aon's data instead. Given the size of this third Tier-1 broker, to extrapolate its GWP corresponding to a revenue-threshold of EUR 300K, the Commission considered that Aon's data would be more representative of its commercial risk brokerage activities than the data from a Tier-2 broker.

(41) Table 2 below compares the markets shares for EEA-based large customers with a revenue threshold of EUR 300K and with a revenue threshold of EUR 500K. The results show that the market shares remain similar for Cyber, FinPro, and P&C for EEA-based large customers.

(42) Based on the above, the Commission considers that its market reconstruction is robust: (i) to the critique of the Notifying Party that large customers splitting their risk between brokers would overestimate the Parties' position, and (ii) to an alternative revenue-threshold more generally.

Table 2: Comparison of market shares for large multinational customers, EUR 300K and EUR 500K revenue-threshold in commercial risk brokerage (EEA, 2019, GWP)

Risks	CRB revenue treshold	Aon	WTW	Combined	3rd broker	4th broker	Other brokers combined
Cyber	EUR 300K	[60-70]%	[5-10]%	**[70-80]%**	[20-30]	[0-5]%	[0-5]%
	EUR 500K	[60-70]%	[5-10]%	**[70-80]%**	[20-30]	[0-5]%	[0-5]%
FinPro	EUR 300K	[40-50]%	[5-10]%	**[40-50]%**	[20-30]%	[10-20]%	[5-10]%
	EUR 500K	[50-60]%	[5-10]%	**[50-60]%**	[30-40]%	[0-5]%	[0-5]%
Property & casualty	EUR 300K	[40-50]%	[10-20]%	**[60-70]%**	[20-30]%	[5-10]%	[0-5]%
	EUR 500K	[50-60]%	[10-20]%	**[70-80]%**	[20-30]%	[0-5]%	[0-5]%

Source: Commission's analysis of RFI 33 and third-party data.

2.2.4. The Commission's market reconstruction is robust to a potential bias due to the (limited) GWP of non-large customers captured with the revenue-threshold approach and to the (limited) GWP of large customers not captured below the revenue-threshold

(43) As discussed above (see paragraph (32)), the Commission's market reconstruction with a EUR 500K revenue threshold captures a large proportion of the GWP of large customers. However, the Commission also acknowledges that a methodology based on a revenue-threshold may also lead to two types of errors:[25]

[25] The Notifying Party mentions a similar argument in the Reply to the 6(1)(c) Decision, paragraphs 151. See also footnote 16.

(a) Part of the GWP captured above the EUR 500K revenue threshold can correspond to non-large customers;

(b) Part of the GWP not captured, that is, below the EUR 500K revenue threshold, can correspond to large customers.

(44) As discussed in more details below, the Commission carried out an additional sensitivity analysis to quantify the extent of the two types of errors and adjusted the GWP appropriately. Based on Aon and WTW data provided in the Reply to RFI 33, the Commission compared the GWP corresponding to customers generating more than EUR 500K revenue with the GWP corresponding to their large customers. This comparison allowed to derive adjustment factors allowing to adjust the GWP for customers generating more than EUR 500K revenue in order to recover the GWP corresponding to large customers.

(45) This analysis shows that the Commission's market reconstruction based on a EUR 500K revenue threshold leads (in the aggregate) to market shares which are similar to market shares where these two types of errors are taken into account. The Commission notes that the Notifying Party agrees with the principle of considering market shares at an aggregate level: "*This is because the primary concern when estimating numerators for market shares is not whether an individual company has been correctly or incorrectly identified, but rather whether in aggregate the volume of GWP captured through the exercise is correct and not biased in a way that would mis-state the Parties' market shares*".[26]

(46) Therefore, the Commission considers that its market reconstruction is robust to a potential bias due to these two type of errors. In particular, the Commission notes that the amount of GWP of non-large customers captured above the EUR 500K revenue threshold is limited, and the amount of GWP of large customers not captured below the EUR 500K revenue threshold is limited as well.

(47) In terms of methodology, to measure the extent of any potential bias due to the two issues discussed above, the Commission used Aon's and WTW's customer data provided in the Reply to RFI 33. In particular, this additional sensitivity analysis requires three pieces of information: (i) the revenue generated for each customer, (ii) the GWP for each customer, and (iii) the turnover for each customer. In both WTW and Aon data, the turnover information was available for 2019 only.

(48) However, in WTW's data, information on the headquarter of customers was not provided for customers generating less the EUR 500K revenue, and the additional data collected in the context of RFI 40 was limited to customers with sales between EUR 300K and EUR 500K revenue (see paragraph (38)). Given that information on the headquarter of customers was only partial in WTW's data, the additional sensitivity analysis for market shares was only possible by covering all large customers, that is, independently of their locations. While it was not possible to carry out such analysis for large customers located specifically in the EEA, the Commission considers that there is no reason why the finding of a lack of bias due to the two errors discussed above would be different for EEA-based large customers.

(49) Based on the Parties' data provided in the Reply to RFI 33, the Commission has quantified, per risk type, the exact bias due to the two types of errors discussed above (see paragraphs (43)-(44)). This quantification allows computing an adjustment factor, which is applied to the observed GWP for customers with revenues above

26 Reply to RFI 43, introductory remarks.

EUR 500K in order to obtain the GWP for large customers (GWP of customers with turnover in excess of EUR 1 billion). Table 3 provides an example of the quantification for the "commercial risks overall" category with Aon data. A similar methodology is applied to WTW's customers' data.

Table 3: […]

	[A]	[B]	[C]	[D]
	GWP of non-large customers	GWP of large customers	Share large within the specific category of revenue	Share large across the two revenue categories
[1] above 500k	[…]	[…]	[…]	[…]
[2] below 500k	[…]	[…]	[…]	[…]
True GWP for large customers	[…]	[B][1]+[B][2]		
Observed GWP	[…]	[A][1]+[B][1]		
	[…]			
GWP of large in > 500 revenue category (observed * share large in the > 500K category)	[…]	([A][1]+[B][1])*[C][1]		
Share of GWP for large customers in > 500 revenue cat	[…]	[D][1]		
True large GWP from observed GWP	[…]	([A][1]+[B][1])*[C][1]/[D][1]		
Therefore, the adjustment factor is	[…]	[C][1]/[D][1]		

Source: Commission's analysis of RFI 33 data.

(50) The adjustment factor to obtain the GWP of large customers from the observed GWP of customers with more than EUR 500K sales can be larger than 1 (scaling up) or smaller than 1 (scaling down), depending on two parameters:

(a) The proportion of large customers' GWP (correctly) captured when considering customers generating more than EUR 500K sales. For example, in Table 3, [a high percentage] of the GWP of large customers in commercial risk brokerage is captured when considering customers generating more than EUR 500K revenue in commercial risk brokerage (cell D1);

(b) The proportion of non-large customers' GWP (incorrectly) captured when considering customers generating more than EUR 500K sales. For example, in Table 3, when considering customers generating more than EUR 500K revenue in commercial risk brokerage, [a high percentage] of the GWP captured correspond to large customers (cell C1), the remaining [a small percentage] corresponding to non-large customers.

(c) Table 3 above illustrates the computation of the adjustment factors based on Aon's data for commercial risk brokerage overall. A similar calculation is carried out for each risk type (Cyber, FinPro, P&C). A similar methodology is applied to the WTW customers' data.

(51) As regards the Third-party Brokers captured in the market reconstruction, since the collection of this data at such level of granularity was not feasible, the Commission applied the bias adjustment factors calculated from Aon and WTW data in the following way:

(a) Aon's adjustment factors are used for both Aon and the remaining independent Tier-1 broker. Since the sizes of these two Tier-1 brokers are relatively close, the Commission considers that Aon's adjustment factor is sufficiently representative for this other Tier-1 broker.

(b) The GWP (per segment) of all Tier-2 brokers is multiplied by WTW's adjustment factors. This is because WTW is the smallest of the three Tier-1 brokers.

(52) Table 4 below reports the results of the sensitivity analysis when the two types of errors discussed above are taken into account. Table 4 shows that the market shares for large customers (independently of their locations) for Cyber, FinPro, and P&C are similar to the market shares in the Commission's market reconstruction with a EUR 500K revenue threshold. In particular, this additional sensitivity analysis still shows that large customers are mainly served by the Big-Three brokers, with a significant combined position of the Parties, while other brokers have a limited presence to serve large customers.

(53) Based on the above, the Commission considers that its market reconstruction with the EUR 500K revenue-threshold is robust to any potential bias arising from: (i) the (limited) amount of GWP of large customers not captured (that is, corresponding to large customers generating less than EUR 500K revenue in commercial risk brokerage), and (ii) the (limited) amount of GWP of non-large customers captured when considering customers generating more than EUR 500K revenue in commercial risk brokerage.

Table 4: Overview of market shares (all large customers, independently of their location), GWP, 2019

Risks	Analysis	Aon	WTW	Combined	3rd broker	4th broker	Other brokers combined
Cyber	EUR 300K	[60-70]%	[20-30]%	**[80-90]%**	[10-20]%	[0-5]%	[0-5]%
	EUR 500K	[60-70]%	[20-30]%	**[80-90]%**	[10-20]%	[0-5]%	[0-5]%
	Bias adjustment	[70-80]%	[10-20]%	**[80-90]%**	[10-20]%	[0-5]%	[0-5]%
FinPro	EUR 300K	[40-50]%	[10-20]%	**[50-60]%**	[30-40]%	[0-5]%	[0-5]%
	EUR 500K	[40-50]%	[5-10]%	**[50-60]%**	[30-40]%	[0-5]%	[0-5]%
	Bias adjustment	[50-60]%	[5-10]%	**[50-60]%**	[40-50]%	[0-5]%	[0-5]%
Property & casualty	EUR 300K	[30-40]%	[10-20]%	**[40-50]%**	[30-40]%	[5-10]%	[5-10]%
	EUR 500K	[30-40]%	[10-20]%	**[40-50]%**	[40-50]%	[0-5]%	[0-5]%
	Bias adjustment	[30-40]%	[10-20]%	**[40-50]%**	[40-50]%	[0-5]%	[0-5]%

Source: Commission's analysis of RFI 33 and third-party data.

2.2.5. *The Commission's market reconstruction underestimates the strength of WTW for large customers in the EEA*

(54) In the context of the remedy proposed, the Notifying Party submitted updated customer data for WTW. The Commission understands that improvements have been made to WTW customer data when aggregating subsidiaries at the level of parent-company.[27] In particular, this additional dataset allows to recover the revenue and GWP for each of its large customers in the EEA.[28,29]

(55) The Commission notes that the level of GWP placed by WTW for its large customers in the EEA is significantly higher than in the dataset provided in the Reply to RFI 33:

(a) In P&C, the GWP placed by WTW for its large customers in the EEA was almost twice as large, increasing from EUR […] in the Reply to RFI 33 to EUR […] in the Reply to RFI 69;[30]

27 Reply to RFI 52, Question 8d.

28 Reply to RFI 69, Question 1, Annex 1, and Annex 2.

29 The Commission notes that this would not affect the Commission' findings of the markets where a significant impediment to effective competition is raised in the main body of the Decision, and the assessment of the Final Commitments in the main body of the Decision is based on the updated WTW customer data (see Section 12.3.5 of the Decision). In particular, the updated data is used to assess the elimination of the increment for each of the markets where competition concerns have been identified within commercial risk brokerage.

30 In the Reply to RFI 69, the amount submitted is USD […]. The Commission converted in EUR using the conversation rate proposed by the Notifying Party in its submission on markets shares for large

(b) In FinPro, the GWP placed by WTW for its large customers in the EEA increases by more than three times, from EUR […] in the Reply to RFI 33 to EUR […] in the Reply to RFI 69;[31]

(c) In Cyber, the GWP placed by WTW for its large customers in the EEA increases by more than four times, from EUR […] in the Reply to RFI 33 to EUR […] in the Reply to RFI 69.[32]

(56) Based on the above, the Commission considers that its market reconstruction with a revenue threshold of EUR 500K in commercial risk brokerage is likely to underestimate the strength of WTW for large customers in the EEA.

2.3. Conclusion

(57) Based on the above, the Commission considers that its market reconstruction with the EUR 500K revenue threshold for customers in commercial risk brokerage provides a reliable picture of the market structure for commercial risk brokerage to large customers in the EEA. In particular:

(a) The Commission did not notice any material issue with the data from Third-party Brokers used in the market reconstruction, and considers the data provided as being reliable.

(b) Using a revenue threshold approach was appropriate to collect data which are consistent, on the basis of an objective criterion, across the Parties and the Third-party Brokers. Using a EUR 500K revenue threshold in commercial risk brokerage provides a reliable picture of the market structure for large customers since it allows to capture a high proportion of the GWP placed by large customers (almost [a high percentage] for Aon and almost [a high percentage] for WTW).

(c) Using a lower revenue threshold of EUR 300K leads to similar market shares. Therefore, the market reconstruction is robust to the critique of the Notifying Party that large customers splitting their risk between brokers would overestimate the Parties' position. Moreover, the Notifying Party did not explain why large customers splitting their broking requirements would be more likely for small brokers than for large brokers.

(d) The Commission's market reconstruction is robust to any potential bias arising from: (i) the (limited) amount of GWP of large customers not captured (that is, corresponding to large customers generating less than EUR 500K revenue in commercial risk brokerage), and (ii) the (limited) amount of GWP of non-large customers captured when considering customers generating more than EUR 500K revenue in commercial risk brokerage.

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customers (see Section 3 on the Finaccord data with the Market3 model submitted by the Notifying Party).

31 In the Reply to RFI 69, the amount submitted is USD […]. The Commission converted in EUR using the conversation rate proposed by the Notifying Party in its submission on markets shares for large customers (see Section 3 on the Finaccord data with the Market3 model submitted by the Notifying Party).

32 In the Reply to RFI 69, the amount submitted is USD […]. The Commission converted in EUR using the conversation rate proposed by the Notifying Party in its submission on markets shares for large customers (see Section 3 on the Finaccord data with the Market3 model submitted by the Notifying Party).

(e) Additional data provided in the context of the remedy proposal shows that the Commission's market reconstruction is likely to underestimate the strength of WTW for large customers in the EEA.

3. THE NOTIFYING PARTY'S MARKET RECONSTRUCTION SUFFERS FROM A SIGNIFICANT UNCERTAINTY AND CANNOT BE RELIED UPON TO ASSESS THE PROPOSED TRANSACTION

3.1. Overview of the Notifying Party's market reconstruction

(58) Following the Commission's market reconstruction in the 6(1)(c) Decision, the Notifying Party submitted its own market reconstruction. The Notifying Party uses several sources of data:

(a) For the numerator of the market shares, the Notifying Party uses Aon's and WTW's policy datasets as inputs for the quantification of the GWP of large customers that Aon and WTW serve in the EEA;

(b) For the denominator of the market shares, the Notifying Party uses data from Finaccord to estimate the overall size of the market for large customers in the EEA.[33]

(59) To estimate the Parties' GWP corresponding to large customers in the EEA (the numerator in the market share), Aon's and WTW's policy datasets were matched to the Dun & Bradstreet ('D&B') data. Based on the D&B data, the Notifying Party identified all global companies with revenues of over EUR 1 billion, their subsidiaries, and the location of those subsidiaries.[34] The matching was carried out by using a combination of: (i) an exact matching based on existing common identifiers for customers between the Parties' policy datasets and the D&B dataset, and (ii) and application of a fuzzy string-matching algorithm based on customer names for customers that did not have a common identifier.[35] Next, the Notifying Party calculated the GWP placed by Aon and WTW for large customers in the EEA by risk line and for commercial risk overall with a bottom-up approach, that is, by summing the 2019 GWP placed on behalf of their customers for which the D&B dataset indicated that they are large customers.

(60) To estimate the market size for large customers in the EEA (the denominator in the market share), the Parties used Finaccord's data from the Market3 model.[36] According to the Notifying Party, the necessary Finaccord's Market3 data for the market reconstruction became available only at the end of 2020.[37] Finaccord collects

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33 Finaccord is a market research company and a subsidiary of Aon.

34 Reply to the 6(1)(c), Annex 2 ("Commercial risk: market reconstruction for large customers"), paragraph 21: "*The Parties' policy datasets, [...], contain client-level information on GWP placed by risk class. Neither Party's dataset contains a customer size indicator. We therefore had to rely on a third-party source to identify 'large' customers in the Parties' data*.".

35 Reply to the 6(1)(c) Decision, Annex 2 ("Commercial risk: market reconstruction for large customers"). The Notifying Party's submission "Large client numerators and updated market share estimates", dated 8 February 2021, provides also an explanation of the fuzzy string matching algorithm, as well as another additional name-matching algorithm ("Jaro-Winkler matching with Sorted Neighbourhood Indexing").

36 Finaccord is selling this model to clients as bespoke market sizing analysis. Finaccord is refining the model and it customises it depending on the particular needs of its clients (Reply to the 6(1)(c) Decision, Annex 2, paragraph 2.2).

37 The Commission understands that the Finaccord data already included a segmentation of commercial risk broking between various customer sizes, including the customers with turnover above EUR 1bn,

country-level regulatory data on insurance (measured by the GWP) placed in that country. Finaccord then segments each country's total commercial GWP by each of the following three dimensions: (i) a risk class, (ii) customer size, and (iii) customer industry. According to the Notifying Party, Finaccord essentially uses a top-down approach to segment the total amount of insurance placed in each country and makes further adjustment based on its market intelligence.[38]

(61) The Market3 model of Finaccord consists of a series of country-specific datasets, where companies are grouped with their domestic, rather than global, parent companies for defining company size.[39,40] This data limitation from Finaccord has an important implication: to ensure consistency with the denominator, the Notifying Party needs to adjust the numerator in order to consolidate the subsidiaries at the level of their domestic, rather than global parent company.[41] In particular, the following adjustments to the numerator were carried out by the Notifying Party:

(a) Large companies (with a turnover above EUR 1 billion) headquartered in one of the EEA countries in the Market3 model are included in the denominator. Subsidiaries in the same country are rolled up to the parent company level (independently of turnover generated), whereas subsidiaries in other EEA states are excluded if they have not generated more than EUR 1 billion sales. Thus, non-large EEA subsidiaries in other EEA countries than the parent company are excluded from the denominator. The Notifying Party had to identify these subsidiaries in the Parties' policy datasets to exclude the corresponding GWP from the numerator as well.

(b) Non-EEA subsidiaries (independently of size) of companies in EEA countries in the Market3 model are excluded from the denominator. Again, the Parties had to identify these subsidiaries in the Parties' policy datasets to exclude the corresponding GWP from the numerator.

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before the beginning of the merger investigation (Form CO, Annex 6A.24). Similarly, the segmentation by risk type existed before the beginning of the merger investigation. However, the Commission understands that Notifying Party was not able to provide market share for large customers by risk line in pre-notification and Phase I since the joint segmentation by company size and risk line became available only in the late 2020 (Reply to the 6(1)(c) Decision, Annex 2, footnote 5).

38 Reply to the 6(1)(c) Decision, Annex 1, paragraphs 2.6-2.8. See also the Notifying Party's submission "Commercial Risks solutions: submission on Finaccord data", dated 28 January 2021, paragraph 2, paragraphs 5-12.

39 The Commission notes that the Market3 model contains information on 12 EEA countries and the UK, which represents 83% of the total commercial non-life premium placed in the EEA. For the remaining countries, the market size for large customers was extrapolated by the Notifying Party based on the market size submitted in the Form CO. See the Notifying Party's submission "Large client numerators and updated market share estimates", dated 08 February 2021, paragraph 4.5 and Figure 3.

40 Reply to the 6(1)(c) Decision, Annex 2, paragraph 3.4. Notifying Party's submission "Large clients numerators and updated market share estimates", dated 08 February 2021, paragraph 2.6: "*Parent-subsidiary relationships are rolled up to the level of the parent if both the parent and subsidiary are located in the same country. If a parent company owns a subsidiary in a foreign country, that subsidiary is allocated to the foreign country.*". See also paragraph (61)(a) for a definition of domestic-level and global-parent company.

41 Reply to the 6(1)(c) Decision, footnote 162 : "*The Finaccord data consists of a series of country-specific datasets, so companies are grouped with their domestic, rather than global, parent companies for the purpose of defining company size.*". See also Reply to the 6(1)(c) Decision, Annex 2, paragraph 2.14. See also the Notifying Party's submission "Commercial Risks solutions: submission on Finaccord data", dated 28 January 2021, paragraph 2.7: "*We allocate Aon and WTW GWP to the domestic ultimate parent level, rather than global ultimate parent level, because this most closely corresponds to the available data on the distribution of company size and the subsequent definition that underlies Finaccord's modelling.*".

(c) Large subsidiaries of non-EEA companies are included in the denominator. The Parties had to identify those subsidiaries in the Parties policy datasets to include the corresponding GWP in the numerator as well.

(62) Table 5 below summarises the different market shares submitted by the Notifying Party in Phase II. The first set of market shares was submitted with the Reply to 6(1)(c) Decision. These market shares were updated for the first time in a submission “Large client numerators and updated market share estimates”, dated of 8 February 2021, and for the second time in a submission “Follow-up submission on the Parties' large client market share estimates”, dated 19 February 2021.[42]

Table 5: Combined market shares of the Parties for large customers in the EEA with the Notifying Party's market reconstruction (2019, GWP, brokered channel)

Brokered channel only	Reply to the 6(1)(c) – Combined (11 January 2021)	Reply to the 6(1)(c) - Combined maximum with adjustment for WTW shares (due to data quality issue of WTW)	Submission of 8 February-Combined	Submission of 19 February-Combined
Commercial risk overall	[10-20]%	[20-30]%	[20-30]%	[10-20]%
Property & casualty	[10-20]%	[10-20]%	[10-20]%	[10-20]%
FinPro	[20-30]%	[30-40]%	[20-30]%	[20-30]%
Marine	[10-20]%	[10-20]%	[30-40]%	[20-30]%
Credit & political risk	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Cyber	[30-40]%	[40-50]%	[30-40]%	[30-40]%

Source: Commission's assessment of the Parties submissions: Reply to the 6(1)(c) Decision, Notifying Party's submission “Large client numerators and updated market share estimates”, dated of 8 February 2021, and Notifying Party's submission “Follow-up submission on the Parties' large client market share estimates”, dated 19 February 2021.

3.2. The Notifying Party's market reconstruction suffers from a significant uncertainty due to the different approaches to compute the Parties' GWP and the market size, and does not allow to capture the global scope for the insurance programs of LMCs

(63) First, the Commission notes that the Notifying Party has more limited information available than the Commission, since it does not have access to customer data of Third-party Brokers. Therefore, only the Commission can use a full bottom-up approach to calculate market shares (that is, by considering the most disaggregated data possible and aggregating the GWP of the large customers for each of the different brokers). Due to this limitation in the information available, the Notifying Party needed to use two different sources of information for the numerator (that is, the Parties' GWP for large customers) and the denominator (that is, the market size

[42] These additional submissions included further adjustments, for example: the inclusion of direct billings for Aon (that is, billing placed by Aon, but which is “direct-billed” to the client by the insurer), the adjustment for some missing client names in WTW data and some further name cleaning for Denmark and Germany, some adjustments in the name-matching algorithms.

for large customers), which made the alignment of the data difficult and its market shares subject to a significant uncertainty.

(a) For the numerator, the Notifying Party uses a bottom-up approach, by summing-up the GWP corresponding to the identified large customers in the EEA in their policy datasets (see paragraph (59));

(b) For the denominator, the Notifying Party uses a top-down approach, essentially by considering an aggregated figure for the market size from Finaccord (see paragraph (60)).

(64) Using two different data sources, one for the numerator and another for the denominator, leads to a significant complexity in ensuring that the two components are aligned (see paragraph (61)). In particular, Finaccord defines large customers differently, that is, at the level domestic parent company instead of global level companies (see paragraph (61)(a)), obliging the Notifying Party to adjust its numerator accordingly (see paragraph (61)(b)-(61)(c)). As discussed in more details below (Section 3.3 for the numerator and Section 3.4 for the denominator), the Commission considers that the complexity to align both the numerator and the denominator (that is, to bring both components to the level of the domestic parent company) is such that it creates a significant uncertainty as to the reliability of the market shares provided by the Notifying Party.

(65) In contrast, the Commission's market reconstruction relies on the same bottom-up approach, and same data sources, to measure both the numerator and the denominator, based on customers' data provided by the Parties and the main third-party brokers. This approach, which is feasible given the Commission's investigative powers to collect customer data from Third-party Brokers, allows to measure consistently and to align directly both the numerator and the denominator. This method leads to market share estimates that are, unlike those reported in the Notifying Party's submissions, robust (See Section 2 and in particular Section 2.2 above).

(66) In addition, as regards the identification of large customers, for customers that did not have a common identifiers between their policy datasets and the D&B datasets, the Notifying Party needed to rely on a complex name-matching algorithm (called "fuzzy string matching algorithm") to match customers between these datasets (see paragraph (59)) and to identify large/non-large customers and EEA/non-EEA subsidiaries.[43] As discussed in more details below, the numerator (that is, the Parties' GWP for large customers) is likely to suffer from a significant uncertainty.

(67) Second, the Finaccord data, used by the Notifying Party to calculate the market size for EEA-large customers, considers only the GWP placed in the EEA (see paragraph (60)).[44] Therefore, the Notifying Party's market reconstruction does not capture the correct geographical scope for LMCs, since the Commission considers a global scope for the sourcing of brokerage services by LMCs.(see Sections 6.1.4.2 and 6.2.1 of the main body of the Decision).

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43 In RFI 36, the Commission has asked Parties to indicate the fraction of the GWP by type of matching. In the EEA, almost 40% of the GWP was matched via the fuzzy string matching algorithm (Reply to RFI 36, Annex 6).

44 See also Reply to the 6(1)(c) Decision, Annex 2 ("Commercial risk: market reconstruction for large customers"), paragraph 1.3.a: "*These data are taken from recent Finaccord analysis on the size of the market for commercial non-life insurance in the EEA and UK by risk class*.".

(68) This EEA-only GWP placement is an important limitation of the market reconstruction of the Notifying Party. In contrast, the Commission's market reconstruction captures the correct geographical scope of large customers in the EEA, since it includes the global placements for each of the large customers in the EEA.[45]

(69) Third, the market share levels as estimated by the Notifying Party (see Table 5) are not supported by the market feedback collected during the Commission's investigation. Aon, WTW and Marsh are clearly identified as the Big 3 brokers throughout the entire investigation, as well as in the qualitative feedback, for the three risk categories where concerns are identified (see Section 6.3.5 of the main body of the Decision). The investigation also clearly identified a gap to the next Tier-2 brokers. That is not reflected in the Notifying Party's market share estimates, which raises considerable doubts as to their plausibility. For example, with a combined market share of [10-20%] in commercial risks overall (Aon: [10-20]%; WTW: [5-10]%), and assuming that Marsh is slightly bigger than Aon (e.g., at [10-20]%), the Big Three brokers would represent [30-40]% of the GWP placed for large customers in the EEA, which is implausible given the qualitative evidence.[46]

(70) Based on the above, the Commission considers that the Notifying Party's market reconstruction suffers from a significant uncertainty based on the following reasons:

(a) Due to limitations in the information available, the Notifying Party needed to use two different sources of information for the numerator (that is, the Parties' GWP for large customers) and the denominator (that is, the market size for large customers based on Finaccord), which made the alignment of the data difficult and its market shares subject to a significant uncertainty.

(b) The market size data used by the Notifying Party, that is, the Finaccord data, does not capture the correct geographical scope for the placements for the large customers in the EEA. Only the EEA placements are captured, while the relevant market concerns the global placement of large customers in the EEA.

(c) The low market share levels as provided by the Notifying Party, going as far as suggesting for example that P&C and commercial risks overall are not affected markets, are not supported by the market feedback. Aon, WTW and Marsh are clearly identified as the Big 3 brokers throughout the entire investigation, with a significant gap to the next Tier-2 brokers.

3.3. The Notifying Party's market reconstruction suffers from a significant uncertainty in the numerator (that is, the GWP placed by the Parties for large customers)

(71) The Commission considers that the numerator (that is, the Parties' GWP for large customers) suffers from several issues leading to a significant uncertainty in the market shares provided by the Notifying Party. This assessment is based on additional data requested from the Parties in RFI43.[47]

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45 See paragraph (5).

46 According to the Notifying Party, the combined shares for large multinational customers in the EEA are: [10-20]% (increment of [5-10]%) for Property & Casualty, [20-30]% (increment of [10-20]%) for FinPro, and [20-30]% (increment of [5-10]%) for Cyber.

47 The Commission notes that due to the follow up submission on market shares of 19 February 2021, the Commission requested the Parties to submit an updated version of the response to RFI 43. The updated response was received on 19 February 2021 and is used in the Commission's assessment.

(a) First, (non-large) EEA-subsidiaries of large EEA-based clients have been excluded. This represent a large amount of GWP for Aon, which underestimates the combined position of the Parties in the numerator.

(b) Second, for both Aon and WTW, the Commission identified a large category (in terms of GWP) corresponding to customers located in the EEA, but without names for parent-level companies in the Parties' policy datasets (following the matching with D&B data). While it is not possible to determine whether these EEA clients are large or non-large, the Commission consider that the size of this category is such that it creates a significant uncertainty in the numerator.

(c) Third, the Commission identified in the Parties' policy datasets (following the matching with D&B data) some clients listed as large clients in the EEA at the level of the parent-level company, which have not been matched by the Notifying Party's matching algorithm. This category represents a significant amount of GWP. By excluding these specific large clients in the EEA the Notifying Party's market reconstruction underestimates the combined position of the Parties.

(d) Fourth, even though the Parties have made some ad-hoc adjustments to their numerators, the Commission considers that these adjustments are not sufficient to compensate given the importance of issues identified above.

(e) Last, the treatment of negative values in the policy datasets of the Parties leads to an additional uncertainty on the market shares provided.

(72) To assess the first and second issues mentioned above, the Commission asked each of the Parties to provide the following information:[48]

(a) The GWP in Aon's and WTW's raw policy datasets before dropping unmatched entities and entities outside of the EEA;

(b) The GWP considered in the numerator of the Commission's market reconstruction;

(c) The GWP corresponding to entities that were matched by the matching-algorithm but dropped because it was related to non-EEA entities;

(d) The GWP corresponding to entities not matched by the algorithm, separately for EEA entities and non-EEA entities.

(73) The Parties have not provided a reply to question (72)(d) and mentioned that only clients that matched to the list of large companies in the D&B dataset will have this information populated. However, the Commission notes that in the datasets provided in response to RFI 36, the Parties have provided a variable indicating for each company the country where the customer is located.[49] The Commission has therefore used this information and complemented the submission of the Parties.

(74) The Commission also notes that the sum of the matched GWP provided in Annex 2 of RFI 43 does not correspond to the value of WTW's numerator in the latest submission on market shares.[50] The Commission has therefore used WTW's raw

48 Reply to RFI43, Annex 1 for Aon and Annex 2 for WTW.

49 RFI36 asked to provide explanations on the different variables available in the Parties' datasets submitted in the context of the Notifying Party's market reconstruction.

50 This corresponds to the follow-up submission of the Notifying Party of 19 February 2021, "Follow-up submission on the Parties large client market share estimates".

policy data and replicated the response of WTW in RFI 43 for the questions (72)(a) to (72)(d) above.

3.3.1. A significant amount of GWP related to subsidiaries of large clients in the EEA has been excluded, and a significant uncertainty remains due to missing client names

(75) Table 6 summarizes the results of the Commissions analysis.

Table 6: Comparison of Aon and WTW matched and non-matched GWP

	Aon	**WTW**
Matched GWP	[…]	[…]
Premium non-matched in EEA	[…]	[…]
Of which: related to matching	[…]	[…]
Of which: related to omission of EEA subsidiaries of large clients	[…]	[…]

Source: Commission's analysis of the updated Reply to RFI 43, Annex 1 and Annex 2. Note: For Aon, the fourth line corresponds to the sum of "NO DUNS" and "UNKNWON" accounts. For WTW, the fourth line corresponds to empty client names.

(76) In the Notifying Party's market reconstruction, for Aon, EUR […] of GWP was attributed to large EEA customers.[51] However, the Commission's analysis shows that an additional amount of EUR […] can be attributed to non-matched EEA customers. This omission creates two biases in the Notifying Party's market reconstruction:

(a) For entries that were not matched by the algorithm (GWP of EUR […]):[52] while it is not possible to determine whether they relate to large or non-large EEA entities, the amount of GWP is so significant that a part of it is likely to correspond to large customers. Such GWP would be excluded from the numerator and, by definition of Finaccord, part of it would be included in the denominator. Therefore, this is likely to underestimate the market share of Aon for large customers.

(b) For companies where the parent company was classified as a large EEA client, due to the definition of Finaccord's denominator, non-large subsidiaries of these companies are excluded (GWP of EUR […]).[53] However, excluding non-large-EEA subsidiaries of large clients in the EEA will still underestimate the market share of Aon for large customers in the EEA since, by excluding these

51 The latest numerator in the Notifying Party's analysis (corresponding to the 19 February submission) is slightly higher (EUR […]) due to two additional adjustment carried out by the Notifying Party: (i) a different matching bias factor and (ii) an allocation of direct billing.

52 This refers to entries with parent company names marked as "UNKNOWN" or "NO DUNS".

53 Notifying Party's submission "Large clients numerators and updated market share estimates", dated 08 February 2021, paragraph 2.8 ("*Based on the above, and as explained in the response to the Decision, we exclude clients from Aon and WTW's data sets for inclusion in the "large" client numerators if the domestic ultimate parent has turnover below EUR 1 billion.*") and paragraph 2.9 ("*Therefore, if a company's global ultimate parent has revenue in excess of EUR 1 billion, but the domestic ultimate parent has revenue below EUR 1 billion, that company would not be considered as a "large" client for the purpose of our market share reconstruction.*"). Notifying Party's submission "Reconciliation between data in RFIs 17/33 and Parties' large client market share estimates", dated 10 February 2021, paragraph 2.1.f: "*As a result, subsidiaries of domestic ultimate parents with a turnover below EUR 1 billion but global ultimate parents with a turnover above EUR 1 billion are no longer considered large companies.*".

EEA-subsidiaries, the numerator decreases more proportionally than the denominator.

(77) For WTW, in the Notifying Party's market reconstruction, EUR […] of GWP was attributed to large EEA customers.[54] However, the Commission's analysis shows that an additional amount of EUR […] can be attributed to non-matched EEA customers. In WTW's case, this is almost entirely driven by clients with empty customer names (EUR […]), and the Parties could not determine whether these entries relate to large or non-large EEA entities. Nevertheless, given the importance of the corresponding GWP (EUR […]), which is actually of the same order of magnitude as the EUR […] GWP already attributed to WTW, it is likely that a part of it corresponds to large customers in the EEA (in particular given that only […]% of the non-matched GWP, EUR […], was found to be related to EEA subsidiaries of large clients).

(78) Based on the above, the Commission considers that it is likely that the Notifying Party's market reconstruction excludes a significant amount of GWP related to large clients in the EEA, leading to a significant uncertainty as to the reliability of the market share estimates.

3.3.2. A significant amount of GWP related to large clients in the EEA has been excluded due to the name-matching algorithm used

(79) As regards the third issue on non-matched large clients in the EEA which are not included in the Notifying Party's numerator for Aon and WTW (see paragraph (71)(c)), the Commission has asked each of the Parties to provide for each client considered in RFI 33 data a detailed break-down of GWP, for commercial risk and by risk line, when considering:

(a) The initial GWP in the raw policy data of the Parties, and

(b) The resulting GWP considered in the Parties' numerator.[55,56]

(c) This additional information allowed to identified the large clients in the EEA based on the RFI 33 data that were not included in the Notifying Party's market reconstruction.

(80) For the EEA large clients not included in the Notifying Party's market reconstruction due to the matching-algorithm used, for each of Aon and WTW, Table 7 below shows:

(a) A comparison of the corresponding GWP in the Parties' policy datasets and in the RFI 33 data used in the Commission's market reconstruction: Columns 2 and 3 for Aon and Columns 6 and 7 for WTW show that the missing GWP for large EEA customers in the Notifying Party's market reconstruction is either identical between the two data sources (for WTW) or generally in the same order of magnitude (for Aon).[57] This indicates that the missing GWP is not related to data processing between the raw policy datasets of the Parties and the RFI 33 data used in the Commission's market reconstruction.

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54 The latest numerator in the Notifying Party's analysis is slightly higher (EUR […]) due to two additional adjustment carried out by the Notifying Party: (i) a different matching bias factor and (ii) an allocation of direct billing.

55 Reply to RFI43, Annex 3 for Aon and Annex 4 for WTW.

56 The datasets of Aon and WTW provided in the Reply to RFI 33 are used for the Commission's market reconstruction.

57 The only exception being Marine for Aon.

(b) A comparison of the GWP for the non-matched large customers in the EEA in RFI 33 data (column 3 for Aon and column 7 for WTW) with the numerator used in the Notifying Party's market reconstruction (column 4 for Aon and column 8 for WTW). Column 5 for Aon and Column 9 for WTW show the potential percentage increase in the numerator of the Notifying Party's market reconstruction if these large EEA customers would be included.

Table 7: Non-matched GWP in Parties' numerator

	Aon				WTW			
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]
Segment	Policy data (million EUR)	RFI 33 (million EUR)	Numerator in Notifying Party's market reconstruction	Potential % increase of Notifying Party's numerator due to the non-matched large EEA clients	Policy data (million EUR)	RFI 33 (million EUR)	Numerator in Notifying Party's market reconstruction	Potential % increase of Notifying Party's numerator due to the non-matched large EEA clients
CR	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
C&P	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Construction	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cyber	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
FinPro	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Marine	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
P&C	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of the updated Reply to RFI 43, Annex 3, Annex 4, and Excel file "Market reconstruction table_v1.xlsx" provided in the email received from the Notifying Party on Friday 19 February 2021 at 23:44.

(81) For Aon, EUR […] of commercial risk GWP of EEA large customers is omitted in the Notifying Party's market reconstruction. Depending on the segment, for example, Aon's numerator can increase potentially 13% for Cyber, 32% for P&C, and 69% for FinPro. This indicates that the Notifying Party's market reconstruction significantly understates the GWP of Aon for large clients. The Commission also notes that the entire GWP for some large companies in the EEA (for example […]) is not considered in the numerator for Aon.

(82) For WTW, EUR […] of commercial risk GWP of EEA large customers is omitted in the Notifying Party's market reconstruction. Depending on the segment, for example, WTW's numerator can increase potentially by 6% for Cyber, 8% for FinPro, and 26% for Cyber. Although the extent of this issue is somewhat less strong in WTW's data compared to Aon's, it still indicates that the Notifying Party's market reconstruction substantially understates the GWP of WTW for large clients in P&C for example.

3.3.3. The adjustments proposed by the Notifying Party are unlikely to be sufficient to take into account the uncertainty identified above

(83) As regards the fourth issue on the ad hoc adjustment carried out by the Notifying Party (see paragraph (71)(d)), an increase of 5.4% (that is, approximately EUR[…])

was applied to Aon numerator and 6% (that is, approximately EUR […]) to WTW numerator. However, given the significant uncertainty identified above (Sections 3.3.1-3.3.2), the Commission considers that such small adjustment factors are unlikely to compensate for the significant uncertainty due to the omitted GWP of large clients in the EEA in the Notifying Party's market reconstruction.

3.3.4. The treatment of negative values in the policy datasets of the Parties leads to an additional uncertainty

(84) The Commission also considers that the Notifying Party's market reconstruction suffers from an additional uncertainty due to the treatment of entries with negative values of GWP. In the reply to RFI 36 and the follow-up submission on market shares,[58] the Notifying Party explained that negative values in the Aon datasets appear across risk types and exist for several reasons, for example: (i) cancellations of policies from previous years, (ii) data entry errors, (iii) returns of previous extra payments, and (iv) return payments due to changes in the payment schedule. The Notifying Party notes that determining the precise reason in each individual case would require a case-by-case analysis.[59]

(85) Table 8 shows the extent of the values with negative GWPs by risk type. Across risk types, the negative values amount to between [a small percentage] and [a significant percentage] of the positive values, and almost cancel all positives values for Cyber. At the Commission's request, the Notifying Party explained that the excessive negative GWP in Cyber in 2019 relates to data errors of Aon's German sales office.[60] For the other segments, no further clarification was provided.

[58] Notifying Party's submission "Follow-up submission on the Parties large client market share estimates", dated 19 February 2021, paragraph 6.2: "*Negative GWP appears in Aon's data across all risk classes, representing, inter alia, reversals due to data entry errors, cancelled policies, returns of previous extra payments, and return payments due to changes in the payment schedule*.".

[59] Reply to RFI 36, paragraph 2.6.

[60] Notifying Party's submission "Follow-up submission on the Parties large client market share estimates" , dated 19 February 2021, paragraph 6.4

Table 8: Negative values of GWP in the numerator for Aon

Variable Segment_FormCO	Sum of positive premiums (EUR m)	Sum of negative premiums (EUR m)	Share of Absolute value of negatives vs positives
Aviation - Aerospace Manufacturers	[…]	[…]	[…]
Aviation - Aircraft Operators	[…]	[…]	[…]
Crisis - Credit and Political Risk	[…]	[…]	[…]
Crisis - Trade Credit	[…]	[…]	[…]
Energy	[…]	[…]	[…]
Cyber	[…]	[…]	[…]
FinPro	[…]	[…]	[…]
Marine	[…]	[…]	[…]
Other	[…]	[…]	[…]
P&C	[…]	[…]	[…]
Space	[…]	[…]	[…]

Source: Commission's analysis of Aon policy dataset and RFI36.

(86) In its market reconstruction, the Notifying Party included all negative values in the numerator. The Notifying Party argues that where negative values reflect cancellations or modifications, removing them from the dataset would remove the cancellation but not the initial record that has been cancelled, and therefore overstate the Parties' positions and fail to reflect the premiums actually paid by clients over time.[61]

(87) The Commission disagrees with this treatment of negative values. In particular, since the market reconstruction is carried out for one specific year (2019), the Commission considers that the ideal approach would have been to consider only the cancellations of policies (or data errors) referring to 2019 policies, and not to previous years. While the Notifying Party mentioned that it could not distinguish cancellations related to 2019 from cancellations of previous years, the Commission still considers that considering all negative values is likely to decrease too much the GWP of Aon for 2019 and understate its market share, and this creates an additional uncertainty.

(88) Without being able to distinguish the different types of cancellations, an alternative could have been, for example, to determine an average rate of cancellations by

61 Notifying Party's submission "Follow-up submission on the Parties large client market share estimates", dated 19 February 2021, paragraph 6.6(b).

considering several years, and then apply this average rate to adjust the positive values. However, the Notifying Party did not carry out such analysis.

(89) Moreover, in order to be internally consistent, the Notifying Party should have also adjusted the denominator to account for cancellations of policies. The Notifying Party did not explain whether Finaccord took into account the cancellation of policies in the data used to calculate the size of the market for large customers in the EEA.

3.4. The Notifying Party's market reconstruction suffers from a significant uncertainty in the denominator (that is, the market size of large customers)

(90) Due the Finaccord data available (see paragraph (60)-(61)), the Notifying Party needed to rely on several assumptions to measure the market size for large customers in the EEA in the different segments of commercial risk brokerage. As discussed below, these assumptions lead to a significant uncertainty in the market size for large customers. In particular, the Commission notes three specific issues:

(a) The Notifying Party needed to rely on Finaccord for the allocation of GWP per segment and per customer sizes (micro, small, medium, large, very large customers).[62] The allocation per customer size used by Finaccord has changed significantly in a period of few months and therefore does not appear sufficiently stable to be relied upon (Section 3.4.1).

(b) Since Finaccord provides data at an aggregated level for the size of the market, including all customers independently of their sizes, the Notifying Party needed to combine two ratios to estimate the size of the (brokered) market for large customers; (i) a ratio capturing the share large customers, and (ii) a ratio capturing the share of the brokered channel. These two ratios are sensitive to the relative importance given to each of the lines composing each risk (for example, for C&P, the different sub-lines are Trade credit, Structured credit/political risk, Kidnap & ransom, Terrorism and political violence). While this is illustrated with the C&P risk, it cannot be excluded that such consideration also applies to other risks, such as FinPro and P&C, which are composed of several risk lines as well (Section 3.4.2).

(c) The assumption used by the Notifying Party to allocate the GWP to large customers in proportion to their operating revenues is not verified by Aon's customer data and was not substantiated by the Notifying Party (Section 3.4.3).

(91) In addition, as discussed above (see paragraph (67)), the Notifying Party's market reconstruction does not capture the proper geographical scope for the placements of large customers in the EEA. For EEA large customers, the Notifying Party's market reconstruction considers the GWP placed only in the EEA, while the relevant market include the global placements from large customers in the EEA.

3.4.1. The allocation of GWP across the different customers' sizes to calculate the market size of large customers in the EEA suffers from a significant uncertainty

(92) The Commission has analysed Finaccord's data, which is used by the Notifying Party as the main input to estimate the market size for large customers in the EEA (that is, the denominator in the Notifying Party's market reconstruction). As discussed below, the Commission considers that the market size for large customers in Finaccord data

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62 For clarity, Finaccord's terminology of 'very large' customers refers to 'large' customers as defined by the Commission.

is not stable, due to a significant variation over a few months between pre-notification (based on Finaccord data provided in the Form CO, Annex 6A.24) and Phase II (based on Finaccord's Market3 data), with an increase of approximately 70%. This is an important variation in the market size, and creates a significant uncertainty as to the reliability of the Notifying Party's market reconstruction methodology and results.

(93) The Notifying Party mentioned that the estimation of market sizes based on the Market3 model of Finaccord used in its market reconstruction closely relies on the market sizes submitted in the Form CO.[63] While the Commission agrees that the total GWP for non-life commercial risk for all customers remained similar between these two sources of data (see Table 9, column [7]), the Commission has identified significant differences in the GWP allocated to large customers in several EEA countries (see Table 9, column [2], [4], and [6]).

(94) In particular, Finaccord defines five types of customers, micro, small, medium, large, and very large. The GWP in a given country is then allocated to each type of customers. For clarity, Finaccord's terminology of 'very large' customers refers to 'large' customers as defined by the Commission.

Table 9: Comparison of Finaccord data for 'very large' customers in selected countries

[1]	[2]	[3]	[4]	[5]	[6]	[7]
Country	**Market3, very large customers, local currency (millions), 2019**	**Market3, very large customers, rank, 2019**	**Annex 6.A24, very large customers, local currency (million), 2019**	**Annex 6.A24, very large customers, rank, 2019**	**Increase in size of the very large customers in Market3 vs Annex 6A.24**	**All customers' market size: Annex 6A.24 divided by Market3**
France	[…]	[…]	[…]	[…]	122%	99%
Germany	[…]	[…]	[…]	[…]	41%	98%
Italy	[…]	[…]	[…]	[…]	112%	83%
Netherlands	[…]	[…]	[…]	[…]	354%	97%
Spain	[…]	[…]	[…]	[…]	-13%	99%
UK	[…]	[…]	[…]	[…]5	75%	101%

Source: Commission's analysis of Annex 6A.24 of the Form CO, Market3 extractor 16-12-2020.xlsx and Annex 1 of the Reply to RFI 47, question 2 and Annex 1. Please note that Finaccord's terminology 'very large' refers to 'large' clients as defined by the Commission (clients with turnover above EUR 1 billion).

63 Reply to the 6(1)(c), paragraph 174. For completeness, the FormCO data relates to Annex 6A. and Market3 data relates to the file " extractor 16-12-2020.xlsx" provided in the context of the Notifying Party's market reconstruction.

(95) For the countries listed in Table 9, the changes in GWP allocated to very large customers are significant, and even change the importance and ranking of the five Finaccord customer segments. In particular, while the 'very large' segment was the second smallest in Spain and the smallest in the remaining countries in the Form CO data (see Table 9, column [5]), the Market3 model ranks the 'very large' segment first in the Netherlands, second in France and the UK, third in Germany, and last in Spain and Italy (see Table 9, column [3]).

(96) Table 9 shows that, for five of the six countries listed, the GWP allocated to large customers by Finaccord has increased significantly: by 122% for France, 41% for Germany, 112% for Italy, 354% for Netherlands, and 75% for the UK. It has deceased only for Spain, and by a more limited proportion of 13%. Overall, when the six countries are combined, the GWP allocated to large customers increased by 80% in few months only: between 15 November 2021 (based on the Form CO submitted at the notification, Annex 6A.24) and late December 2021 (based on Market3 data of Finaccord). When all EEA countries are considered, this leads to an increase in the market size of large customers by 70%.[64]

(97) According to the Notifying Party,[65] the differences in the GWP allocated to 'very large' customers by Finaccord between Annex 6A.24 of the Form CO and the Market3 data, which are concentrated in the six countries identified above, are due to the bespoke work Finaccord did for its client […] in September 2020. […] requested detailed cross-tabulations for […], with a particular focus on […]. As part of its work for […], Finaccord's engaged in revisions of the splits of GWP across the five customer size bands, for each customer activity and adjusted the resulting GWP in the Market3 model.[66]

(98) However, as explained in by the Notifying Party in the Reply to RFI 47, Finaccord used information about customers of […] for the revisions of the size/risk line/activity combination, and […] approached Finaccord with a particular request for small customers.[67] Given that […] represents only [a very small percentage] of the Direct Premiums Written,[68] the sample of its customers is unlikely to be representative of the distribution of GWP across the different types of customers. Moreover, as mentioned by the Notifying Party, Finaccord's analyses are tailored to the needs of its clients, and […] was essentially interested in small clients. The Commission concludes that any extrapolation made by Finaccord to estimate the market size for large customers on the basis of […] data is unlikely to be representative of the GWP placed for large customers.

(99) Moreover, Finaccord collects regulatory data at country level and proceeds with further adjustments.[69] The data processing carried out by Finaccord has not been submitted. In light of the uncertainty identified above with the important change in the market size for large customers in a period of only few months, it cannot be

64 This is based on a comparison of the size of 'very large' customers between the Finaccord's Market3 data and the Reply to RFI47, Question 2.

65 Reply to RFI 47.

66 Reply to RFI 47, paragraphs 1.4 to 1.6.

67 Notifying Party's submission on Finaccord, "Commercial Risks solutions: submission on Finaccord data", dated 28 January 2021, paragraph 15.

68 Insurance Information Institute website, https://www.iii.org/publications/commercial-insurance/rankings , accessed on 15 May 2021, at 14:18.

69 Reply to the 6(1)(c) Decision, paragraphs 2.6-2.8. Notifying Party's submission on Finaccord, "Commercial Risks solutions: submission on Finaccord data", dated 28 January 2021, paragraph 2.

excluded that the Finaccord's market size for 'very large' customers is sensitive to other assumptions that the Commission could not verify.

(100) Based on the above, the Commission considers that the market size for large customers used by the Notifying Party in its market reconstruction suffers from a significant uncertainty due to:

(a) A significant increase in the market size of large customers based on Finaccord data (by approximately 70% between pre-notification and Phase II), and

(b) The extrapolation of the market size for large customers based on […] data, for which the focus of the bespoke work from Finaccord was on […], is unlikely to be representative of the GWP placed for large customers.

(c) In light of the uncertainty identified with the important change in the market size for large customers in a period of only few months, it cannot be excluded that the Finaccord's market size for 'very large' customers is sensitive to other assumptions that the Commission could not verify.

3.4.2. The market size for large customers is sensitive to the relative importance given to the risk lines composing each risk type

(101) The Commission notes that, in the Notifying Party's market reconstruction, the market size for the C&P ("Credit & Political Risk") segment for large customers in the EEA has increased by [40-50%], from EUR […] million in the Reply to the 6(1)(c) Decision (dated 11 January 2021) to EUR […] million in the updated submission of 08 February 2021.[70] While a market for large customers is not defined for the C&P Risk (see Section 6.1.5 of the main body of the Decision), the Commission still considers that this specific risk illustrates the significant uncertainty underlying the market size estimates for large customers used in the Notifying Party's market reconstruction.

(102) In parallel, the Notifying Party also identified a some missing entries in the numerator for C&P, which increased:

(a) For Aon: from EUR […] in the Reply to the 6(1)(c) Decision to EUR […] in the updated submission (+176%);

(b) For WTW: from EUR […] in the Reply to the 6(1)(c) Decision to EUR […] in the updated submission (+22%).

(103) While the Parties' GWP for large customers in C&P has increased significantly (in particular for Aon), the market share of the Parties for C&P increased only by 9 percentage points, from [30-40]% in the Reply to the 6(1)(c) Decision to [30-40]% in the updated submission of 08 February 2021. This limited increase is driven by the important increase in the market size, which increased by 50% in parallel. Absent the changes to the market size (that is, the denominator), the resulting combined market shares of the Parties in C&P would be [50-60]% instead of [30-40]% (see Table 10 below, third row which corresponds to the first Commission's sensitivity analysis).

(104) The market size of C&P for all customers as presented in Finaccord has remained constant across submissions, at EUR […]. To estimate the brokered GWP for large customers, the Notifying Party applied to the initial GWP of EUR […] two ratios: (i) a ratio capturing the share of large customers, and (ii) a ratio capturing the share of

70 Notifying Party submission "Large clients numerators and updated market share estimates", dated 08 February 2021.

brokered GWP. When these two ratios are larger, the GWP allocated from the Form CO market size for all customers (EUR […]) to the market size of large customers increases.[71] The significant increase in the market size of large customers (50% across the different submissions) is driven by an increase in these two ratios.

(105) As regards the ratio capturing the share of large customers:

(a) In the Reply to the 6(1)(c) Decision, Annex 2, the Notifying Party considered two sub-segments for C&P: Trade credit (representing 78% of large customers in Finaccord data) and Political risks (representing 22% of large customers in Finaccord data). Finacccord estimates the share of large customers at 4.9% for Trade credit and 39.3% for Political risks. Combining these shares of large customers for each sub-segment with their relative importance (weight of 78% for Trade credit and 22% for Political risk) leads to ratio of 12.6% for the share of large customers in C&P.

(b) In the follow-up submission of 8 February, the Notifying Party further disaggregated the Political risk line into three sub-lines: Structured credit/political risk, Kidnap & ransom, and Terrorism and political violence. However, the Commission notes that this disaggregation does not affect the calculation of the share of large customers, since the critical element is actually the relative weight given to the Trade credit and Political risk lines.

(c) In the follow-up submission of 8 February 2021, Trade credit was given a lower importance, with a weight of 65% instead of 78% in the Reply to the 6(1)(c) Decision. The weight of 65% represents the share of trade credit in the overall C&P segment when all customers are considered.[72] Similarly, Political risk was given a higher weight of 35%, compared to 22% in paragraph (105)(a). Since Political risk (resp. Trade credit) has a higher (resp. lower) share of large customers (39.3% for Political risk compared to 4.9% for trade credit), increasing (resp. decreasing) the relative importance of Political risk (resp. Trade credit) increases the share of large customers in C&P from 12.6% to 16.9% (see Table 10, row 1 and row 2).

(d) By increasing the share of large customers in the C&P segment, the Notifying Party also increased the market size for large customers.

(106) As regards the ratio capturing the share of brokered GWP:

(a) In the Reply to the 6(1)(c) Decision, Annex 2, the Notifying Party considered four sub-segments for C&P, and their relative importance is determined by the share of GWP within the C&P risk: Trade credit (representing 65% of GWP in C&P), Structured credit (20% weight), Terrorism and political violence (12% weight), and Kidnap & ransom (3% weight). Based on Form CO estimates, the Notifying Party considers the following size of the brokered channel for each sub-segment: 59% for Trade credit, 77% for Structured credit, 78% for Terrorism and political violence, and 7°% for Kidnap & ransom. Combining these shares of the brokered channel for each sub-segment with their relative importance (weight of 65% for Trade credit, 20% for Structured credit, 12%

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71 Notifying Party's submission "Follow-up submission on the Parties large client market share estimates", dated 19 February 2021, Table 2.

72 In contrast, only large customers based on Finaccord data were considered in paragraph (105)(a) to determine the relative importance of Trade credit, with a weight of 78%.

for Terrorism and political violence, and 3% for Kidnap & ransom leads to ratio of 65% for the share of brokered GWP in C&P.

(b) In the follow-up submission of 8 February 2021, Trade credit was given a lower importance, with a weight of 19% instead of 65% in the Reply to the 6(1)(c) Decision. The weight of 19% represents the share of trade credit among large customers based on Finaccord data.[73] Similarly, the other three lines were given a higher relative importance: weight of 47% for Structured credit, 27% for Terrorism and political violence, and 7% for Kidnap & ransom. By changing the relative importance of the four risk lines within the C&P risk, the Notifying Party increases the share of the brokered channel for C&P from 65% in the Reply to the 6(1)(c) Decision to 73% in the updated submission of 08 February 2021 (see Table 10, row 1 and row 2).

(c) By increasing the share of the brokered channel in the C&P segment, the Notifying Party also increased the market size for large customers.

(107) Overall, by increasing the share of marge customers from 12.6% to 16.9% and the share of the brokered channel from 65% to 73%, the Notifying Party's market reconstruction leads to an increase in the market size of large customers in C&P by 50% (from EUR 630 million to EUR 958 million).

(108) The Commission is not aware of another independent source of information to assess which ratios are more reliable for the share of large customers and the share of the brokered channel. However, the significant change in the market size of large customers for C&P, depending on the relative importance given to the different sub-lines illustrates the significant uncertainty of the market size (that is, the denominator) in the Notifying Party's market reconstruction methodology.

(109) Table 10 illustrates the wide range of possible market shares that can be generated by: (i) using the updated GWP of Aon and WTW for C&P provided in the updated submission of 8 February, (ii) using the share of large customers provided in the FormCO (12.6%), and (iii) using the two ratios of 65% and 73% for the share of the brokered channel. By combining different sets of parameters, the C&P market share in the Notifying Party's market reconstruction can range between [30-40]% and [50-60]%, [a small percentage] points difference.

(110) As mentioned, while a market for large customers is not defined for the C&P Risk (see Section 6.1.5 of the main body of the Decision), the Commission still considers that this specific risk illustrates the significant uncertainty underlying the market size estimates for large customers used in the Notifying Party's market reconstruction. For example, the FinPro risk, for which a market for large multinational is defined in the main body of the Decision, is composed of several risk lines as well, such as: D&O, Medical malpractice, Professional indemnity and Legal protection.[74] For P&C risk, for which a market for LMCs is also defined, Finaccord Market3 data indicates as well several risk lines such as: Commercial motor, Commercial property, Environmental liability, Workers compensation and Other liability.[75]

73 In contrast, all customers based on Finaccord data were considered in paragraph (106)(a) to determine the relative importance of Trade credit, with a weight of 65%.

74 Notifying Party's submission "Large clients numerators and updated market share estimates", dated 08 February 2021, paragraph 4.8. Reply to the 6(1)(c) Decision, Annex 2, footnote 15.

75 Reply to the 6(1)(c) Decision, Annex 2, footnote 15.

(111) Moreover, the Notifying Party did not provide the full underlying data and processing used by Finaccord to calculate the market sizes estimates. Therefore, in light of the uncertainty identified above with the important change in the market size for C&P, the Commission cannot exclude that the market size for large customers in other risks types is sensitive to the relative importance given to each of the sub-lines.

(112) Based on the above, the Commission considers that the market size for large customers used by the Notifying Party in its market reconstruction suffers from a significant uncertainty due to the sensitivity in the relative importance given to the different lines composing a specify risk. While this is illustrated with the C&P risk, it cannot be excluded that such consideration also applies to other risks, such as FinPro and P&C, which are also composed of several risk lines.

Table 10: Range of possible market share ranges, C&P

	Ratio 1: share of Large customers	**Ratio 2: share of Brokered channel**	**Denominator based on the two ratios**	**Numerator Aon**	**Numerator WTW**	**Combined share**
11 January Submission (Reply to the 6(1)(c) Decision)	12,6%	65%	630	[…]	[…]	[30-40]%
8 February Submission (updated market shares submission)	16,9%	73%	948	[…]	[…]	[30-40]%
First sensitivity analysis (Commission's calculation)	12,6%	65%	630	[…]	[…]	[50-60]%
Second sensitivity analysis (Commission's calculation)	12,6%	73%	700	[…]	[…]	[50-60]%

Source: Commission analysis of Notifying Party's submissions on markets shares (submission of 11 January and 8 February).

3.4.3. The assumption used by the Notifying Party to allocate the overall GWP across the five different customer types based on operating revenue of companies is not substantiated and is not verified in Aon's customer data

(113) The Notifying Party explained that Finaccord estimates the market size for large customers by allocating the overall GWP between five customer size bands – micro, small, medium, large and very large – based on the operating revenues of companies, split by customer size.[76]

(114) First, the Commission notes that this is a critical assumption used by the Notifying Party to estimate the market size for large customers in the EEA, and the Notifying Party did not provide any evidence to substantiate this assumption.

(115) Second, the Commission carried out an analysis based on Aon's customer data provided in the Reply to RFI 33 to assess this assumption. As discussed below, the Commission finds that Aon's data does not validate this critical assumption used by the Notifying Party in its market reconstruction.[77]

(116) The Commission applied the following methodology to assess the assumption of the Notifying Party:

(a) EEA customers are identified in Aon's data.

(b) While turnover information is available for each of the large customers in the EEA in Aon's data, this is not the case for non-large customers: such information is available for 12% of the non-large customers in Aon's data.

(c) In order to have a sample of large customers comparable to the sample of non-large customers where turnover information is available, the Commission considered a random sample of [a small percentage] of large customers.[78] The Commission found that large customers represent [a high percentage]% of the turnover among all customers.

(d) The [a high percentage] ratio is then applied to the total GWP in Aon's data. This is in line with the assumption used by the Notifying Party, that the overall GWP is allocated across the types customers according to their operating revenue (see paragraph (113)). The implied size of large customer is then compared to observed size of large customers in Aon's data.

(e) Overall, the Commission found that the Notifying Party's assumption overestimates the size of large customers in Aon data by [a high percentage]. Therefore, the assumption used by the Notifying Party in its market reconstruction is likely to overestimate the market size for large customers.

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76 Reply to the 6(1)(c) Decision, Annex 2, paragraph 2.13: "*The share of revenue accounted for by companies in each size band are then used by Finaccord to allocate GWP placed in each size band*.".

77 The Commission did not use WTW customer data provided in the Reply to RFI33 due to a lack of information on the turnover of customers.

78 In practice, the Commission implemented the following simulation : (i) a random sample of 12% of large customers was drawn, the Commission then considered this sample of large customers and the sample of non-large customers where turnover information is available and computed the proportion of turnover that large customers represent, (ii) the previous procedure was repeated 100 times, allowing the obtain a distribution of the proportion of turnover that large customers represent, and the Commission took the average proportion across these 100 random draws (this second part of the methodology allows to mitigate the impact of any outliers in the first part of the simulation where a a random sample of 12% of large customers was drawn).

(117) Based on the above, the Commission considers that the assumption used by the Notifying Party to allocate the GWP to large customers in proportion to their operating revenues is not verified by Aon's customer data and was not substantiated by then Notifying Party, which leads to a significant uncertainty on the market size for large customers.

3.5. Conclusion of the critique on Parties' market reconstruction

(118) Based on the above, the Commission considers that the Notifying Party's market reconstruction suffers from a significant uncertainty and cannot be relied upon to assess the proposed Transaction. In particular:

(a) The Notifying Party's market reconstruction does not capture the proper geographic scope for large customers in the EEA, since it considers only the GWP placed in the EEA by large customers in the EEA. In contrast, he Commission defines the relevant market as the LMCs that source their worldwide services from within the EEA. The Commission's market reconstruction captures the correct geographic scope of large customers in the EEA, since it includes the global placements for each of the large customers in the EEA.

(b) The Notifying Party has more limited information available compared to the Commission, since it does not have access to customers' data of Third-party Brokers and therefore only the Commission can use a full bottom-up approach to calculate market shares (that is, by considering the most disaggregated data possible and aggregating the GWP of the large customers for each of the different brokers). Due to this limitation in the information available, the Notifying Party needed to use two different sources of information for the numerator (that is, the Parties' GWP for large customers, based on the Parties' polcy datasets) and the denominator (that is, the market size for large customers, based on Finaccord data), which made the alignment of the data difficult and its market shares subject to a significant uncertainty. In contrast, the Commission's market reconstruction relies on the same bottom-up approach to measure both the numerator and the denominator, based on customers' data provided by the Parties and the main Third-party Brokers.

(c) The market share levels as provided by the Notifying Party (see Table 5), even suggesting for example that P&C and commercial risk overall are not affected markets, are not supported by the market feedback. Aon, WTW and Marsh are clearly identified as the Big 3 brokers throughout the entire investigation, also in the qualitative feedback, for the three risk types where concerns are identified for LMCs (see Section 6.1.5 of the main body of the Decision). The investigation also clearly identified a gap to the next Tier-2 brokers. That is not reflected in the Notifying Party's market share estimates, which raises considerable doubts as to their plausibility.

(d) The Notifying Party's market reconstruction also suffers from a significant uncertainty in the numerator (that is, the GWP placed by the Parties for large customers), which is likely to significantly underestimates the Parties' position for large customers:

– (Non-large) EEA-subsidiaries of large EEA-based clients have been excluded. This represents a large amount of GWP for Aon;

– For both Aon and WTW, the Commission identified a large category (in terms of GWP) corresponding to customers located in the EEA, but without names for parent-level companies. While it is not possible to determine if these EEA clients are large or non-large, the Commission consider that the size of this category is such that it creates a significant uncertainty in the numerator.

– Some clients listed as large clients in the EEA at the level of the parent-level company, have not been included. This category represents a significant amount of GWP, in particular for Aon.

– Even though the Parties have made some ad-hoc adjustments to their numerators, the Commission considers that these adjustments are not sufficient to take into account the issues identified above.

– The treatment of negative values in the policy datasets of the Parties leads to an additional uncertainty on the market shares provided, in particular for Aon.

(e) The Notifying Party's market reconstruction suffers from a significant uncertainty in the denominator (that is, the market size of large customers).Due the limitations in the available Finaccord data (see paragraph (93)-(94)), the Notifying Party needed to rely on several assumptions to measure the market size for large customers in the EEA in the different segments of commercial risk brokerage:

– The allocation per customer size used by Finaccord has changed significantly in a period of a few months between pre-notification and Phase II, leading to an increase in the market size of large customers by 70%, and therefore does not appear sufficiently stable to be relied upon;

– The two ratios used by the Notifying Party to estimate the size of the market for large customers (namely the ratio capturing the share large customers and the ratio capturing the share of the brokered channel) are sensitive to the relative importance given to each of the lines composing each risk. For example, for C&P, the different sub-lines are Trade credit, Structured credit/political risk, Kidnap & ransom, Terrorism and political violence, and depending on the relative weights used by the Notifying Party, the market size can increase by 50%. The Commission cannot exclude that such consideration applies as well to other risks, such as FinPro and P&C, which are also composed of several risk lines;

– The assumption used by the Notifying Party to allocate the GWP to large customers in proportion to their operating revenues is not verified by Aon's customer data and was not substantiated by the Notifying Party.

4. THE NOTIFYING PARTY'S WALLET ANALYSIS IS CONSISTENT WITH A CONCENTRATED MARKET STRUCTURE AMONG THE BIG-THREE BROKERS FOR LARGE CUSTOMERS IN THE EEA AND THE HIGH MARKET SHARE OF THE PARTIES FOR LARGE CUSTOMERS

4.1. The Notifying Party's view

(119) During pre-notification and Phase I of the investigation, the Notifying Party did not provide market shares for large customers in commercial risk brokerage and per risk types. As an alternative, on 29 October, 2020, the Notifying Party submitted a market reconstruction (called 'Wallet Analysis') by providing for each company listed the Fortune Global 500 companies and headquartered in the EEA in 2019 an estimate of the proportion of GWP each broker accounted for. This represents 119 companies in the EEA (hereinafter called "FG500").[79]

(120) On the basis of the Wallet Analysis, the Notifying Party argued that:[80]

(a) A wide range of brokers can service clients of varying sizes.

(b) No particular size of client has a more limited choice in their selection of a broker and larger, regional, local and specialised brokers all compete for, and provide services to, clients of all sizes. Parties are significantly constrained by the presence of smaller (and in-house) brokers across the entire spectrum of clients that they serve.

(c) Large clients use a wide range of brokers (including in-house brokers) to place their risks and that smaller brokers specifically can win and service major clients on a regular basis from larger brokers.

(121) Figure 5 was submitted by the Notifying Party to describe the findings of the Wallet Analysis. According to the Notifying Party, the largest companies in the world frequently rely not on one single broker, but a mix of brokers. According to the Parties, only a minority of firms – 15 out of 116 firms, or 13% – rely on a single broker for their needs. In addition, 69 out of 116 firms, or 59%, rely on three or more brokers and 16 firms use five or more brokers.

Figure 5: […]

[…]

Source: Notifying Party's submission "Competition for large customers in the commercial risk industry", dated 29 October 2020.

(122) In addition, the Notifying Party argues that "*where smaller brokers serve large clients, they are by no means relegated to serving selected risk lines while a large broker claims the lion's share of the business*" (see Figure 6 submitted by the Notifying Party). According to the Notifying Party, this is the case since:

(a) 7 out of the 116 FG500 firms analysed rely entirely on in-house brokers or on brokers other than Aon, WTW or Marsh.

(b) Another 62 FG500 companies use, to varying degrees, at least one broker that is not Aon, WTW, or Marsh (either in-house or external).

79 The market reconstruction for large customers was submitted as part of the Large Customers White Paper, "Competition for 'large' clients in the commercial risk industry", dated 29 October 2020. The underlying data was submitted in Annex 2 to the Large Customers White Paper.

80 Large Customers White Paper.

(c) 47 FG500 companies use Aon, WTW or Marsh only, with varying shares of wallet for the three large brokers.

Figure 6: […]

[…]

Source: Notifying Party's submission "Competition for large customers in the commercial risk industry", dated 29 October 2020.

(123) On 23 November 2020, the Notifying Party submitted in the reply to the Commission's RFI 23, dated 19 November 2020, additional data on the estimated total risk premium (that is, the level of GWP) placed by each of the 119 companies in 2019. The Notifying Party has followed a three-step procedure to provide an estimate of the total risk premium placed by each of the 119 companies in 2019:

(a) First, the Parties have extracted the total 2019 GWP in USD placed for the 119 companies in their respective policy datasets.

(b) Second, the Parties have estimated total GWP placed by each company by dividing the sum of GWP placed with the Parties by their combined share of wallet.

(c) Third, the Parties converted the figures into EUR using the average annual exchange rate for 2019.

4.2. The Commission's assessment of the Notifying Party's submissions

(124) First, on a general level, the Commission notes that the Wallet Analysis submitted by the Notifying Party does not allow to assess the market structure separately for each risk type, but for commercial risk brokerage overall. In contrast, the Commission's market reconstruction is more comprehensive and allows to carry out assessment at the level of risk type (see Section 2).

(125) Second, while the Parties' estimates of the share of each broker for each company is provided by their experts (that is, account managers), the Commission cannot exclude that some data points may not be reliable. This is based on the following considerations:[81]

(a) In many cases, the Parties have limited oversight of the other brokers used by clients, as well as about the total size of the premium companies place. This uncertainty can be more important for clients where the Parties only serve a low share of the wallet.

(b) The Parties had some difficulties in mapping subsidiaries to corporate parent companies. Therefore, the figures underlying the calculations may not, in all instances, capture all GWP placed through all subsidiaries, which may underestimate total GWP placed per client.

(c) Aon's policy datasets do not cover all countries where Aon is active. As a result, its total GWP at individual client-level may be underestimated.

(d) The Parties' data may contain cancellation of policies or returns of extra payments from previous years. In some instances, the GWP for multi-year policies may be assigned entirely to the first year, which also leads to some uncertainty for the shares of the Parties.

[81] Reply to RFI 23, section 3.

(126) Third, the Commission disagrees with the Notifying Party's assessment (see paragraphs (120)-(122)) and makes the following considerations:

(a) As a general point, while large clients appear to use multiple brokers based on the data provided by the Parties, the Commission notes that this fact alone does not allow to conclude that Tier 2 brokers are close competitors to Aon, WTW, and Marsh (the Big Three), since Tier 2 brokers serve LMCs to a limited extent compared to the Big Three brokers (see Table 11).

(b) As regards Figure 5, the Commission notes that Marsh (blue dots), Aon (grey dots), and WTW (orange dots) have a very significant presence for the 119 companies. In fact, almost all large customers are served by at least one of the Parties or the Big Three more broadly (see further details in paragraph (129) below). The Commission has carried out a more detailed assessment in paragraph (128)-(130) below.

(c) As regards the analysis underlying Figure 6 and the Notifying Party's claim that "*smaller brokers often win a large share of business from the world's largest companies*" and more broadly that "*where smaller brokers serve large clients, they are by no means relegated to serving selected risk lines while a large broker claims the lion's share of the business*", the Commission disagrees for the following reasons.

– In order to assess the strength of smaller brokers for the top 119 customers, it is necessary to calculate the share of GWP accounted for by each broker across all large customers, taking into account the level of GWP placed by each customer. The Commission has carried out this assessment in paragraph (131)-(136) below, showing that the Big Three brokers account for [a high percentage] of the share of Wallet and all other smaller brokers combined only serve [a small percentage] of the share of Wallet.

– Information on the specific risk type is not included in the Parties' submission. Therefore, it is not clear on what basis the Parties argue that smaller brokers are not relegated to serving only selected risk lines.

– The Commission also notes that in Figure 6, the Notifying Party provides an aggregated view by summing up all brokers other than Big Three and in-house into the light-blue bar. The Commission considers that such aggregated analysis does not allow for an assessment of the extent of the fragmentation of the wallet within the set of smaller brokers. In addition, the Commission notes that none of the other brokers serves more than 13 companies (see Table 11 and paragraph (129) for a detailed analysis).

(127) The Commission has carried out its own analysis based on the data Figure 5 and Figure 6 and the supplementary information on the GWP submitted in the Reply to RFI 23. More specifically, the Commissions analysis focused on: (i) assessing the frequency with which each of the brokers serves the 119 EEA clients (participation analysis); and (ii) calculating the GWP weighted share for each of the brokers over the sample of these 119 large companies. The results of both analyses are described below.

Table 11: […]

Broker	Count	Participation rate	Share of Wallet (GWP), incl. brokerage service, direct and in-house	Share of Wallet (GWP), brokerage service
Aon	[…]	[…]	[…]	[…]
WTW	[…]	[…]	[…]	[…]
Combined	*[…]*	*[…]*	*[…]*	*[…]*
Marsh	[…]	[…]	[…]	[…]
Big Three	[…]	*[…]*	[…]	*[…]*
In-house broker	[…]	[…]	[…]	-
Lockton	[…]	[…]	[…]	[…]
Gallagher	[…]	[…]	[…]	[…]
Diot	[…]	[…]	[…]	[…]
Siaci Saint Honoré	[…]	[…]	[…]	[…]
Direct to insurers	[…]	[…]	[…]	
Other	[…]	[…]	[…]	[…]
Total	[…]		[…]	[…]

Source: Commission's analysis of Parties' data submitted with white paper on large customers and reply to RFI 23.

(128) **Participation analysis.** To assess how often brokers serve the top 119 companies, the Commission has performed a participation analysis.[82] The results are reported in the second and third column of Table 11. Since more than one broker can serve a company, the sum of participation rates exceed 100%.

(129) The analysis shows that:

(a) The Merged Entity would be used by […] companies ([a very high percentage]). Marsh, Aon and WTW are used by almost all large customers - […] out of 108 companies ([a very high percentage]) have used at least one of the Big Three brokers. These rates are also high for each of the Big Three brokers: Aon was used by […] large customers ([a significant percentage]), WTW was used by […] large customers ([a high percentage]) and Marsh was used by […] large customers ([a high percentage]).

(b) In contrast, other brokers appear to a much smaller extent. The largest broker, Siaci Saint Honoré, served […] large customers ([a small percentage]) – almost 5 times lower that Aon. These rates are even lower for other tier-two brokers, such as Lockton, Gallagher. Numerous other brokers are aggregated into the category "others", which served a total of 37 customers; however, the

82 The Commission removed 11 companies from the Parties' wallet dataset since it was indicated that no wallet allocation was known. This leads to a sample of 108 Fortune 500 companies headquartered in EEA.

Commission notes that each broker included in this category served individually at most 4 companies.

(130) As regards the direct channel and in-house brokers, in line with its conclusions in section 6.1.3 of the main body of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage service.

(131) **Share of Wallet.** To assess the extent that each of the brokers serve large customers, the Commission computed shares of supply, weighted by the GWP for each company. This is based on the additional data provided in the Reply to RFI 23 (see paragraph (123)). Table 11 reports the analysis: the third column corresponds to the Parties' wallet analysis, and the fourth column corresponds to the brokerage market (that is, excluding the direct channel and the in-house brokers).

(132) As regards the direct channel and in-house brokers, in line with its conclusions in section 6.1.3 of the main body of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage service.

(133) In the market for brokerage services, the wallet analysis actually indicates a combined share of Wallet of [a significant percentage] (Aon: [a significant percentage]; WTW: [a small percentage]), with Marsh being the only significant competitor ([a significant percentage]).

(134) In contrast, each of the other brokers serves a significantly smaller share of the large customers' wallet. No large customers were served exclusively by the other brokers. The largest of the other brokers, Siaci Saint Honoré, serves only [a small percentage] of the large customers' wallet.

(135) The Commission considers that this evidence shows that there is a large gap after the Big Three and other Tier 2 brokers are significantly behind.

(136) The Commission notes that after applying the relevant corrections (as presented in Table 11) to the Wallet analysis provided by the Notifying Party, the analysis shows a concentred market structure among the Big-Three brokers for LMCs.

4.3. Conclusion

(137) On the basis of the above, the Commission concludes that (i) Aon, WTW, and Marsh are the most credible alternative brokers for LMCs, and (ii) other Tier 2 brokers are less credible alternatives. This is based on the following:

(a) The Big Three brokers serve almost all large customers ([a very high percentage] of them) and account for the majority of the large customer's wallet: Aon serves [a significant percentage] of large customers ([…] customers), WTW services [a high percentage] ([…] customers), and Marsh serves [a high percentage] ([…] customers). In contrast, among the Tier 2 brokers, the largest broker, Siaci Saint Honoré, serves only […] large customers ([a small percentage]) – almost 5 times lower that Aon. For other Tier 2 brokers, such as Lockton, Gallagher, these rates are even lower.

(b) Considering the market for brokerage services, the Parties' combined share of GWP is [40-50]% (Aon: [20-30]%, WTW: [10-20]%), and only Marsh appears as a significant competitor ([30-40]%).

(138) The Commission notes that the Notifying Party did not comment on the Commission's findings in the Reply to the 6(1)(c) Decision. Instead, and in

contradiction to its previous submissions, the Notifying Party appeared to cast doubt on the representativeness of the customer sample and on the underlying data.[83,84]

(139) Overall, the Commission considers that the share of wallet provides another piece of evidence, which is consistent with the findings from its market reconstruction (Section 2). In particular, the Wallet Analysis confirms that:

(a) The market for serving large customers is concentrated among the Big Three markets. In other words, Aon, WTW, and Marsh are the most credible alternative brokers for large multinational customers;

(b) Other Tier 2 brokers are distant competitors and serve LMCs only to a limited extent.

(140) Moreover, the Wallet Analysis constitutes another piece of evidence indicating that the low market shares for EEA large customers provided by the Notifying Party in its market reconstruction are implausible (see Table 5, with a combined market share around [20-30]% only, see also paragraph (69)).

83 For example, in paragraph (168) of the Reply to the 6(1)(c) Decision, the Notifying Party mentions that Fortune Global 500 represent just a small minority of all large MNCs, and that these are the subset of large MNCs that face the most restricted choice set of brokers. In contrast, in paragraph 3.2 of the Large Customers White Paper, the Notifying Party mentions that Fortune 500 presents an objective list of the largest companies in the world.

84 In paragraph (168) of the Reply to the 6(1)(c) Decision, the Notifying Party claims that these shares will necessarily be overstated because of the Parties' limited visibility of third-party brokers. However, in Annex 2 to the Large Customers White Paper, the Notifying Party explains that Aon and its advisers contacted Aon account executives to collect information about brokers used by each company, and that this process was iterative, with multiple rounds of clarification required to ensure that responses were as complete and consistent as possible. Similarly, WTW and its advisers also gathered information from WTW account executives on the accounts with which they did the most business, and as a cross check on Aon's estimates of brokers used. Where feedback from Aon and WTW differed, the feedback regarding the firm's own involvement with the client took precedence. In cases where feedback differed with respect to other brokers, the party with the largest share of wallet was assumed to have better knowledge of the client's insurance programme.

Annex B: Analysis of tender data

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1. INTRODUCTION AND OUTLINE

(1) In addition to the qualitative analysis, in order to assess the intensity of competition between the Parties and the importance of both Aon and WTW as competitive forces in the market, the Commission conducted a series of statistical analyses based on tender data provided by the Parties.

(2) In this annex, the Commission describes the results of its analysis of tender data for certain markets discussed in the main body of the Decision where the Commission found a significant impediment to effective competition. As regards the Retirement Benefits Consulting market in Germany specifically (Section 4.2.2), while it can be left open whether the proposed transaction would lead to a significant impediment of effective competition as the final commitments submitted on 12 May 2021, with a view to addressing competition concerns identified in the market for Pension Administration in Germany, would address the competition concerns on this market in any event, the Commission still reports the analysis of tender data.

(3) The annex is structured as follows:

(a) Section 2 presents the submissions of the Parties and the Commission's assessment of tender data for commercial risk brokerage;

(b) Section 3 presents the submissions of the Parties and the Commission's assessment of tender data for reinsurance brokerage;

(c) Section 4 presents the submissions of the Parties and the Commission's assessment of tender data for retirement benefit consulting and pension administration in Germany.

(4) Throughout this Annex, reference is made to the submissions of an economic nature made by the Notifying Party. These include the following submissions:

(a) The submissions made in pre-notification, with the different responses to RFIs;

(b) The Notifying Reply to the Article 6(1)(c) decision, including Annex A for tender data on commercial risk brokerage and retirement benefit consulting/pension administration in Germany, and Annex 2 for tender data in reinsurance brokerage.

2. TENDER DATA FOR LARGE MULTINATIONAL CUSTOMERS IN COMMERCIAL RISK BROKERAGE

(5) As mentioned in the main body of the Decision, most of the Commission's concerns in commercial risk brokerage are related to Large Multinational Customers ("LMCs") who have specific and more sophisticated requirements. Please refer to Section 6 of the Decision for further details.

(6) The Commission has used the tender data provided by the Parties to assess the competitive interactions between the Parties and other brokers for the markets for LMCs where a significant impediment to effective competition is found by the Commission in the main body of the Decision, namely: LMCs in Property & Casualty (P&C), LMCs in Financial and Professional Risk ("FinPro"), and LMCs in Cyber. As regards Aerospace Manufacturing market, where a significant impediment to effective competition is found for all customers, the Parties have provided tender data for Aviation instead (which includes both aircraft operators market and aerospace manufacturing market); however, the Commission considers that the results are consistent with the findings in the market investigation that the Parties are close competitors for aerospace manufacturing for all customers (see Section 2.4.4).

As regards Space, the Parties did not provide any submission on tender data; the Commission has also excluded space from the analysis given the low number of tenders recorded: […] tenders in 2017, […] tenders in 2018, and […] tenders in 2019.

2.1. Description of the data

(7) As regards Aon data, the primary source of information is its internal tool called "Aon Connect pipeline", which records information on sales opportunities (i.e. tenders where Aon participated). In particular, this dataset includes information on other participants, incumbent, winner, and value of the opportunities. On the basis of this dataset, Aon submitted during the proceedings several analyses of participation rates (that is, in which proportion of tenders WTW is participating against Aon) and analyses of loss rates by considering to which competitors Aon lost tenders when it was the incumbent (or more generally by considering all tenders where Aon participated and lost, independently if Aon was the incumbent).

(8) In the course of pre-notification, Aon also complemented its tender data by identifying tenders for large customers, that is customers generating more than EUR 1 billion turnover per year.

(9) As regards WTW data, one source of information is its CRM dataset which records information on tender opportunities where WTW participated, which tenders were won by WTW (but without information on winner for the tenders lost by WTW), the identity of the incumbents, and the value of the opportunity. WTW noted that information on the other participants in tenders is not available, and therefore no participation analysis was submitted.

(10) WTW also maintains a number of other datasets that track lost business […]. On the basis of these "lost business trackers", a loss analysis was provided in Annex 3.

2.2. The Commission's framework

2.2.1. Conceptual framework.

(11) In order to assess the closeness of competition between the Parties in commercial risk brokerage, the Commission carried out a participation analysis and a loss analysis based on the Aon Connect database submitted as part of RFI 1, and further amended by Aon in the reply to RFIs 9 and 10 and in the Reply to the 6(1)(c) Decision. As regards the tender data submitted by WTW, as discussed in paragraph (47) below, the Commission considers that the underlying data are not sufficiently reliable for assessing the competitive effect of the proposed Transaction.

(12) The Commission considers the participation and loss analyses jointly to assess the competitive interactions between the Parties and other brokers.

(13) The participation analysis considers the number of tenders where the merging parties participate against each other, and therefore allows to assess the degree of competitive interactions between the merging Parties relative to third-parties. Since participating in a tender requires time and efforts, brokers participate in tenders if they expect to meet the tender requirements. Frequent interactions of the merging parties, relative to other competitors, is therefore an indication that the Parties offer close substitutes and thus exert a competitive pressure on each other.

(14) In addition, the loss analysis allows the Commission to assess to whom one of the merging parties is losing when it participates in tenders. The Commission considers that the participation analysis should be interpreted in conjunction with the loss analysis, since participation in tenders is particularly credible if it also results in wins. For example, if a competitor participates often against Aon, but never wins, it

would not be a credible alternative to Aon. Conversely, a firm with a significant number of participations and with a commensurate number of wins is likely to exercise a significant competitive constraint on its rivals.[1]

(15) These two analyses allow to assess the degree of competitive interactions (i.e., the degree of closeness of competition) between the merging parties relative to other brokers.

(16) The Commission considers that these two analyses are the most suited to assess closeness of competition in this specific case. These types of analysis are also consistent with the Commission's case practice.[2]

(17) As described by the Notifying Party, the tender process for commercial risk brokerage is characterised by a significant uncertainty where bidders have relatively imperfect information on some key competitive parameters when making their offer to a customers, namely: (i) the characteristics of their offers from rival bidders and (ii) how the customers value the different offers.[3] In such a setting where bidders face a significant uncertainty on key competitive parameters during the tender process, merger effects resemble price effects in 'ordinary' differentiated product settings. This type of setting is proxied with a first-price auction (FPA) model in the academic literature, which is also closely related to the participation analysis and loss analysis discussed above. [4]

(18) In a standard first-price auction design bidders are formally paid-as-bid (that is, they are paid their final bid if successful) and make private offers to the buyer (which may or may not be updated over time, if there are multiple bidding rounds).[5] The standard assumption in this setting is that bidders make their offers under conditions of imperfect information on the offers that are made by rival bidders and also on the value that is placed by the buyer on each bid (on the assumption that the products are differentiated).[6] Under the assumption of imperfect information, when placing its (final) offer, each bidder faces a trade-off between the probability of its bid being successful and the profit earned if the bid is successful. A higher bid will reduce the probability of being the winner, but it will increase the profit that is associated with a successful bid. The equilibrium bid will optimise this trade-off, similar to ordinary markets with differentiated products where pricing optimises the trade-off between volumes sold and profit margins on each unit sold.

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1 See also for example: M.8677 – Siemens/Alstom, Annex 1, paragraph 25 and paragraph 30; M.7278 - GE/Alstom, Annex 1, paragraph 306; and M.4747 – *IBM/Telelogic*, paragraphs 185-196.

2 See for example the following cases where a participation and a loss analysis were implemented: M.8677 – Siemens/Alstom, M.7278 - GE/Alstom, M.6851 – Baxter International/Gambro, M.4747 – IBM/Telelogic.

3 Please refer to Section 2.3.2 below for an assessment of the conceptual framework put forward by the Notifying Party.

4 See GE/Alstom, Annex 1; P. Klemperer (2005), "Bidding Markets", Competition Commission discussion paper; C. Shapiro (2010), "The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years", Antitrust Law Journal, Vol. 77, G. Werden and L. Froeb (2008), "Unilateral Competitive Effects of Horizontal Mergers", in L. Buccirossi (ed.), Handbook of Antitrust Economics, Cambridge, MA, MIT Press, and OFT (2007), "Markets with Bidding Processes", Economics discussion paper.

5 In practice, bidders often provide their offers in a sealed bid.

6 If instead bidders have very good information on these variables, then the outcome of the auction resembles a second-price environment, as described in Section 2.3.2 below and as advocated by the Notifying Party.

(19) In this setting a merger increases the bids offered. A merger, ceteris paribus, increases the probability of winning faced by each bidder. This is because the merger either entirely removes a competitor, or it eliminates (internalises) competition between two rival bidders. This upward shift in expected sales leads to higher profit-maximizing bids. The effect is larger when the “probability diversion” between the merging parties is greater; that is, when the impact on the probability of winning of one merging party is greater if the other merging party increases its bid (similar to a standard “upwards pricing pressure” logic in ordinary markets).[7] Unilateral effects from a merger should therefore be expected in any tender where each of the two merging parties participates against each other with a reasonable probability of winning, that is, where its participation affects the other merging party's probability of winning. Hence, in a first-price auction the set of tenders that are affected by a merger can therefore extend well beyond the tenders where the merging parties would have been the winner and runner-up (absent the merger).

2.2.2. Empirical framework

(20) The Commission reports the results of its analysis of tender data at the EEA-level for the markets where a significant impediment to effective competition is identified in the main body of the Decision for LMCs (see Sections 6.3.5.1, 6.3.5.3, 6.3.5.5 of the main body of the Decision). This includes: (i) LMCs for Property and Casualty, (ii) LMCs for FinPro, (iii) and LMCs for Cyber.

(21) In addition, the Commission also analysed the tender data for all customers for Aviation.[8] As regards Aviation, the Commission considers that the analysis of tender data is still representative to assess the competitive landscape in aerospace manufacturing (see Section 2.4.4; see also Section 6.3.5.11 in the Decision).

(22) Similar to the analysis of Aon tender data submitted by the Notifying Party in the Reply to the 6(1)(c) Decision, the Commission considers tenders for large customers. In its analysis, the Commission has also considered the adjustment in term of data processing implemented by the Notifying Party in the Reply to the 6(1)(c) Decision.

(23) However, the Commission implements four adjustments compared to the Notifying Party’s submissions (for further details, see Section 2.3.1-2.3.9 below for an assessment of the Notifying Party’ submissions).

(24) First, the Commission considered tenders in terms of value, not in terms of count. As Table 1-Table 4 below show, tenders are very heterogeneous, where a significant number of tenders have little value and a small number of tenders representing the large majority of the overall value. In other words, tenders differs greatly in their economic significance, with many tenders having little value while a few tenders prove to be very valuable. For example:[9]

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7 As in the logic of UPP, higher pre-merger margins are also associated with higher upward pricing pressure. The interpretation of diversion ratios in terms of “winning probability diversion ratios” is set out by S. Moresi (2010See S. Moresi (2010), "The use of upwards price pressure indices in Merger Analysis", The Antitrust Source, February.

8 The Commission has excluded space from the analysis given the low number of tenders recorded: […] tenders in 2017, […] tenders in 2018, and […] tenders in 2019.

9 The results below are based on the sample of tenders included in the participation analysis in Section 2.4 below. The results are similar for the sample of tenders included in the loss analysis: in P&C [a significant percentage] of tenders covers 81% of value, in FinPro [a small percentage] of tenders covers 81% of value, in Cyber [a significant percentage] of tenders covers 75% of value, and in Aviation [a significant percentage] of tenders covers 79% of value.

(a) As regards Property and Casualty, [a significant percentage] of tenders for large customers represents approximately 80% of the tender value for large customers;

(b) As regards FinPro, [a small percentage] of tenders for large customers represents approximately 80% of the tender value for large customers;

(c) As regards Cyber, [a significant percentage] of tenders for large customers represents approximately 80% of the tender value for large customers;

(d) As regards Aviation, approx. [a significant percentage] of tenders for all customers represents approximately 80% of the tender value for large customers.

(25) The Commission therefore considers that the value-weighting approach is more appropriate than a count-approach (i.e. where tenders are considered irrespective of their economic importance) to assess the competitive interaction between the Parties relative to other brokers.

Table 1: Distribution of revenue for tenders in P&C in terms of count and value

Sample of tenders in participation analysis					Sample of tenders in loss analysis				
Value Cate-gory (EUR 000)[10]	**Share by Count**	**Cumulative share by Count**	**Share by Revenue**	**Cumulative share by Revenue**	**Value Cate-gory (EUR 000)**	**Share by Count**	**Cumulative share by Count**	**Share by Revenue**	**Cumulative share by Revenue**
40	[…]	[…]	[…]	[…]	40	[…]	[…]	[…]	[…]
80	[…]	[…]	[…]	[…]	80	[…]	[…]	[…]	[…]
120	[…]	[…]	[…]	[…]	120	[…]	[…]	[…]	[…]
160	[…]	[…]	[…]	[…]	160	[…]	[…]	[…]	[…]
200	[…]	[…]	[…]	[…]	200	[…]	[…]	[…]	[…]
240	[…]	[…]	[…]	[…]	240	[…]	[…]	[…]	[…]
280	[…]	[…]	[…]	[…]	280	[…]	[…]	[…]	[…]
320	[…]	[…]	[…]	[…]	320	[…]	[…]	[…]	[…]
360	[…]	[…]	[…]	[…]	360	[…]	[…]	[…]	[…]
400	[…]	[…]	[…]	[…]	400	[…]	[…]	[…]	[…]
440	[…]	[…]	[…]	[…]	440	[…]	[…]	[…]	[…]
480	[…]	[…]	[…]	[…]	480	[…]	[…]	[…]	[…]
520	[…]	[…]	[…]	[…]	520	[…]	[…]	[…]	[…]
560	[…]	[…]	[…]	[…]	560	[…]	[…]	[…]	[…]
600	[…]	[…]	[…]	[…]	600	[…]	[…]	[…]	[…]
640	[…]	[…]	[…]	[…]	640	[…]	[…]	[…]	[…]
680	[…]	[…]	[…]	[…]	680	[…]	[…]	[…]	[…]
720	[…]	[…]	[…]	[…]	720	[…]	[…]	[…]	[…]
760	[…]	[…]	[…]	[…]	760	[…]	[…]	[…]	[…]

[10] For example, the category 40 USD (000) includes all tenders where the revue is between 0 and 40,000 USD. A similar consideration applies to the other categories.

Sample of tenders in participation analysis					Sample of tenders in loss analysis				
Value Category (EUR 000)[10]	Share by Count	Cumulative share by Count	Share by Revenue	Cumulative share by Revenue	Value Category (EUR 000)	Share by Count	Cumulative share by Count	Share by Revenue	Cumulative share by Revenue
800	[…]	[…]	[…]	[…]	800	[…]	[…]	[…]	[…]
840	[…]	[…]	[…]	[…]	840	[…]	[…]	[…]	[…]
880	[…]	[…]	[…]	[…]	880	[…]	[…]	[…]	[…]
920	[…]	[…]	[…]	[…]	920	[…]	[…]	[…]	[…]
1000	[…]	[…]	[…]	[…]	1000	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

Table 2: Distribution of revenue for tenders in FinPro in terms of count and value

Sample of tenders in participation analysis					Sample of tenders in loss analysis				
Value Category (EUR 000)	Share by Count	Cumulative share by Count	Share by Revenue	Cumulative share by Revenue	Value Category (EUR 000)	Share by Count	Cumulative share by Count	Share by Revenue	Cumulative share by Revenue
40	[…]	[…]	[…]	[…]	40	[…]	[…]	[…]	[…]
80	[…]	[…]	[…]	[…]	80	[…]	[…]	[…]	[…]
120	[…]	[…]	[…]	[…]	120	[…]	[…]	[…]	[…]
160	[…]	[…]	[…]	[…]	160	[…]	[…]	[…]	[…]
200	[…]	[…]	[…]	[…]	200	[…]	[…]	[…]	[…]
240	[…]	[…]	[…]	[…]	240	[…]	[…]	[…]	[…]
280	[…]	[…]	[…]	[…]	280	[…]	[…]	[…]	[…]
320	[…]	[…]	[…]	[…]	360	[…]	[…]	[…]	[…]
360	[…]	[…]	[…]	[…]	400	[…]	[…]	[…]	[…]
400	[…]	[…]	[…]	[…]	480	[…]	[…]	[…]	[…]
440	[…]	[…]	[…]	[…]	560	[…]	[…]	[…]	[…]
480	[…]	[…]	[…]	[…]	600	[…]	[…]	[…]	[…]
560	[…]	[…]	[…]	[…]	800	[…]	[…]	[…]	[…]
600	[…]	[…]	[…]	[…]					
800	[…]	[…]	[…]	[…]					
840	[…]	[…]	[…]	[…]					

Source: Commission's analysis of Aon tender data.

Table 3: Distribution of revenue for tenders in Cyber in terms of count and value

Sample of tenders in participation analysis					Sample of tenders in loss analysis				
Value Cate-gory (EUR 000)	Share by Count	Cumulative share by Count	Share by Revenue	Cumulative share by Revenue	Value Cate-gory (EUR 000)	Share by Count	Cumulative share by Count	Share by Revenue	Cumulative share by Revenue
10	[…]	[…]	[…]	[…]	10	[…]	[…]	[…]	[…]
20	[…]	[…]	[…]	[…]	20	[…]	[…]	[…]	[…]
30	[…]	[…]	[…]	[…]	30	[…]	[…]	[…]	[…]
40	[…]	[…]	[…]	[…]	40	[…]	[…]	[…]	[…]
50	[…]	[…]	[…]	[…]	50	[…]	[…]	[…]	[…]
60	[…]	[…]	[…]	[…]	60	[…]	[…]	[…]	[…]
70	[…]	[…]	[…]	[…]	70	[…]	[…]	[…]	[…]
80	[…]	[…]	[…]	[…]	80	[…]	[…]	[…]	[…]
90	[…]	[…]	[…]	[…]	90	[…]	[…]	[…]	[…]
100	[…]	[…]	[…]	[…]	100	[…]	[…]	[…]	[…]
120	[…]	[…]	[…]	[…]	120	[…]	[…]	[…]	[…]
130	[…]	[…]	[…]	[…]	130	[…]	[…]	[…]	[…]
180	[…]	[…]	[…]	[…]	180	[…]	[…]	[…]	[…]
190	[…]	[…]	[…]	[…]	200	[…]	[…]	[…]	[…]
200	[…]	[…]	[…]	[…]	320	[…]	[…]	[…]	[…]
320	[…]	[…]	[…]	[…]	380	[…]	[…]	[…]	[…]
380	[…]	[…]	[…]	[…]					

Source: Commission's analysis of Aon tender data.

Table 4: Distribution of revenue for tenders in Aviation in terms of count and value

Sample of tenders in participation analysis					Sample of tenders in loss analysis				
Value Cate-gory (EUR 000)	Share by Count	Cumulative share by Count	Share by Reven ue	Cumulative share by Revenue	Value Cate-gory (EUR 000)	Shar e by Coun t	Cumulativ e share by Count	Share by Revenue	Cumulative share by Revenue
10	[…]	[…]	[…]	[…]	10	[…]	[…]	[…]	[…]
20	[…]	[…]	[…]	[…]	20	[…]	[…]	[…]	[…]
30	[…]	[…]	[…]	[…]	30	[…]	[…]	[…]	[…]
40	[…]	[…]	[…]	[…]	40	[…]	[…]	[…]	[…]
50	[…]	[…]	[…]	[…]	50	[…]	[…]	[…]	[…]
60	[…]	[…]	[…]	[…]	60	[…]	[…]	[…]	[…]
70	[…]	[…]	[…]	[…]	70	[…]	[…]	[…]	[…]
80	[…]	[…]	[…]	[…]	80	[…]	[…]	[…]	[…]
90	[…]	[…]	[…]	[…]	90	[…]	[…]	[…]	[…]
100	[…]	[…]	[…]	[…]	100	[…]	[…]	[…]	[…]
110	[…]	[…]	[…]	[…]	110	[…]	[…]	[…]	[…]

Sample of tenders in participation analysis					Sample of tenders in loss analysis				
Value Category (EUR 000)	**Share by Count**	**Cumulative share by Count**	**Share by Revenue**	**Cumulative share by Revenue**	**Value Category (EUR 000)**	**Share by Count**	**Cumulative share by Count**	**Share by Revenue**	**Cumulative share by Revenue**
120	[…]	[…]	[…]	[…]	120	[…]	[…]	[…]	[…]
140	[…]	[…]	[…]	[…]	140	[…]	[…]	[…]	[…]
170	[…]	[…]	[…]	[…]	170	[…]	[…]	[…]	[…]
200	[…]	[…]	[…]	[…]	270	[…]	[…]	[…]	[…]
230	[…]	[…]	[…]	[…]	400	[…]	[…]	[…]	[…]
270	[…]	[…]	[…]	[…]	510	[…]	[…]	[…]	[…]
400	[…]	[…]	[…]	[…]	600	[…]	[…]	[…]	[…]
510	[…]	[…]	[…]	[…]	690	[…]	[…]	[…]	[…]
600	[…]	[…]	[…]	[…]					
690	[…]	[…]	[…]	[…]					

Source: Commission's analysis of Aon tender data.

(26) Second, the Commission distinguishes competitive tenders from non-competitive tenders. Given that the objective is to assess the competitive interactions between the Parties and other suppliers, non-competitive tenders (i.e. tenders without any competitive interactions between suppliers) are excluded. The Commission notes that the Parties agree with this principle.[11] Consistent with the Parties' definition, tenders explicitly identified as non-competitive and tenders with no information on the identity of competitors recorded are excluded from the analysis.[12]

(27) Third, the Commission considers all tenders for the time period 2017-2019. Pooling all years together increases the sample size, and therefore mitigates the uncertainty related to samples with a small number of tenders. For example, in Aviation, while there are […] competitive tenders with information on participants in 2019, pooling the three years together allows to increase the sample size to […] opportunities.[13]

(28) The Commission notes the comment of the Notifying Party that due to the migration from Aon's legacy systems to Aon Connect in 2019, a lower number of local brokers should be recorded in 2017-2018 compared to 2019.[14] The Commission therefore reports the results for both the 2017-2019 period and the 2019 period as a sensitivity analysis (see Section 2.4). As discussed in Section 2.3.4, results are similar for the 2017-2019 period and 2019 period when there is a sufficient number of tenders in 2019.

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[11] Reply to RFI 1, questions 16 and 17, Annex 3, footnote 24.

[12] Reply to RFI 1, questions 16 and 17, Annex 1, paragraph 4.7*: "We have identified certain opportunities as 'non-competitive' where there are comments in the competitor fields such as "non-competitive", "no competitors" and similar variants, provided that no information on competitors was recorded in any other competitor fields."*

[13] In addition, the Commission notes that there is no reason why pooling several years together would bias the results. See also Section 2.3.4.

[14] Reply to the 6(1)(c) Decision, Annex A, paragraph 3.13.

(29) Fourth, as discussed in more detail in Sections 2.3.3 and 2.4, a significant number of tenders in Aon Connect tender database have unknown competitors or winners. The Commission considers the analysis when tenders with unknown competitors or unknown winners are excluded as being more reliable. This is based on the assumption that the distribution of winners/participants in the set of tenders with unknown winners or unknown participants is similar to the distribution of winners/participants in the set of tenders with known winners or known participants. In contrast, the Notifying Party included in its submissions tenders with unknown competitors or unknown winners, which artificially decreases the level of switching rates from Aon to WTW (and from Aon to Marsh).

(30) In its updated analysis of tender data (Section 2.4), the Commission carried out an additional assessment of the tenders with unknown winners by manually checking if they correspond to WTW's customers (see Sections 2.3.3 and 2.4 for further details). In summary, as regards the loss analysis, this additional analysis confirms the validity of the Commission's assumption used in the 6(1)(c) Decision, notably for P&C, FinPro, and Aviation. For Cyber, while the Commission's review did not confirm the assumption used in the 6(1)(c) Decision, suggesting that tenders with unknown winners refers to brokers different from WTW (which are likely to be local brokers according to the Notifying Party's argument), the Commission notes as well that no Tier-2 brokers available in the tender data (e.g., Gallagher, Howden, and Lockton) achieve a significant win rate against Aon. Moreover, the tender data to assess closeness of competition should be interpreted in conjunction with the market shares for large customers in the EEA, with a combined market share in the range of [70-80]% in Cyber, and with the minor role played by brokers different from the Big-Three, and with the other evidence on closeness of competition (see Section 6.3.5.4 of the main body of the Decision).

(31) As regards the participation analysis, the Commission considers that there is no reason to believe that excluding unknown tenders would create a systematic bias for the participation rates between the merging parties relative to other brokers. First, the Commission's assumption of similar participants' distribution across known/unknown tenders is confirmed in the context of the loss analysis (see Sections 2.3.3 and 2.4 for further details). Second, even the Notifying Party mentions in a pre-notification submission that there is no reason to believe that the participation rates of the merging parties relative to other competitors would be biased when tenders with missing information are excluded.[15]

2.3. The Notifying Party's submissions do not undermine the reliability and robustness of the Commission's analysis

2.3.1. The submissions of the Parties during pre-notification suffer from significant shortcomings

2.3.1.1. Description of the Parties' submissions

(32) The Parties made the following submissions based on Aon's tender data for commercial risk brokerage.

(33) **Reply to RFI 1.** In the reply to RFI 1, questions 16-17, the Parties provided two types of analyses, depending on the data available to each party:

[15] Reply to RFI 9 Q1-Q2 and RFI 10 Q8, dated 29 September 2020, paragraph 2.5: "*While participation is under-recorded, Aon has no reason to believe that WTW's participation would systematically be under-recorded compared with competitors.*".

(a) A participation analysis, considering which brokers participate in tenders against Aon;

(b) A loss analysis (also called switching analysis), considering to which brokers Aon loses tenders.

(34) In the reply to RFI 1, questions 16-17, these analyses correspond to Annex 2 for Aon's tender data ("Analysis of Commercial Risk opportunities data", dated 26 August 2020) and Annex 3 for WTW tender data ("Overview of WTW CRB Datasets", dated 26 August 2020).

(35) **Reply to RFI 9 and RFI 10.** In the reply to RFI 9, questions 1-2 and RFI 10, question 8, the Parties submitted a memo ("RFI 9 Q1-1 & RFI 10 Q8", dated 29 September 2020) explaining why combining the information from the Aon and WTW tender datasets would not be reliable to build a comprehensive tender database on the identity of participants in tenders. In particular, the Parties mention that:

(a) Given that the competitive opportunities in which the Parties participate are generally informal tenders, there is no universal identifier that enables to match opportunities between the Parties' datasets;

(b) Because both Aon and WTW tender datasets are not comprehensive, a matching exercise cannot identify all opportunities in which the Parties met;

(c) There are several difficulties with identifying identical opportunities between the Parties' datasets since: (i) matching datasets on client names is difficult because it is recorded in different ways across datasets, (ii) matching on time periods is difficult (again due to possibly different recording between the Parties), (iii) using information on product information (e.g. risk class in commercial risk) is difficult since the Parties could record the same opportunities in similar but not identical risk class, (iv) matching at the individual opportunity level is difficult in cases where they are multiple opportunities associated with the same customer, (v) even if a matching algorithm is designed, checking the accuracy of the matched and unmatched opportunities would entail a significant manual exercise;

(d) Moreover, Aon mentioned that while data on average number of competitors per tender may not be reliable given some missing information on participants in tenders, there is no reason to believe that WTW's participation would systematically be under-recorded compared to competitors;

(e) As a test case, the Parties provided the results of a possible matching exercise for commercial risk customers located in the UK in 2019. On that basis, the Parties mention that they generally found few matches, and that there would not be any significant impact on the findings of the participation and loss analyses.

(36) **Follow-up responses to RFI 9 and RFI 10.** In the reply of follow-up questions on RFI 9 and RFI 10 (dated 30 October 2020), the Parties supplemented their previous submission (dated 26 August 2020) by identifying the large and very large customers in their opportunity database.[16] According to Aon, identifying large customers based on the opportunity value may not be necessarily accurate as a means of capturing customer size, because opportunity value may not necessarily reflect the size of customers. In particular, the Parties mention that "*a large customer (large company)*

[16] Aon's reply to follow up questions RFI 9 - 10, dated 30 October 2020, Annex 1

with complex requirements may have many small opportunities, and a small customers with simpler requirements may have a single large opportunity".

(37) Aon has therefore provided the corresponding customers' global annual sales for each opportunity listed in the Aon Connect database, in order to identify large customers (i.e. with yearly sales between EUR 100 million and EUR 1 billion) and very large customers (i.e. with yearly sales exceeding EUR 1 billion). Aon also extended its previous submission (dated 26 August 2020) by carrying out a loss analysis for large and very large customers.[17] The Commission discusses in more details in Section 2.3.6 the treatment of tenders for large customers.

(38) WTW also provided additional analyses in the reply of follow-up questions on RFI 9 and RFI 10 (dated 31 October 2020), with: (i) a participation analysis showing, for each group of opportunities where the incumbent is a third-Party, the proportion of opportunities where WTW participated,[18] and (ii) a loss analysis using revenue variance above the median and the 75th percentile to identify high valued customers.[19]

(39) **Ancillary dataset.** In a submission dated 5 November 2020, Aon submitted an additional loss analysis for commercial risk in France based on additional data collected by Aon's commercial risk teams in France.[20] This dataset includes information such as on client name, risk line, date of the tender, incumbent broker, tender outcome (win or loss), and the identity of the winner. However, this dataset is not used in the Commission's tender analysis described in Section 2.4 since: (i) information on the value of tenders is not available, and (ii) information on customers' turnover is not available, preventing the identification of large clients. Nevertheless, these additional datasets submitted are used in the analysis of tender data for Retirement Benefit Consulting and Pension Administration in Germany (see Section 4).

2.3.1.2. Assessment of the Parties' submissions

(40) The submissions from Aon are summarised in Table 5 below. According to the Notifying Party, both the participation analysis and the switching analysis show that WTW exerts a limited competitive constraint on Aon.

(41) According to the participation analysis submitted by Aon:

(a) When considering all tenders where Aon participated, WTW is only recorded as having participated in [a small percentage] of Aon's opportunities, across risk classes; notably, [a small percentage] for P&C, [a very small percentage] for FinPro,[21] and [a small percentage] for Aviation.

(b) When considering tenders won by Aon, WTW is recorded as having participated in [a small percentage] of opportunities, across risk class. In particular, WTW is recorded as having participated in [a very small

17 Aon carried out a matching of Aon's tender data with a third party dataset […], allowing to recover turnover figures for clients of Aon. Clients were categorised as large customers if their global yearly turnover is higher than EUR 100 million, and as very large customers if their global yearly turnover is higher than EUR 1 billion.

18 WTW's reply to follow up questions RFI 9-10, dated 31 October 2020, Table 2

19 WTW's reply to follow up questions RFI 9-10, dated 31 October 2020, Table 3 and 4 and Annex A

20 Notifying Party's submission "Ancillary win loss CR France dataset", Annex 3, 4 and 5, dated 05 November 2020.

21 The Commission notes that Cyber was included within the FinPro category in the Notifying Party's submissions.

percentage] of the tenders won by Aon in P&C, [a small percentage] in FinPro and [a small percentage] in Aviation;

(c) Marsh is recorded as being the most frequent participant in Aon opportunities in all risk classes except Aviation (in which it participates at a similar rate to WTW);[22]

(d) In all risk classes, there are a large number of other brokers recorded as participants;

(e) In all risk classes, insurers ("direct") as well as brokers are noted as participants.

(42) According to the switching analysis submitted by Aon:

(a) Out of all lost opportunities recorded in which Aon was the incumbent, WTW wins a very small share – [a very small percentage] for all risk classes with the exception of Aviation at [a small percentage] (however, Aon considers that this figure is not reliable due to the small number of opportunities recoded, only […]); This also includes a [a very small percentage] loss rate to WTW in P&C and [a small percentage] in FinPro.

(b) When excluding unknown winners from the sample of lost opportunities, the proportion of losses to WTW is higher but still moderate across risk categories (in particular, [a small percentage] in P&C and [a small percentage] in FinPro). For Aviation, the [a significant percentage] loss rate to WTW is considered by the Notifying Party as not reliable due to the small number of opportunities with only […] observations,

(c) When considering all opportunities where Aon participated (and not only those where Aon was the incumbent), WTW wins a very small share (in particular [a very small percentage] in P&C and [a very small percentage] in FinPro), with the exception of Aviation at [a small percentage] and Energy at [a sigificant percentage] (however, Aon considers that these figures are not reliable due to the small number of opportunities recoded, only […] for Aviation and only […] for Energy);

(d) When considering all opportunities where Aon participated (and not only those where Aon was the incumbent) and excluding the 'unknown' winner, the proportion of losses to WTW is higher but still moderate across risk categories – in P&C, FinPro and Aviation the loss percentage is to WTW is [a small percentage], while Energy is at [a significant percentage] (however, Aon considers that the figure for Energy is not reliable due to the small number of opportunities with only […] observations);

(e) Switching to Marsh/Guy Carpenter is either similar to or higher than WTW;

(f) Switching to direct supply is similar to or higher than the witching to WTW in all risk classes (with the exception of Aviation, which is not reliable due to small sample size).

(43) The Commission, however, considers that these findings described by the Notifying Party suffer from several shortcomings and therefore cannot be relied upon in the form presented to assess the competitive effect of the proposed Transaction.

22 […].

(a) First, as discussed in the main body of the Decision, the Commission's concerns are related in particular to LMCs (see Sections 6.3.5.1, 6.3.5.3 and 6.3.5.5 in the main body of the Decision). However by counting tenders for each competitor (independently of their size and economic value), the submissions from the Notifying Party do not allow for an assessment of the competitive interactions between the Parties since the heterogeneity in tender value is not captured (see paragraph (24) and Section 2.3.5). In contrast, in order to account for the impact of the proposed Transaction by taking into account the high heterogeneity in tender values, the Commission considers that value-weighted results are more appropriate. The Commission notes that the Notifying Party agrees with this principle.[23]

(b) Second, the Commission notes that the Notifying Party has included all tenders in its participation analysis, including the tenders that were non-competitive (i.e. where Aon was the only participant). In order to assess the competitive interactions between the Parties, the Commission considers that only the competitive tenders should be included; otherwise, including the non-competitive tenders artificially dilutes the extent of the competitive interactions between the Parties.[24] The Commission notes that the Parties agree with this principle in other submissions.[25]

(c) Third, instead of considering the results separately for each year in 2017, 2018, and 2019, the Commission notes that an analysis that pools all years together leads to a higher sample size. This approach would mitigate the issue of the small number of opportunities recorded for some segments, and therefore allows inferences to be drawn on the degree of competitive interactions between the Parties for those segments as well. While the Notifying Party notes that there was a change in Aon's internal systems in 2019 compared to 2017 and 2018,[26] the Commission notes that the results for the full period 2017-2019 are similar to the period 2019 when a sufficient number of observations is available (see Section 2.3.4 for further details).

(d) Fourth, as noted by the Notifying Party, there is a significant number of tenders without information on participants and/or winners. The Commission considers that including these tenders in the analysis artificially dilutes the extent of the competitive interactions between the Parties. As mentioned by the Notifying Party (see paragraphs (31) and (35)(d) above), while some tenders have incomplete data on the identity of participants, there is no reason to believe that WTW's participation rate would be biased compared to competitors. Moreover, as discussed in more details in Section 2.3.3 and Section 2.4, the additional analysis carried out by the Commission generally confirms that the distribution of winners in the set of tenders with unknown winners is similar to the distribution of winners in the set of tenders with known winners or known participants; this implies that excluding tenders with unknown winners does not create any systematic bias in the win rate of WTW against Aon. Last, when

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23 Notifying Party's submission "RFI 9 Q1-2 & RFI 10 Q8", dated 29 September 2020, paragraph 2.7. Notifying Party's reply to follow up questions RFI 9 - 10, dated 30 October 2020, paragraph 2.15 and reply to RFI 1, questions 16 and 17, Annex 2, footnote 7.

24 M.7278 - GE/Alstom, Annex 1, for example paragraph 191. M/8677 – Siemens/Alstom, Annex 1, for example paragraph 6.

25 Reply to RFI 1, questions 16 and 17, Annex 3, footnote 24.

26 Reply to RFI 1, questions 16 and 17, Annex 2, paragraph 4.12.

entering participants and winners, Aon's account executives have the choice to enter more than 1,000 brokers in the list available to them; it is therefore unlikely that significant Tier-2 brokers or local brokers would be missed by Aon's account executives and therefore not well-represented in the tender data provided. Please see Section 2.3.3 for further considerations.

(44) As regards the follow-up submission of the Notifying Party on the identification of large/very large customers, while the Notifying Party has not submitted any interpretation of the results, following the Commission's request some of the issues discussed above have been considered in the Excel annexes submitted by the Parties, namely: (i) the use of value-weighting, (ii) considering only competitive tenders, (iii) the pooling of the three years 2017-2019 and (iv) reporting of results with and without the category of 'unknown' winners. However, the results provided in the different Excel annexes are only related to switching analyses and no participation analysis was submitted.

Table 5. Summary of Aon submissions on tender data

	Product segment	P&C	FinPro	Credit & Political Risk	Marine	Aviation	Energy
Participation analysis (EEA, 2019)							
Participation analysis, EEA, 2019 (all opportunities where Aon participated)	**Nb. Opportunities**	[…]	[…]	[…]	[…]	[…]	[…]
	Percentage of Opportunities in which both Aon and WTW participated	[…]	[…]	[…]	[…]	[…]	[…]
Participation analysis, EEA, 2019 (all opportunities where Aon is the winner)	**Nb. Opportunities**	[…]	[…]	[…]	[…]	[…]	[…]
	Percentage of opportunities won by Aon in which both Aon and WTW participated	[…]	[…]	[…]	[…]	[…]	[…]
Loss analysis (EEA, 2019)							
Loss analysis (lost opportunities where Aon is incumbent, EEA, 2019)	**Nb. Opportunities**	[…]	[…]	[…]	[…]	[…]	[…]
	Loss percentage to WTW (all opportunities)	[…]	[…]	[…]	[…]	[…]	[…]
	Nb. Opportunities	[…]	[…]	[…]	[…]	[…]	[…]
	Loss percentage to WTW (excluding opportunities with 'unknown' winners)	[…]	[…]	[…]	[…]	[…]	[…]

	Product segment	P&C	FinPro	Credit & Political Risk	Marine	Aviation	Energy
Loss analysis (lost opportunities where Aon participated, EEA, 2019)	**Nb. opportunities**	[…]	[…]	[…]	[…]	[…]	[…]
	Loss percentage to WTW (all opportunities)	[…]	[…]	[…]	[…]	[…]	[…]
	Nb. Opportunities	[…]	[…]	[…]	[…]	[…]	[…]
	Loss percentage to WTW (excluding opportunities with 'unknown' winners)	[…]	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 1- questions 16 and 17, Annex 2, Table 3, Table 6, Table 8 and 9.

(45) The Commission notes that WTW was not able to submit a participation analysis due to missing data on participants in WTW's internal databases (see paragraph (9)).

(46) According to WTW, the switching analysis shows that there is a limited competitive constraint from Aon to WTW for P&C, FinPro, Cyber, and Aviation since:

(a) Over the period 2017-2019, [a small percentage] of lost business was considered to be lost to Aon (this percentage varies from [a very small percentage] to [a significant percentage] across risk classes, with the highest being P&C and the lowest being Aviation).

(b) Lost business to Marsh is higher in all risk categories. Lost business to self-insurance is higher than lost business to Aon in all risk categories except P&C (in which it is only slightly less).

(c) Business is also recorded as being lost to numerous other brokers and insurers.

(47) The Commission, however, considers that the switching analysis submitted by WTW suffers from several shortcomings and therefore cannot be relied upon to assess the competitive effect of the proposed Transaction, in particular for LMCs. The Commission notes that WTW also agrees with the data limitations of the "Lost Business Tracker" datasets discussed below.[27]

(a) First, the data used for the switching analysis by WTW does not capture tenders. Instead, it considers the potential lost business at a customer level. Given that customers carry out several tenders with different specifications, the data provided cannot capture the competitive interactions between the different competitors at the granular tender-level required for the analysis. For example, tenders that WTW lost and won for a particular customer in given year can be netted out, and such competitive interactions would therefore not be captured in a dataset at a customer level. The Commission notes that such a netting out effect is likely to be more significant for larger customers with a higher level of

[27] Reply to RFI 1, questions 16 and 17, Annex 3

brokerage activity; therefore, the data provided is likely to significantly understate the volume of lost business by LMCs.

(b) Second, a customer is identified as potential lost business when the revenues of a particular client are lower than a predetermined forecast level in a given year (this is called a negative "revenue variance"). However, as mentioned by WTW, the revenue variance does not represent a measure of the value of business lost to different competitive alternatives. Therefore, it is not possible to assess the impact of the proposed Transaction on LMCs by considering value-weighted results.

(c) Third, the data does not provide a representative picture of the competitive landscape in the EEA. This is because the corresponding datasets are maintained by the UK brokering team only, and therefore provide information mainly on UK customers. Therefore, as mentioned by WTW, this data "*does not give a robust or comprehensive picture of the competitors which win business from WTW across the EEA*".[28]

(48) In the Reply to the 6(1)(c) Decision, the Notifying Party argues that the analysis submitted still shows that Marsh is closer to Aon than WTW, and that it could still be used to assess the competitive constraints faced by WTW.[29] However, the Commission notes that the concerns identified above on the lack of reliably of WTW tender data are still valid. Moreover, and in any event, notwithstanding the issues with the quality of WTW "lost business tracker" data discussed above, the Commission still notes that the rates of switching from WTW to Aon and to Marsh increase for the customers with a high revenue variance, suggesting that Marsh and Aon are the two closest competitors to WTW for large customers, with a significant gap to other players:[30]

(a) The rate of switching from WTW to Aon increases from [a small percentage] to [a significant percentage] for customers above the median revenue variance, and to [a significant percentage] for customers above the 75th percentile of the revenue variance;

(b) The rate of switching from WTW to Marsh increases from [a significant percentage] to [a significant percentage] for customers above the median revenue variance, and remains at [a significant percentage] for customers above the 75th percentile of the revenue variance;

(c) In contrast, the rate of switching from WTW to self-insured/in-house decreases from [a significant percentage] to [a small percentage] for customers above the median revenue variance, and to [a small percentage] for customers above the 75th percentile of the revenue variance;

(d) There is a significant gap with the rate of switching to other competitors;

(e) The rate of switching to the direct channel is minor, at [a small percentage] for the full sample, [a small percentage] for customers above the median revenue variance, and [a very small percentage] for customers above the 75th percentile for revenue variance.

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28 Reply to RFI 1, questions 16 and 17, Annex 3, Section 2.1 and footnote 7

29 Reply to the 6(1)(c) Decision, paragraph 190.

30 WTW's reply to follow up questions RFI 9-10, dated 31 October 2020, Table 4 and Annex A.

2.3.1.3. Conclusion

(49) On the basis of the above, the Commission disagrees with the Notifying Party that the analysis of tender data of Aon and WTW shows a limited competitive interaction between the Parties. As discussed below in Section 2.4, once the shortcomings identified in the Parties' submissions are corrected, the analysis of tender data shows that Aon, WTW, and Marsh are three particularly close competitors for LMCs in P&C, FinPro, Cyber, and for all customers in Aviation, with a significant gap to other brokers, and with the direct channel playing a limited role as well. In other words, Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon and WTW.

(50) The Commission addresses below the comments of the Notifying Party made specifically in the reply to the 6(1)(c) Decision.

2.3.2. The critique of the Notifying Party to consider only a ranking analysis is not consistent with the auction framework

(51) In the Reply to the 6(1)(c) Decision, the Notifying Party argues that only the information on ranking of bidders at the end of a tender process matters to assess closeness of competition in bidding markets.[31] On that basis, the Notifying Party considers that a participation analysis and a loss analysis are not appropriate to assess the degree of substitutability between the Parties.

(52) In particular, according to the Notifying Party:[32]

(a) Only the tenders where the merging parties are the winner and runner-up bidders would suffer from a loss of competition;

(b) For those tenders where Aon and WTW are the winner and runner-up bidders, any anticompetitive effect would be limited due to the strength of the number 3 ranked bidder.

(53) Since Aon Connect tender data does not include information on the ranking of participants, the Notifying Party argues that the most reliable analysis is a switching analysis, i.e. to whom Aon loses tenders to when it is the incumbent.

(54) The Commission disagrees with the Notifying Party for the following reasons.

(55) First, the Commission notes that a ranking analysis is justified when participants in tenders have very reliable information on offers made by other competitors and how the customers value the different offers.[33] However, this is contradicted by the description of the tender process provided by the Notifying Party (see paragraph (60), see also paragraph (61) for additional elements noted by the Commission).

(56) The importance of the ranking of bidders to assess the competitive effects of the merger can be understood in the context of a second-price-auction model, where bidders have good information on the characteristics of rival bidders and on valuation by final customers. In a procurement setting (which is typically more relevant for merger assessments), rival bidders compete to supply a product, and may differ both in their cost of supplying he product and in the value that they offer to the buyer.

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[31] Reply to the 6(1)(c) Decision, Annex A, Section 2, in particular paragraphs 2.5-2.7.

[32] Reply to the 6(1)(c) Decision, Annex A,; Reply to the 6(1)(c) Decision, paragraphs 362-365.

[33] M. 7278 GE-Alstom, Annex 1, Sections 2-3.

(57) The simplest case of a second-price auction design is one where bidders observe the offers made by rivals, bidders only differ in the cost of supply, and bids are reduced during the course of the tender process in small steps. In this benchmark case, the price paid by the winner is the lowest price that any other competitor was willing to offer before dropping out of the tender. The winning bid is therefore equal to the cost of production of the firm with the second-lowest cost. The only determinant of the winning bid is therefore the cost of the runner-up bidder. In such a setting, a merger between competing firms only affects the final outcome of the auction if the merging firms are those with the lowest and second-lowest costs. In this case, the post-merger winning bid is therefore equal to the cost of firm with the (pre-merger) third lowest cost.

(58) The description of optimal bidding behaviour is more complex in a second-price auction where suppliers differ both in their cost of production and in the value placed by the buyer on their respective products. In such a setting, bidding at cost remains optimal for the second-best placed firm if the bidding process approximates a bargaining situation where the "outside option" for the buyer is determined by the surplus or utility (i.e. the difference between value and costs) offered by the second-best bidder. If this is the case, a buyer can play suppliers off against each other up to the point where the surplus offered by the best-placed firm cannot be matched profitably by the next-best supplier.[34] The best-placed bidder wins the tender at a bid that is such that the utility of the buyer equals the surplus generated by the second-best bidder. The winning bid therefore equals the cost of the second-best bidder (as in the standard case with only cost asymmetries) plus the difference in value between the best and second-best bidder.[35] Similar to the previous setting, a merger between competing firms only affects the final outcome of the auction if it brings together the two firms that are best placed to serve a customer (that is, if the first-ranked and second-ranked firms by the customer come together). As before, the post-merger winning bid is determined by the properties of the (pre-merger) third-best bidder.

(59) Overall, if bidders have very reliable (or perfect) information on the cost of supply of all rival bidders and on the value placed by the buyer on each offer, then the outcome of the tender has "second-price" features. In this setting, the only constraint on the winning bidder is represented by the second-placed bidder, and all other competitors are irrelevant to the final outcome.[36] This means that following a merger, only tenders where the merging parties were respectively the winner and the runner-up

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[34] For a detailed description of this environment, see N. Miller (2014), "Modelling the effects of mergers in procurement", International Journal of Industrial Organization, Vol. 37, pages 201-208.

[35] For the sake of exposition, consider only two firms 1 and 2 with costs $c1 \leq c2$ that generate gross surplus for the customer of v1 and v2, respectively, where for simplicity it is assumed that $v1 > v2$. In a second-price auction framework, firm 2 ends up bidding at cost, i.e. $b2 = c2$, and firm 1 wins the tender by offering a bid that makes the customer indifferent between the two competitors. This implies a winning bid of $b1 = (v1 - v2) + c2$, and a profit of $(v1 - v2) + (c2 - c1)$. The profit of the winning bidder is therefore the difference in surplus generated by the two competing bidders.

[36] Second-price auctions describe auction processes where the price for an object is raised successively until only one bidder remains (e.g. as in the case of auctions for paintings, which are also called ascending auctions). It is well-established in the economic literature that in a second-price auction to purchase a product, the only constraint on the price paid by the winning bidder is determined by the willingness to pay of the runner-up bidder. This follows from the fact the price paid by the winner under this auction rule equals the bid of the second-highest bidder. This outcome can be approximated in an ascending price setting, where bidders can observe the offers made by rivals and adjust their bids accordingly over time until all bidders but one drop out. The winning bidder therefore purchases the object at a price that is equal to the willingness to pay (plus a small increment) of the last bidder to drop out of the auction (i.e., the runner-up).

would experience a price increase (assuming that the products of the two merging parties continue to be both offered after the merger).[37] Hence, such a second price auction framework allows explaining the necessary conditions for the Notifying Party's assertions about the affected tenders being those with the merging firms as winner/runner-up, and anticompetitive effects being limited by the strength of the third ranked bidder.[38]

(60) However, the Commission notes that the tenders in this specific case do not have the necessary characteristics in term of informational structure to justify such framework. For example, the Notifying Party explains that:

(a) "prices were not transparent";[39]

(b) "There is very little transparency around competitor behaviour. […] Where the broker is remunerated on a fee (rather than commission) basis, this is again entirely non-transparent. […] *Even the outcome of tender processes is very often unknown. […] The Parties have limited visibility into the share of their competitors in particular segments; they only have a sense of who they face more or less often.*";[40]

(c) "no firm has visibility over the price, output or other elements of a rival firm's offering";[41]

(d) "*it is typical for clients to require that all or part of that commission be rebated to them or for commission to be shared with other parties such as local producing brokers; the extent of such rebates or sharing varies very significantly between clients and particular mandates and is entirely non-transparent. Where the broker is remunerated on a fee (rather than commission) basis, this is again entirely non-transparent vis-à-vis other competitors*."[42]

(61) Second, the Commission notes that several further elements contradict the informational structure that characterises tenders with second-price auction features (see paragraphs (55)-(59)). In particular:

(a) The Commission understands that a significant number of opportunities are informal (instead of formal RFP process, see also paragraph (35)(a)).

(b) Moreover, as evidenced by Aon Connect tender data, the Parties do not have full visibility on participants in a given opportunity and on the outcome of opportunities, and the Parties do not have runner-up data available.

(62) Third, the Notifying Party did not provide any economic model to justify its argument that only a raking analysis would matter for the assessment of the competitive effect of the merger. Instead, they start their argumentation by pre-supposing that a ranking analysis is the only reliable analysis to assess closeness of competition in bidding markets.[43] As discussed above (see paragraphs (55)-(59)), a

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37 This price increase equals the difference in the surplus associated with the second- and third-ranked bidders (that is, the sum of the differences in their value to the customer, and in their cost of production).

38 See paragraph (52).

39 Form CO, paragraph 200.

40 Form CO, paragraph 203.

41 Reply to the 6(1)(c) Decision, for example paragraph 440.

42 Reply to the 6(1)(c) Decision, for example paragraph 440.

43 See Annex A of the Reply to the 6(1)(c) Decision, Section 2, paragraphs 2.5-2.6.

model where the informational structure is similar to a second-price auction framework would rationalise the prediction of the Notifying Party that only ranking analysis matters to assess closeness of competition in bidding markets; however, this type of model is not consistent with the tender process in this specific case. In contrast, the Commission's analytical framework relies on several papers published in the economic literature (see Section 2.2.1).

(63) Fourth, the framework advocated by the Notifying Party should be taken with caution since in practice a bidder participating in a tender will do so because it considers that it has a material chance of winning. Removing this bidder through a merger can therefore be expected to have some effect on the bid-taker, even if in past bids the bidder had not frequently been a runner-up to the other merging party.[44]

(64) To conclude, the limited information available by the participants during the tender process points toward a first-price-auction economic framework (where bidders compete under conditions of imperfect information), as discussed in Section 2.2.1. In such framework, the primary difference with respect to ordinary markets is that the diversion of sales between competing firms should be understood in terms of the expected sales (i.e. the probability of winning the tender) rather than actual sales. That is, each firm knows that if it bids less aggressively, its probability of winning the tender will decrease, and the probability of winning the tender enjoyed by each of its competitors in that tender will increase. The diversion ratio between Firm A and Firm B is therefore determined by the fraction of the reduction in Firm A's winning probability that is captured by Firm B (and vice versa for the diversion ratio from Firm B to Firm A). A merger between Firm A and Firm B will induce each firm to bid less aggressively, since a higher bid by Firm A will increase the probability of winning of Firm B, and thus increase its profits (in proportion to its pre-merger margin). Similarly, less aggressive bidding by Firm B will make it more likely that Firm A will win the tender, and thus increase its profits. The incentives to increase prices are thus determined by the level of diversion between the merging firms (evaluated in terms of winning probabilities) and by the level of pre-merger margins.

(65) In such a setting, unilateral effects from a merger should therefore be expected in any tender where each of the two merging parties participates against each other with a reasonable probability of winning, i.e. where its participation affects in particular the probability of winning of the other merging party. The set of tenders that are affected by a merger can therefore extend well beyond the tenders where the merging parties would have been the winner and runner-up. In such framework, two types of analyses are frequently used:[45]

(a) A participation analysis, allowing to assess the degree of competitive interactions between the merging Parties relative to third-parties (see paragraph (13)).

44 OFT (2007), "Markets with Bidding Processes", Economics discussion paper, May, paragraphs 7.13-7.15 and A.42-A.45.

45 In contrast, price effects from mergers in second-price auctions are more targeted than those in first-price auctions, since they are focused on those customers where the parties can be expected to be winner and runner-up, as opposed to be spread over all customers for which the parties offered a competitive bid. Overall merger effects are, however, not expected to differ greatly between the two auction formats, implying that merger effects in second-price environment are typically sharper but more targeted, whilst those in first-price auctions are less pronounced but more diffuse (See G. Werden and L. Froeb (2008), "Unilateral Competitive Effects of Horizontal Mergers", in L. Buccirossi (ed.), Handbook of Antitrust Economics, Cambridge, MA, MIT Press, See also GE/Alstom, Annex I.

(b) A loss analysis, allowing to assess to whom Aon is losing to when it participated in tenders (see paragraph (14)). This is because a participation analysis needs to be seen in conjunction with an analysis of win rates when the Parties face each other, since participation is particularly credible if it also results in wins. In other words, a competitor that win rarely against Aon is not a close competitor, in contrast to a competitor winning and participating often against Aon.

(66) Both the participation analysis and the loss analysis are also consistent with the Commission's case practice (see paragraph (16)).

(67) In addition, and notwithstanding the considerations made above in paragraphs (60)-(63), the Commission also report the results of the switching analysis, i.e. to whom Aon is losing when it is an incumbent. As explained below (Section 2.4), restricting the tenders where Aon is the incumbent leads to a significantly smaller sample, and is therefore subject to a significant uncertainty. Moreover, the participation and the loss analyses are more appropriate to assess the competitive effects of the merger, as discussed in Section 2.2 and in paragraphs (64)-(66)). However, the Commission notes that, when enough observations are available, the switching analysis confirms the results of the loss analysis.

2.3.3. The critique of the Notifying Party on the treatment of unknown tenders does not undermine the Commission's analysis

(68) In the 6(1)(c) Decision, the Commission assumed that the distribution of winners in the unknown category is similar to the distribution of winners in the known category (see paragraph (43)(d)). In the Reply to the 6(1)(c) Decision, the Notifying Party disagrees with this assumption and considers that the unknown category is more likely to include winners different from WTW (and especially smaller or local competitors), since these competitors are not included in the default pick-list available to Aon's account executives when entering information in the Aon tender database.[46] In other words, the Notifying Party expects that the distribution of unnamed winners differs from the distribution of named winners (and disproportionately include competitors other than WTW and competitors included in the Aon pick list, which would apply in particular to smaller or local brokers).[47]

(69) In addition, in the Reply to RFI 37, the Notifying Party proposes to sub-segment the unknown category (also called 'unnamed' category in the Reply to the RFI 37) into two sub-categories: (i) unknowns and (ii) others. In previous submissions during pre-notification and in the Reply to the 6(1)(c) Decision, the Notifying Party treated these two categories in the same way, and classified them as 'unknown' winners. In the reply to RFI 37, the Notifying Party mentioned that the Commission should consider at least the sub-category "other" winner in its analysis of tender data as switches different from WTW.[48] According to Aon, the sub-category "other" represents [a significant percentage] of the unnamed winners in P&C in 2019, [a significant percentage] in FinPro, [a significant percentage] in Cyber, and [a small

46 Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.

47 Reply to RFI37, paragraph 2.1, and paragraph 2.13: "*[...] Aon expects that the distribution of unnamed winners differs from the distribution of named winners, and that unknown winners are disproportionally likely to be firms other than WTW and other competitors included on the Aon Connect competitor list.*".

48 Reply to RFI37, paragraph 2.2, paragraph 2.9.

percentage] in Aviation.[49] According to the Notifying Party, the Commission's tender analysis would overestimate the competitive constraint faced by Aon from WTW (and from Marsh and other Tier-2 brokers listed in the Aon's pick list) since the sub-category of opportunities classified as "others" should be included as losses from Aon to other smaller local brokers.

(70) As regards the participation analysis more specifically, the Notifying Party mentioned that data on participants is of a poor quality and therefore cannot be used for the assessment of the proposed Transaction.[50]

(71) The Commission disagrees with the Notifying Party for the following reasons.

(72) First, the pick list available to Aon's account executives to enter the names of winners include 1,075 brokers and more than 1,000 brokers are listed as active.[51] Given how comprehensive the pick list is, the Commission considers that: (i) it is unlikely that Tier-2 brokers would be missed[52] and (ii) that the main local brokers would be well represented.

(73) Second, the Commission notes that the Notifying Party was not able to identify any significant brokers as being missing from the pick list, with the exception of […] who has entered in 2019 and which by construction cannot be included in the pick list (the Notifying Party did not mention any other recent entrant as Tier-2 broker).[53] In the Reply to RFI 37, the Commission notes for example that no Tier 2 broker is listed by the Notifying Party as being missing in P&C, FinPro, Cyber, and Aviation. [54,55] Instead, in P&C, FinPro, Cyber, and Aviation, all listed brokers by the Notifying Party are essentially local brokers, which do not appear as alternatives to the Big-Three brokers in the market investigation. It is therefore unlikely that the Commission's analysis misses an important competitive constraint to Aon when "unknowns" tenders are excluded.

(74) Third, the Notifying Party focuses its argument on the sub-category "other" winners, arguing that local and smaller brokers are more likely to be represented in this sub-category.[56] The Notifying Party did not make a specific argument in relation to the other sub-category of "unknown" winner. However, given the extensive pick list available to Aon's account executives (more than 1,000 brokers are listed), the Commission considers that it is implausible that smaller local brokers would account for almost half of the tenders with unnamed winners (see paragraph (69)).

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49 Reply to RFI37, Table 1.

50 Reply to the 6(1)(c) Decision, Annex A, paragraphs 3.21-3.23.

51 Reply to RFI37, Excel file "M.9829 - Aon_WTW - RFI 37 - Aon Connect competitor list - confidential.xlsx", pick list available as of 04 January 2021.

52 The only exception is […], who has entered in 2019 (Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B. The Notifying Party did not mention any other recent entrant as Tier-2 broker.

53 Reply to RFI 37, paragraph 2.8.

54 Reply to RFI 37, Table 2. The Commission notes that there is one third-party broker for FinPro, which does not seem to be a local broker according to the Notifying Party's description in the Form CO. However, the Commission notes that this specific broker was contacted in the context of the market reconstruction for large customers (see Annex 1 to the Commission's Decision), and the market reconstruction shows that this third-party broker represents a minor share of the GWP for large customers in the EEA.

55 Reply to RFI 37, Table 2. The Commission notes that the Notifying even mentions […] as a missing competitor. However, […] considers itself rather a client than a competitor of the global brokers (see Non-confidential minutes of conference call with […], 4 November 2020).

56 Reply to RFI 37.

(75) Fourth, the Commission notes that the argument of the Notifying Party in the Reply to RFI 37 to substantiate why local brokers, in contrast to WTW, would be more represented in tenders with unnamed winners is in contradiction with its previous submissions. In the Reply to RFI 37, the Notifying Party argues that tenders where the winner is categorised as "other" should be distinguished from tenders where the winners is "unknown", and that while the Notifying Party cannot assess the winner in tenders with "unknown" winners (that is, the winner cannot be identified as being reasonably different from WTW), the Notifying Party expects that tenders where the winner is "other" would include local brokers different from WTW. However, the Commission notes that this argument contradicts its previous submissions since pre-notification, where the Notifying Party considered that tenders with "unknown" or "other" winner faced the same uncertainty about the identify and type of winners:

(a) In the Aon Connect methodology memo […][57] […]

(b) In the data processing submitted, the Notifying Party considers that both sub-categories of "other" and "unknown" winners have insufficient information to be included in the analysis.[58]

(76) Fifth, the Commission undertook a manual review of tenders with unnamed winners (that is, including unknown winners and other winners), and compared the corresponding clients with WTW customer data provided in the Reply to RFI 33. The Commission was able to manually review a significant number of tenders with unnamed winners, representing approximately [a significant percentage] of tender value with unnamed winners in P&C, [a high percentage] in FinPro, [a high percentage] in Cyber, and [a very high percentage] in Aviation.[59] For each tender with unnamed winner reviewed, the Commission identified the customer name, the risk type, the year of the tender, and manually checked in the RFI 33 customer data of WTW whether the same customer appears for the given risk type and year. As discussed in more details in Section 2.4:

(a) Among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent generally a proportion (in term of value) which is similar than in the sample of tenders with named winners. This indicates that the Commission's assumption in the 6(1)c decision is generally valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category, notably for P&C, FinPro, and Aviation; see Section 2.4 for further details). For example:[60]

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57 Notifying Party' submission "Aon Connect, Data description and methodology", dated 25 August 2020, paragraph 4.8.

58 Notifying Party' submission with the data pack "M_9829 - Aon Connect Data Submission", […].

59 Given the high number of tenders to be manually reviewed ([…] in P&C, […] In FinPro, […] in Cyber, […] in Aviation), it was not possible to review all of them. Instead, the Commission reviewed a significant number of tenders, allowing to cover a high share of the value of tenders with unknown winners: [a significant percentage] of the value for P&C (Section 2.4.1), [a high percentage] for FinPro (Section 2.4.2), [a high percentage] for Cyber (Section 2.4.3), and [a very high percentage] for Aviation (Section 2.4.4).

60 The only exception is Cyber; while the loss rate from Aon to WTW is [a significant percentage] in the sample of tenders with named winners (see Table 26), WTW's customers represent a proportion which is lower with [a small percentage] of the value of tenders with unnamed winners (see Table 28). However, while the Commission's review did not confirm the assumption used in the 6(1)(c) Decision, suggesting that tenders with unknown winners refers to brokers different from WTW in Cyber (which are likely to be local brokers according to the Notifying Party's argument), the Commission notes as well that no Tier-2 brokers (such as […]) achieves a significant win rates against Aon. Moreover, the

– In P&C, while the loss rate from Aon to WTW is [a significant percentage] in the sample of tenders with named winners (see Table 8), WTW's customers represent a proportion which is even higher with [a significant percentage] of the value of tenders with unnamed winners (see Table 10);

– In FinPro, while the loss rate from Aon to WTW is [a significant percentage] in the sample of tenders with named winners (see Table 17), WTW's customers represent a proportion which is similar with [a significant percentage] of the value of tenders with unnamed winners (see Table 19);

– In Aviation, while the loss rate from Aon to WTW is [a significant percentage] in the sample of tenders with named winners (see Table 35), WTW's customers represent a proportion which is similar with [a significant percentage] of the value of tenders with unnamed winners (see Table 37).

(b) Among the tenders with unnamed winners and where the clients is also reported in WTW RFI 33 customer data, a significant proportion correspond to tenders where the winner is categorised as "other". This contradicts the claim of the Notifying Party that tenders where the winner is categorised as "other" correspond to winners different from WTW. For example:

– In P&C, among the tenders manually reviewed by the Commission and which correspond to WTW's customers, [a significant percentage] (in term of value) correspond to tenders where the winner is originally listed as "other" (see Table 10);

– In FinPro, among the tenders manually reviewed by the Commission and which correspond to WTW's customers, [a significant percentage] (in term of value) correspond to tenders where the winner is originally listed as "other" (see Table 19);

– In Aviation, among the tenders manually reviewed by the Commission and which correspond to WTW's customers, [a high percentage] (in term of value) correspond to tenders where the winner is originally listed as "other" (see Table 37).

(77) Last, the Commission considers that the pick-list argument of the Notifying Party (see paragraphs (68)-(69)) is mainly applicable to the loss analysis, […].[61] In contrast, as regards the participation analysis, it is possible for Aon's account executives to enter as free text the name of other participants.[62] The Commission therefore considers that, while Aon's account executive did not enter the full list of participants in a tender (that is, not all participants are listed for a given tender), there is no reason to believe that the participation rates of WTW relative to their competitors would be biased when tenders with missing information on participants are excluded. The Commission notes that the Notifying Party agrees with this principle in a submission during pre-notification, by explaining that while data on

tender data to assess closeness of competition should be interpreted in conjunction with the market shares for large customers in the EEA, with a combined market share in the range of [a high percentage] in Cyber (see Commission's Decision, Annex 1 on market shares for LMCs).

61 Reply to the 6(1)(c) Decision, Annex A, paragraph 3.16.B.

62 Reply to RFI37, paragraph 1.9: […].

average number of competitors per tender may not be reliable given some missing information on participants in tenders, there is no reason to believe that WTW's participation would be systematically biased.[63]

(78) To conclude, based on the above, the Commission considers that the assumption that the distribution of winners in the unnamed category is similar to the distribution of winners in the known category is generally valid. In other words, it is unlikely that the unnamed category includes a higher proportion of winners different from WTW compared to tenders with known winners, in particular in P&C, FinPro, and Aviation. Therefore, the Commission considers that the results of its tender analysis are valid and reliable.

2.3.4. The critique of the Notifying Party on pooling the years 2017-2019 against 2019 alone does not affect the results of Commission's analysis

(79) In the 6(1)(c) Decision, the Commission considered tender data for the period 2017-2019. This allows having a sufficient number of observations for a reliable analysis. For example, in Aviation, while there are […] competitive tenders with information on participants in 2019, pooling the three years together allows to increase the sample size to […] opportunities. In the Reply to the 6(1)(c) Decision, the Notifying Party considered that pooling the years 2017, 2018, and 2019 is not appropriate since data on smaller or local competitors are generally of a lower quality in 2017-2018 compared to 2019 due to a change in Aon's internal systems. In particular, the Notifying Party mentioned that for the period 2017-2019, there were less options to record the names of local competitors and that there was a loss of competitors names for the period 2017-2018 due to the system migration.[64] In the reply to RFI 37, the Notifying Party also mentions that that it was more difficult in 2017 and 2018 to enter data on competitors compared to 2019.[65]

(80) Based on the above, the Commission understands that the Notifying Party proposes to consider only the year 2019 for the analysis of tender data.

(81) The Commission has the following observations.

(82) First, the Notifying Party did not provide examples of any important broker that would be missing in the year 2017-2018 compared to the year 2019.

(83) Second, while the Notifying Party criticises the 2017-2019 pooling, and seems to suggest to use the 2019 analysis instead, in its Reply to the 6(1)(c) it still reports only the results for the pooled data of 2017-2019.[66]

(84) Third, as discussed in Section 2.4 in more details, the Commission carried out the analysis of tender data for both the pooled period 2017-2019, as well as 2019 only. The two cases lead to similar findings, in particular when a sufficient number of observations is available in 2019. In its analysis in Section 2.4, the Commission indicates whenever the 2019 analysis is not reliable due to an insufficient number of observations.

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63 Reply to RFI 9, questions 1-2 and RFI 10, question 8, Notifying Party' memo "RFI 9 Q1-1 & RFI 10 Q8", dated 29 September 2020, paragraph 2.5. "*While participation is under-recorded, Aon has no reason to believe that WTW's participation would systematically be under-recorded compared with competitors*".

64 Reply to the 6(1)(c) Decision, Annex A, paragraphs 3.13-3.14.

65 Reply to RFI 37, paragraph 1.2.

66 Reply to the 6(1)(c) Decision, Annex A, Section 4.

(85) Based on the above, the Commission considers the analysis based on the period 2017-2019 as its baseline analysis. The analysis based on 2019 is only a sensitivity analysis corroborating the baseline results.

2.3.5. The critique of the Notifying Party on value-weighting is not appropriate since tenders are very heterogeneous in terms of value

(86) In the 6(1)(c) Decision, the Commission considered results based on value-weighting as being more reliable than in term of counts since tender are very heterogeneous in terms of value (see paragraphs (25) for further details). In the Reply to the 6(1)(c) Decision, the Notifying Party mentioned that the value weighting results should be interpreted with caution since Aon did not undertake a validation exercise.

(87) The Commission has the following observations.

(88) First, as the Notifying Party recognises in its previous submissions during pre-notification, the results based on value weighting results provide an indication of Aon's participation in high-value opportunities.[67]

(89) Second, the Notifying Party did not explain why a degree of uncertainty on tender value would systemically bias the results of the analysis.

(90) Third, as discussed in details in paragraph (25), tenders are very heterogeneous in term of value, and therefore the Commission considers that each tender cannot be given the same weight to draw conclusion. In fact, equal weighting of tenders of different values would bias the results. A participant winning a number of smaller tenders would be assessed as important a competitor, if not more important, than a participant winning a few very large tenders. Hence, value weighting as opposed to simple counting is more appropriate for the competitive assessment in this case.

(91) Based on the above, the Commission considers that value-weighting results are more reliable than count results to assess the competitive interactions between the Parties.

2.3.6. The critique of the Notifying Party to consider only large customers does not affect the Commission's analysis

(92) In the Reply to the 6(1)(c) Decision, the Notifying Party seems to criticise that the Commission considered tenders for all customers (and large customers separately), with value-weighting. Instead, the Notifying Party seems to suggest that considering tenders for large customers only is more appropriate, that is by considering customers generating more than EUR 1 billion turnover per year.[68]

(93) The Commission notes that considering all customers with value-weighting was a proposal made by the Notifying Party in one submission in pre-notification.[69]

(94) In line with the Notifying Party's critique, the Commission reports in Section 2.4 the analysis of tender based on:

[67] Notifying Party' submission "RFI 9 Q1-2 & RFI 10 Q8", dated 29 September 2020, paragraph 2.7. Notifying Party's reply to follow up questions RFI 9 - 10, dated 30 October 2020, paragraph 2.15 and reply to RFI 1, questions 16 and 17, Annex 2, footnote 7.

[68] Reply to the 6(1)(c) Decision, Annex A, paragraphs 3.1-3.3.

[69] Notifying Party' submission "RFI 9 Q1-2 & RFI 10 Q8", dated 29 September 2020, paragraph 2.7. Notifying Party's reply to follow up questions RFI 9 - 10, dated 30 October 2020, paragraph 2.15 and reply to RFI 1, questions 16 and 17, Annex 2, footnote 7.

(a) Large customers only for P&C (Section 2.4.1), FinPro (Section 2.4.2), and Cyber (Section 2.4.3). This is in line with the main body of the Decision, where a significant impediment to effective competition is found in these markets;

(b) All customers for Aviation. This is in line with the main body of the Decision, where a significant impediment to effective competition is found for all customers in aerospace manufacturing.

(95) Overall, the analysis of tender data still shows that Aon and WTW are particularly close competitors compared to almost all other brokers, and only Marsh is comparable to and equally close to Aon and WTW.

(96) The Notifying Party also argues that the tenders of clients active in fewer than five countries should be removed from the analysis of tender data in order to be consistent with the market definition used in the main body of the Decision (see Section 6.1.4 and 6.2.1 of the main body of the Decision, where LMCs designate those companies headquartered in the EEA and/or sourcing in this geography at least a significant proportion of their insurance needs, with a global turnover equal to or higher than EUR 1 billion and requiring insurance needs in more than five countries).[70] However, the Commission notes that the Notifying Party, in all its submissions on tender data, was not able to identify the geographical coverage for insurance needs for their large customers due to data limitations. Therefore, it is also not possible for the Commission to capture such geographical scope of insurance needs given the lack of data available. Nevertheless, despite this data limitation, both the Commission and the Notifying Party (in its own submissions on tender data) still considered that such data limitation does not prevent to carry out a reliable analysis of tender data for large customers.

(97) In particular, most companies responding to the market investigation with a turnover exceeding EUR 1 billion (which corresponds to the definition of large customers) indicated to have insurance needs in more than 5 countries. Conversely, the majority of companies with a turnover below EUR 1 billion provided that their insurance needs covered only 5 countries or less. On that basis, the Commission considers that tender data for large customers (i.e. companies with a turnover exceeding EUR 1 billion) is a reliable proxy for tender data for LMCs (i.e., companies with a turnover exceeding EUR 1 billion and having insurance needs in more than five countries).[71]

2.3.7. The Notifying Party has incorrectly included non-competitive tenders in its participation analysis

(98) In the 6(1)(c) Decision, the Commission excluded the non-competitive tenders from the participation analysis and its loss analysis. As explained in paragraph (26), including non-competitive tenders would artificially decrease the level of competitive interactions between the Parties. In contrast, in its submissions on tender data, the Notifying Party has included all tenders in its participation analysis (see Section 2.3.1), while it has excluded them in it loss analysis.[72]

(99) Overall, the Commission understands that the Notifying Party agrees with the principle of excluding non-competitive tenders.[73]

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70 Reply to the 6(1)(c) Decision, paragraph 3.4.

71 Replies to question 1.2 and question 21 of questionnaire Q1 to Customers.

72 Reply to the 6(1)(c) Decision, Annex A, paragraphs 3.10-3.11.

73 Reply to the 6(1)(c) Decision, Annex A, paragraphs 3.10-3.11. Reply to RFI 1, questions 16 and 17, Annex 3, footnote 24.

2.3.8. The targeted incumbent analysis is relevant to assess the competitive constraints faced by WTW

(100) In the 6(1)(c) Decision, due to the lack of quality of WTW tender data, no participation analysis and no loss analysis were feasible (see paragraphs (45)-(48)). Therefore, WTW tender data could not be used to assess the competitive constraints faced by WTW.

(101) Nevertheless, as an alternative and based on Aon tender data, the Commission was able to assess which incumbent Aon is targeting, and in particular to which extent WTW is specifically targeted by Aon relative to other incumbents. In practice, this amounts to consider against which incumbent Aon is participating.

(102) In the Reply to the 6(1)(c) Decision, the Notifying Party argues that such targeted incumbent analysis is less reliable than a switching analysis and therefore it cannot be used to assess the competitive effects of the proposed Transaction.[74]

(103) The Commission has the following observations.

(104) First, the Commission agrees with the Notifying Party that other types of analysis such as a participation or loss analyses would be preferable to assess the competitive constraints faced by WTW. However, as discussed in the 6(1)(c) Decision and in Section 2.3.1.2 above, these analyses are not feasible with the tender data provided by WTW. Similarly, a switching analysis is not feasible with WTW tender data.

(105) Second, the targeted incumbent analysis is therefore an alternative used by the Commission to assess the competitive constraint faced by WTW. The advantage of such analysis is that it can be carried out based on Aon tender data. The Commission notes that the Notifying Party did not provide an alternative analysis to assess the competitive constraint faced by WTW.

(106) Third, the Commission considers that this alternative analysis still allows to assess the competitive interactions between the merging Parties relative to other brokers, and in particular the competitive constraint faced by WTW. As discussed above in 2.2, a high competitive interaction between the merging parties relative to other brokers is indicative of significant unilateral effects post-Transaction.

2.3.9. The critique of the Notifying Party on the aggregate constraint from other brokers is not appropriate and does not undermine the Commission's analysis

(107) In the Reply to the 6(1)(c) Decision, the Notifying Party argues that other brokers (e.g., including Tier-2 brokers and other smaller and local brokers) should be considered on an aggregate level, instead of considering them separately. On that basis, the Notifying Party argues that the aggregate constraint faced by Aon is similar or higher than the competitive constraint faced by WTW. The Commission understands that the Notifying Party suggests that WTW is not a close competitive constraint to Aon, due to the aggregate constraint from other brokers.[75]

(108) The Commission disagrees with the Notifying Party for the following reasons.

(109) First, as discussed in more details in Section 2.4, both the participation analysis and the loss analysis show that after Marsh, WTW is the closest competitive constraint to Aon and that Tier-2 brokers and smaller/local brokers are significantly behind WTW.

[74] Reply to the 6(1)(c) Decision, Annex A, paragraphs 3.14-3.17.

[75] Reply to the 6(1)(c) Decision, for example paragraph 185, paragraphs 221-222, paragraph 315, paragraph 325, paragraph 367, paragraph 369.

In other words, while Marsh and WTW are close competitors to Aon, Tier-2 brokers and smaller/local brokers are distant competitors to Aon. The lack of credibility of Tier-2 brokers and smaller/local brokers for large customers is also evidenced by the market investigation (see Sections 6.3.5.1, 6.3.5.3, 6.3.5.5 of the main body of the Decision).

(110) On that basis, the Commission cannot consider that the aggregation of a competitive fringe, being generally composed of non-credible players, would be in the aggregate a competitive constraint to Aon which is comparable or even more significant than WTW. In other words, it is implausible that the aggregation of non-credible players would be a credible competitive constraint to Aon in the aggregate.

(111) Second, as discussed in more details in Section 2.2, the competitive effects from the proposed Transaction are driven by the degree of competitive interactions between the Parties. Both the participation analysis and the loss analysis indicate a relatively important competitive interaction between the merging parties since after Marsh, WTW is the closest competitors to Aon, while Tier-2 brokers are significantly behind (see Section 2.4 for more details). In other words, aggregating Tier-2 brokers does not change the fact that the degree of competitive interactions between the Parties is relatively high.

2.4. Commission's analysis by risk types

(112) As regards the competitive constraints faced by Aon, this section reports below the results of the Commission's analysis of Aon tender data with the participation analysis and loss analysis for the period 2017-2019 (see Section 2.2 for a description of the Commission's framework), in the following markets: Property & Casualty (P&C) for LMCs in the EEA, Financial and Professional Risks (FinPro) for LMCs in the EEA, Cyber for LMCs in the EEA, and Aviation for all customers.[76]

(113) In addition, following the comments of the Notifying Party in the Reply to the 6(1)(c) Decision, the Commission also reports the following analyses:

(a) The sensitivity analysis based on the year 2019 only (Section 2.3.4).

(b) Notwithstanding the considerations made in paragraphs (72)-(75), the Commission carried out a manual review of tenders with unnamed winners (that is, including unknown winners and other winners), and compared the corresponding clients with WTW customer data provided in the Reply to RFI33. This analysis indicates that the Commission's assumption in the 6(1)(c) decision is valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(c) Notwithstanding the considerations made in Section 2.3.2, the Commission also report the results of the switching analysis, i.e. to whom Aon is losing to when it is an incumbent. As explained below, restricting the tenders where Aon is the incumbent leads to a significantly smaller sample compared to the loss analysis, and is therefore subject to a significant uncertainty. Moreover, the participation and the loss analyses are more appropriate to assess the competitive effects of the merger, as discussed in Section 2.2 and in paragraphs

76 As proposed by the Notifying Party, the Commission considers only tenders for large customers for P&C, FinPro, and Cyber (i.e. customers with yearly sales exceeding EUR 1 billion, see section *2.3.6*). In addition, the Commission also took into consideration the adjustments proposed by the Notifying Party in term of data processing, with the data pack submitted with the Reply to the 6(1)(c) Decision.

(64)-(66)). However, the Commission notes that, when enough observations are available, the switching analysis confirms the results of the loss analysis.

(114) As regards the competitive constraint faced by WTW, while a participation analysis and loss analysis cannot be carried out based on WTW tender data (see paragraphs (45)-(48)), the Commission was able to assess which incumbent Aon is targeting on the basis of Aon tender data (in particular, to which extent WTW is specifically targeted by Aon relative to other incumbents). In practice, this amounts to consider against which incumbent Aon is participating.

2.4.1. Property & Casualty

2.4.1.1. Competitive constraint of WTW on Aon

(115) This section reports the results of the Commission's analysis of tender data in the Property & Casualty (P&C) market for large customers in the EEA.

(116) **Participation analysis.** Table 6 reports the participation analysis for Aon. In the P&C market, Aon participated in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying one or more competing tender participants.

(117) For the period 2017-2019, the results show that Aon encounters WTW the most frequently after Marsh. In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a significant percentage] of the corresponding tender value.

(118) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage]). The largest of these brokers, Gallagher, participated against Aon in [a very small percentage] of tender value only.

(119) As regards the direct channel ([a very small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[77] Table 6 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon. The Commission also notes that the participation rate in term of value ([a very small percentage]) is lower compared to the participation rate in term of count ([a small percentage]), indicating that insurers participate against Aon primarily in low-value opportunities.

[77] In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 6. Participation analysis for 2017-2019 in EEA: P&C, large customers, all opportunities where Aon participated

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(120) Following the Notifying Party's Reply to 6(1)(c) Decision, in Table 7 the Commission also reports the participation analysis for 2019, which confirms the findings for the period 2017-2019.

(a) In the P&C market, Aon participated in […] competitive tenders in 2019, of which […] tenders contained information identifying one or more competing tender participants.

(b) The results show that Aon encounters WTW the most frequently after Marsh . In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a high percentage] of the corresponding tender value.

(c) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage]). The largest of these brokers, […], participated against Aon in [a very small percentage] of tender value only.

(d) As regards the direct channel ([a very small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[78] Table 7 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon.

Table 7: Participation analysis for 2019 in EEA: P&C, large customers, all opportunities where Aon participated

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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Source: Commission's analysis of Aon tender data.

(121) **Loss analysis.** Table 8 reports the loss analysis for Aon. In the P&C market, Aon participated and lost in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying the competing tender winner.

(122) The results show that after Marsh ([a significant percentage] win rate against Aon, by value), WTW has the highest win rate against Aon ([a significant percentage], by value).

(123) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small precentage], by value). Similarly, and notwithstanding the exclusion of the direct channel from the relevant product

[78] In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

market,[79] insurers (direct channel) rarely won against Aon ([a very small precentage] of tender value).

Table 8: Loss analysis for 2017-2019 in EEA: P&C, large customers, all opportunities where Aon lost

	2017-2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(124) Following the Notifying Party's reply to 6(1)(c) Decision, in Table 9 the Commission also reports the loss analysis for 2019, which confirms the findings for the period 2017-2019.

(a) In the P&C market, Aon lost in […] competitive tenders in 2019, of which […] tenders contained information identifying the competing tender winner.

(b) The results show that Marsh ([a significant percentage] win rate against Aon, by value) and WTW ([a significant percentage], by value) have similar win rates against Aon.

(c) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small percentage], by value). Similarly, and notwithstanding the exclusion of the direct channel from the relevant product market, insurers (direct channel) rarely won against Aon ([a very small percentage] of tender value).

79 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 9: Loss analysis for 2019 in EEA: P&C, large customers, all opportunities where Aon lost

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(125) To conclude, the participation analysis and the loss analysis indicate that in the P&C market: (i) after Marsh, WTW is the closest competitor to Aon, (ii) while other competitors and the direct channel are more distant competitors with limited competitive interactions with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon.

(126) **Analysis of unknown tenders.** As regards unknown and other winners in tenders, the Commission has carried out a manual matching exercise between the tenders with unknown/other winners and WTW customer data as submitted in RFI 33 (see Section 2.3.3 for further details).

(127) Table 10 below describes the results in the period 2017-2019 and 2019 only for tenders where the winner is categorised as 'unknown' or 'other'. Given the high number of tenders ([…] tenders for the period 2017-2019), the Commission carried out the manual matching exercise for tenders representing 50% of total value in 2017-2019. As described in Table 10**,** the top […] tenders by value accounts for 50% of total value in 2017-2019 and for 48.9% of total value in 2019.

Table 10: Lost tenders in 2017-2019 and 2019 in P&C with "Unknown" or "Other" winner

	2017-2019 ([…] tenders, […] of value)			
	Number of tenders	Unknown and Other	Of which Unknown	Of which Other
Value Share - Client of WTW in customer data (RFI33) and client present only in tenders with unnamed winners	[…]	[…]	[…]	[…]
	2019 ([...] tenders, [...] of value)			
Value Share - Client of WTW in customer data (RFI33) and client present only in tenders with unnamed winners	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data and RFI33 WTW client data.

(128) In the period 2017-2019, Table 10 shows that, among the tenders where the winner is unnamed and which were part of the manual review, WTW's customers represent [a significant percentage] of the value of these tenders. This proportion is actually higher than the win rate of WTW against Aon in tenders with named winners ([a significant percentage] in Table 8). This finding confirms the Commission's assumption underlying the analysis above in paragraphs (121)-(125) (i.e., that the distribution of winners in the unnamed category is similar to the distribution of winners in the known category).

(129) Moreover, among these tenders, [a significant percentage] is listed originally as 'other' winner and [a significant percentage] as 'unknown' winner. The Commission notes that the high proportion of WTW's customers in the sub-category of tenders where the winner is classified as 'other' contradicts the Notifying Party's claim that tenders where the winner is categorised as "other" correspond to winners different from WTW (see Section 2.3.3 above).

(130) The Commission also notes that considering the period 2019 only leads to the same findings.

(a) Among the tenders where the winner is unnamed and which were part of the manual review, WTW's customers represents [a significant percentage] of the value of these tenders. This proportion is similar to the win rate of WTW against Aon in tenders with named winners ([a significant percentage] in Table 9), which confirms the Commission's assumption underlying the analysis above in paragraphs (121)-(125) (i.e., that the distribution of winners in the unnamed category is similar to the distribution of winners in the known category).

(b) Moreover, The Commission notes that the high proportion of WTW's customers in the sub-category of tenders where the winner is classified as 'other' ([a high percentage]) contradicts the Notifying Party's claim that tenders where the winner is categorised as "other" correspond to winners different from WTW (see Section 2.3.3 above).

(131) To conclude, this analysis indicates that, among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with named winners. This indicates that the Commission's assumption in the 6(1)(c) Decision is actually valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category). Moreover, among the tenders with unnamed winners and where the clients is also reported in WTW customer data

provided in the Reply to RFI 33, a significant proportion corresponds to tenders where the winner is categorised as "other", which contradicts the claim of the Notifying Party that tenders where the winner is categorised as "other" correspond to winners different from WTW. Last, Section 2.3.3 presents additional considerations, which further explains why the Commission considers unlikely that the category of tenders with unnamed winners includes a higher proportion of winners different from WTW compared to tenders with known winners.

(132) **Switching analysis.** Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Section 2.3.2), Table 11 reports the switching analysis for Aon in the P&C market. The results confirm the findings from the loss analysis carried out by the Commission, where WTW was the second competitive constraint to Aon, after Marsh, but significantly ahead of other brokers and the direct channel.

(a) In the period of 2017-2019, Aon was the incumbent and lost in […] competitive tenders, of which […] tenders contained information identifying the winner. The results still show that after Marsh ([a high percentage] win rate by value when Aon was the incumbent), WTW has the highest win rate when Aon was the incumbent ([a significant percentage], by value).[80] By contrast, there is a significant gap in the win rates for all other referenced brokers (in the range of [a very small percentage] to [a very small percentage], by value). Similarly, insurers (direct channel) rarely won when Aon was the incumbent ([a very small percentage] of tender value).

(b) In 2019, Aon was the incumbent and lost in […] competitive tenders, of which […] tenders contained information identifying the winner. The Commission notes that the results should be taken with caution due to the small sample size with […] tenders only, compared to […] tenders for the period 2017-2019. Nevertheless, the results still show that after Marsh ([a significant percentage] win rate by value when Aon was the incumbent), WTW has the highest win rate when Aon was the incumbent ([a small percentage], by value).[81] By contrast, there is a significant gap in the win rates for all other referenced brokers (in the range of [a very small percentage] to [a small percentage], by value). Similarly, insurers (direct channel) rarely won when Aon was the incumbent ([a very small percentage] of tender value).

(133) To conclude, the switching analysis (i.e. considering tenders where Aon lost and was the incumbent) confirms the results of the loss analysis (i.e. considering all tenders where Aon lost). After Marsh, WTW is the closest competitor to Aon while other brokers and the direct channel are more distant competitors with limited competitive interactions with Aon.

80 The analysis of tenders with unnamed winners for the period 2017-2019 (see paragraphs (126)-(131) above) also confirms that WTW's customers represents a high proportion ([a significant percentage]) of tenders with unnamed winners (and where Aon is the incumbent) which were included in the manual review. The manual review carried out by the Commission covers 53.8% of total value in 2017-2019 (this includes […] tenders over the […] tenders where Aon is the incumbent and lost).

81 The analysis of tenders with unnamed winners for 2019 (see paragraphs (126)-(131) above) also confirms that WTW's customers represents a high proportion ([a significant percentage]) of tenders with unnamed winners (and where Aon is the incumbent) which were included in the manual review. The manual review carried out by the Commission covers 49.5% of total value in 2019 (this includes […] tenders over the […] tenders where Aon is the incumbent and lost).

Table 11: Switching analysis for 2017-2019 in EEA: P&C, large customers, all opportunities where Aon lost and was the incumbent

	2017-2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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Source: Commission's analysis of Aon tender data.

Table 12: Switching analysis for 2019 in EEA: P&C, large customers, all opportunities where Aon lost and was the incumbent

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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Source: Commission's analysis of Aon tender data.

2.4.1.2. Competitive constraint of Aon on WTW

(134) As discussed in the 6(1)(c) Decision and in Section 2.3.1 above, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW. As an alternative, the Commission has used Aon tender data to perform a targeted incumbent analysis to assess the competitive constraint faced by WTW. The Commission notes that the Notifying Party did not provide an alternative analysis to assess the competitive constraint faced by WTW (see also Section 2.3.8).

(135) **Targeted incumbent for new business.** Table 13 reports the analysis for the new business (by value) that Aon tried to win from other incumbents. For the period 2017-2019, among the […] opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), WTW and Marsh were the incumbents in more than [a very high percentage] of the revenues corresponding to these opportunities (WTW was the incumbent for [a significant percentage] of the revenue, and Marsh was the incumbent for [a significant percentage]). Other incumbents, such as […], each represents a minor share of the new business that Aon tried to acquire. While the tender data provided by WTW do not allow for an assessment of the competitive constraints faced by WTW (see paragraphs (45)-(48)), this analysis of Aon tender data still indicates that WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all

other brokers (with the exception of Marsh). The findings are similar when only the year 2019 is considered (see Table 14).

(136) As discussed above in Section 2.3.3, the Commission's analysis confirms the validity of the assumption that the distribution of winners in the unknown category is similar to the distribution of winners in the known category as valid. Similarly, the Commission considers that there is no reason to believe that the targeted incumbent analysis would be biased when tenders with missing incumbents are excluded.

Table 13: Aon's targeted incumbents for new business in P&C (large customers) in 2017-2019

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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Source: Commission's analysis of Aon tender data.

Table 14: Aon's targeted incumbents for new business in P&C (large customers) in 2019

	2019					
	[…]			**[…]**		
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

2.4.1.3. Conclusion

(137) Based on the above, the Commission considers that the analysis of tender data for large customers in EEA in P&C shows that Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon and WTW.

(138) As regards the competitive constraint faced by Aon:

(a) The participation analysis (paragraphs (116)-(120)) and the loss analysis (paragraphs (121)-(124)) for the period 2017-2019 indicate that in the P&C market: (i) after Marsh, WTW is the closest competitor to Aon, (ii) while other competitors and the direct channel are more distant competitors with limited competitive interactions with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon. The sensitivity analysis based on 2019 corroborates the baseline results for the period 2017-2019.

(b) In addition, the Commission finds that, among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with named winners. This indicates that the Commission's assumption used in the participation analysis and loss analysis is actually valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(c) Last, notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party, the switching analysis (i.e. considering tenders where Aon lost and was the incumbent) confirms the results of the loss analysis (i.e. considering all tenders where Aon lost in general). After Marsh, WTW is the closest competitor to Aon while other brokers and the direct channel are more distant competitors with limited competitive interactions with Aon.

(139) As regards the competitive constraint faced by WTW, while a participation analysis and loss analysis cannot be carried out based on WTW tender data, the analysis of Aon tender data shows that, for the period 2017-2019, WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh). The sensitivity analysis based on 2019 corroborates the baseline results for the period 2017-2019.

2.4.2. FinPro

2.4.2.1. Competitive constraint of WTW on Aon

(140) This section reports the results of the Commission's analysis of tender data in the FinPro market for large customers in the EEA.

(141) **Participation analysis.** Table 15 reports the participation analysis for Aon. In the FinPro market, Aon participated in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying one or more competing tender participants.

(142) For the period 2017-2019, the results show that Aon encounters WTW the most frequently after Marsh. In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a significant percentage] of the corresponding tender value.

(143) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage] to [a very small percentage]). The largest of these brokers, Gallagher and Lockton, participated against Aon in [a very small percentage] of tender value only.

(144) As regards the Direct channel ([a very small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[82] Table 15 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon. The Commission also notes that the participation rate in term of value ([a very small percentage]) is lower compared to the participation rate in term of count ([a very small percentage]), indicating that insurers participate against Aon primarily in low-value opportunities.

[82] In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 15: Participation analysis for 2017-2019 in EEA: FinPro, large customers, all opportunities where Aon participated

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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Source: Commission's analysis of Aon tender data.

(145) Following the Notifying Party's reply to 6(1)(c) Decision, in Table 16 the Commission also reports the participation analysis for 2019, which confirms the findings for the period 2017-2019.

(a) In the FinPro market, Aon participated in […] competitive tenders in 2019, of which […] tenders contained information identifying one or more competing tender participants. The Commission notes that only […] tenders are considered in 2019, in comparison to […] tenders for the period 2017-2019. The Commission therefore considers that the smaller number of tenders for 2019 makes the results more sensitive to outliers and therefore subject to some uncertainty.

(b) The results show that that Aon encounters WTW the most frequently after Marsh. In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a significant percentage] of the corresponding tender value.

(c) By contrast, there is generally a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage] to [a small percentage], with the exception of […] at [a small percentage]). The largest of these brokers, […], participated against Aon in [a small percentage] of tender value, compared to [a significant percentage] for WTW. As regards […] specifically, the Commission notes that […], while WTW participated in […] tenders against Aon. Moreover, the Commission notes that […] is not listed in the […] winners against Aon in Table 17 below. Last, […] does not appear as a Tier-2 broker in the market investigation.

(d) As regards the direct channel ([…] [a very small percentage] of tender value) Table 16 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon.

Table 16: Participation analysis for 2019 in EEA: FinPro, large customers, all opportunities where Aon participated

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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Source: Commission's analysis of Aon tender data.

(146) **Loss analysis.** Table 17 reports the loss analysis for Aon. In the FinPro market, Aon participated and lost in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying the competing tender winner.

(147) The results show that after Marsh ([a significant percentage] win rate against Aon, by value), WTW has the highest win rate against Aon ([a significant percentage], by value).

(148) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small percentage], by value). Similarly,

and notwithstanding the exclusion of the direct channel from the relevant product market,[83] insurers (direct channel) rarely won against Aon ([a very small percentage] of tender value).

Table 17: Loss analysis for 2017-2019 in EEA: FinPro, large customers, all opportunities where Aon lost

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(149) Following the Notifying Party' reply to 6(1)(c) decision, in Table 18 the Commission also reports the loss analysis for 2019, which confirms the findings for the period 2017-2019.

(a) In the FinPro market, Aon lost in […] competitive tenders in 2019, of which […] tenders contained information identifying the competing tender winner.

(b) The results show that after Marsh ([a significant percentage] win rate against Aon, by value), WTW has the highest win rate against Aon ([a significant percentage], by value).

(c) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small percentage] to [a small percentage], by value). Similarly, and notwithstanding the exclusion of the direct channel from the relevant product market, insurers (direct channel) rarely won against Aon ([a very small percentage] of tender value).

83 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 18: Loss analysis for 2019 in EEA: FinPro, large customers, all opportunities where Aon lost

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(150) To conclude, the participation analysis and the loss analysis indicate that in the FinPro market: (i) after Marsh, WTW is the closest competitor to Aon, (ii) while other competitors and the direct channel are more distant competitors with limited competitive interactions with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon.

(151) **Analysis of unknown tenders.** As regards unknown and other winners in tenders, the Commission has carried out a manual matching exercise between the tenders with unknown/other winners and WTW customer data as submitted in RFI 33 (see Section 2.3.3 for further details).

(152) Table 19 below describes the results in the period 2017-2019 and 2019 only for tenders where the winner is categorised as 'unknown' or 'other'. Given the high number of tenders ([…] tenders), the Commission carried out the manual matching exercise for tenders representing 75% of the total value in 2017-2019. As described in Table 19, the top […] tenders by value accounts for 75.2% of total value in 2017-2019 and for 76.6% of total value in 2019.

Table 19: Lost tenders in 2017-2019 and 2019 in FinPro with "Unknown" or "Other" winner

	[…]			
	[…]	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]
	[…]			
[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data and RFI33 WTW client data.

(153) In the period 2017-2019, Table 19 shows that, among the tenders where the winner is unnamed and which were part of the manual review, WTW's customers represent [a significant percentage] of the value of these tenders. This proportion is actually similar to the win rate of WTW against Aon in tenders with named winners ([a significant percentage] in Table 17). This finding confirms the Commission's assumption underlying the analysis above in paragraphs (146)-(150) (i.e., that the distribution of winners in the unnamed category is similar to the distribution of winners in the known category).

(154) Moreover, among these tenders, [a significant percentage] is listed originally as 'other' winner and [a high percentage] as 'unknown' winner. The Commission notes that material proportion of WTW's customers in the sub-category of tenders where the winner is classified as 'other' contradicts the Notifying Party's claim that tenders where the winner is categorised as "other" correspond to winners different from WTW (see Section 2.3.3 above).

(155) As regards the analysis for 2019 only, the Commission notes that only […] tenders (with […] tenders reviewed manually) are considered, in comparison to […] tenders for the period 2017-2019 (with […] tenders reviewed manually). The Commission therefore considers that the tender analysis for 2019 is subject to some uncertainty due to the small number of tenders considered in FinPro (see also Table 18 above as well for the loss rate analysis with […] tenders only where the winner is known).

(156) Notwithstanding the concerns on the small number of tenders considered in 2019, the Commission also notes that considering the period 2019 only confirms the findings for the period 2017-2019.

(a) Among the tenders where the winner is unnamed and which were part of the manual review, WTW's customers represents [a significant percentage] of the value of these tenders. While this proportion is lower compared to Table 18 ([a significant percentage] win rate of WTW against Aon), the Commission still considers that the [a significant percentage] proportion is material. Applying this proportion to the share of 'unknown' tenders in Table 18 would actually lead to a significant win rate of WTW against Aon of approximately [a significant percentage].

(b) Moreover, The Commission notes that the material proportion of WTW's customers in the sub-category of tenders where the winner is classified as 'other' ([a small percentage]) contradicts the Notifying Party's claim that tenders where the winner is categorised as "other" correspond to winners different from WTW (see Section 2.3.3 above).

(157) To conclude, this analysis indicates that, among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with named winners, in particular for the period 2017-2019 where there is a sufficient number of observations. This indicates that the Commission's assumption in the 6(1)(c) Decision is actually valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category). Moreover, among the tenders with unnamed winners and where the clients is also reported in WTW customer data provided in the Reply to RFI33, a material proportion correspond to tenders where the winner is categorised as "other". This contradicts the claim of the Notifying Party that tenders where the winner is categorised as "other" correspond to winners different from WTW. Last, Section 2.3.3 presents additional considerations, which further explains why the Commission considers unlikely that

the category of tenders with unnamed winners includes a higher proportion of winners different from WTW compared to tenders with known winners.

(158) **Switching analysis.** Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Section 2.3.2), Table 20 reports the switching analysis for Aon in the FinPro market. The results confirm the findings from the loss analysis carried out by the Commission, where WTW was the second competitive constraint to Aon (with a win rate of [a significant percentage] in 2017-2019 and [a significant percentage] in 2019), after Marsh, but significantly ahead of other brokers and the direct channel.

(a) In the period of 2017-2019, Aon was the incumbent and lost in […] competitive tenders, of which […] tenders contained information identifying the competing tender winner. The Commission notes the small number of tenders for 2019 and therefore the uncertainty of the switching analysis. Nevertheless, the Commission discusses below the results in order to take into account the comment of the Notifying Party in the Reply to the 6(1)(c) Decision on the switching analysis (see Section 2.3.4).

(b) For the period 2017-2019, the results still show that after Marsh ([a significant percentage] win rate by value when Aon was the incumbent), WTW has the highest win rate when Aon was the incumbent ([a significant percentage], by value).[84] By contrast, other listed incumbents such as "direct" or "bank' rarely won when Aon was the incumbent ([a very small percentage], by tender value).

(c) For 2019, the Commission considers that the uncertainty is even greater given the smaller number of tenders considered […] tenders with known incumbent).[85]

(159) To conclude, the switching analysis (i.e. considering tenders where Aon lost and was the incumbent) confirms the results of the loss analysis (i.e. considering all tenders where Aon lost). After Marsh, WTW is the closest competitor to Aon while other listed brokers and the direct channel are more distant competitors with limited competitive interactions with Aon.

84 The Commission considers that the analysis of tenders with unnamed winners for the period 2017-2019 (see paragraphs (153)-(154) above) is also subject to a significant uncertainty due to the small number of tenders considered: only […] tenders were manually reviewed over the […] tenders for the period 2017-2019 where Aon was the incumbent and lost. For completeness, the […] tenders reviewed represent [a high percentage] of the value of these […] tenders with unnamed winner. For the period 2017-2019, WTW's customers represent a material proportion ([a significant percentage]) of tenders with unnamed winners which were included in the manual review. While this proportion is lower than the win rate when unknown tenders are excluded ([a significant percentage] in Table 20), applying this proportion to the share of tenders with unknown winners would led to significant win rate of WTW (approximately [a significant percentage]).

85 The Commission considers that the analysis of tenders with unnamed winners for the period 2019 (see paragraphs (155)-(156) above) is also subject to a significant uncertainty due to the small number of tenders considered: only […] tenders were manually reviewed over […] tenders for 2019 where Aon was the incumbent and lost. That would lead to only […] tenders for 2019 only.

Table 20: Switching analysis for 2017-2019 in EEA: FinPro, large customers, all opportunities where Aon lost and was the incumbent

	2017-2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

Table 21: Switching analysis for 2019 in EEA: FinPro, large customers, all opportunities where Aon lost and was the incumbent

	2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

2.4.2.2. Competitive constraint of Aon on WTW

(160) As discussed in the 6(1)(c) Decision and in Section 2.3.1 above, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW. As an alternative, the Commission has used Aon tender data to perform a targeted incumbent analysis to assess the competitive constraint faced by WTW. The Commission notes that the Notifying Party did not provide an alternative analysis to assess the competitive constraint faced by WTW (see also Section 2.3.8).

(161) **Targeted incumbent for new business.** Table 22 reports the analysis for the new business (by value) that Aon tried to win from other incumbents. Among the […] opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), WTW and Marsh were the incumbents in [a high percentage] of the revenues corresponding to these opportunities (WTW was the incumbent for [a significant percentage] of the revenue, and Marsh was the incumbent for [a high percentage]). Other incumbents, such as […], each represents a

minor share of the new business that Aon tried to acquire. While the tender data provided by WTW do not allow for an assessment of the competitive constraints faced by WTW (see paragraphs (45)-(48)), this analysis of Aon tender data still indicates that WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh which is also close to WTW). As regards the year 2019 only (see Table 23), the Commission considers that the analysis is subject to a significant uncertainty given the smaller number of tenders considered ([…] tenders with known incumbent compared to […] tenders for the period 2017-2019).

(162) As discussed above in Section 2.3.3, the Commission's analysis confirms the validity of the assumption that the distribution of winners in the unknown category is similar to the distribution of winners in the known category as valid. Similarly, the Commission considers that there is no reason to believe that the targeted incumbent analysis would be biased when tenders with missing incumbents are excluded.

Table 22: Aon's targeted incumbents for new business in FinPro (large customers) in 2017-2019 and 2019 only

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

Table 23: Aon's targeted incumbents for new business in FinPro (large customers) in 2019

	2019					
	Including unknowns			[…]Excluding unknowns		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

2.4.2.3. Conclusion

(163) Based on the above, the Commission considers that the analysis of tender data for large customers in EEA in FinPro shows that Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon and WTW.

(164) As regards the competitive constraint faced by Aon:

(a) The participation analysis (paragraphs (141)-(145)) and the loss analysis (paragraphs (146)-(149)) for the period 2017-2019 indicate that in the FinPro market: (i) after Marsh, WTW is the closest competitor to Aon, (ii) while other competitors and the direct channel are more distant competitors with limited competitive interactions with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon. As regards the sensitivity analysis based on 2019, the Commission notes that it is subject to a significant uncertainty due to the lower number of observations available.

(b) In addition, the Commission finds that, among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with named winners, in particular for the period 2017-2019 where there is a sufficient number of observations. This indicates that the Commission's assumption used in the participation analysis and loss analysis is actually valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(c) Last, notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party, the switching analysis (i.e. considering tenders where Aon lost and was the incumbent) confirms the results of the loss analysis (i.e. considering all tenders where Aon lost in general). After Marsh, WTW is the closest competitor to Aon while other brokers and the direct channel are more distant competitors with limited competitive interactions with Aon. As regards the sensitivity analysis based on 2019, the Commission notes that it is subject to a significant uncertainty due to the lower number of observations available.

(165) As regards the competitive constraint faced by WTW, while a participation analysis and loss analysis cannot be carried out based on WTW tender data, the analysis of Aon tender data shows that, for the period 2017-2019, WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh). As regards the sensitivity analysis based on 2019, the Commission notes that it is subject to a significant uncertainty due to the lower number of observations available.

2.4.3. Cyber

2.4.3.1. Competitive constraint of WTW on Aon

(166) This section reports the results of the Commission's analysis of tender data in the Cyber market for large customers in the EEA.

(167) **Participation analysis.** Table 24 reports the participation analysis for Aon. In the Cyber market, Aon participated in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying one or more competing tender participants.

(168) For the period 2017-2019, the results show that Aon encounters WTW the most frequently after Marsh . In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a high percentage] of the corresponding tender value.

(169) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage]). The largest of these brokers, Siaci and Nord Broker, participated against Aon in [a very small percentage] of tender value only.

(170) As regards the Direct channel ([a very small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[86] Table 24 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon.

[86] In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 24: Participation analysis for 2017-2019 in EEA: Cyber, large customers, all opportunities where Aon participated

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(171) Following the Notifying Party's reply to 6(1)(c) Decision, in Table 25 the Commission also reports the participation analysis for 2019, which confirms the findings for the period 2017-2019.

(a) In the Cyber market, Aon participated in […] competitive tenders in 2019, of which […] tenders contained information identifying one or more competing tender participants.

(b) The results show that Aon encounters WTW the most frequently after Marsh . In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a high percentage] of the corresponding tender value.

(c) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage]). The largest of these brokers, […], participated against Aon in [a very small percentage] of tender value only.

(d) As regards the Direct channel ([a very small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[87] Table 25 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon.

Table 25: Participation analysis for 2019 in EEA: Cyber, large customers, all opportunities where Aon participated

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(172) **Loss analysis.** Table 26 reports the loss analysis for Aon. In the Cyber market, Aon participated and lost in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying the competing tender winner.

(173) The results show that after Marsh ([a significant percentage] win rate against Aon, by value), WTW has the highest win rate against Aon ([a significant percentage], by value).

(174) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small percentage], by value). Similarly, and notwithstanding the exclusion of the direct channel from the relevant product market,[88] insurers (direct channel) rarely won against Aon ([a small percentage] of tender value).

87 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

88 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 26: Loss analysis for 2017-2019 in EEA: Cyber, large customers, all opportunities where Aon lost

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(175) Following the Notifying Party's reply to 6(1)(c) decision, in Table 27 the Commission also reports the loss analysis for 2019, which confirms the findings for the period 2017-2019. However, the Commission notes that this analysis is subject to a significant uncertainty due to the lower number of observations available ([…] tenders).

Table 27: Loss analysis for 2019 in EEA: large customers, all opportunities where Aon lost

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(176) To conclude, the participation analysis and the loss analysis indicates that in the Cyber market: (i) after Marsh, WTW is the closest competitor to Aon, (ii) while other competitors and the direct channel are more distant competitors with limited competitive interactions in with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon.

(177) **Analysis of unknown tenders.** As regards unknown and other winners in tenders, the Commission has carried out a manual matching exercise between the tenders with unknown/other winners and WTW customer data as submitted in RFI 33 (see Section 2.3.3 for further details).

(178) Table 28 below describes the results in the period 2017-2019 and 2019 only for tenders where the winner is categorised as 'unknown' or 'other'. Given the high number of tenders ([…] tenders), the Commission carried out the manual matching exercise for tenders representing 75.3% of total value in 2017-2019. As described in Table 28, the top […] tenders by value accounts for 75.3% of total value in 2017-2019 and for 83.5% of total value in 2019.

Table 28: Lost tenders in 2017-2019 and 2019 in Cyber with "Unknown" or "Other" winner

	2017-2019 ([…] tenders, […] of value)			
	Number of tenders	**Unknown and Other**	**Of which Unknown**	**Of which Other**
Value Share - Client of WTW in customer data (RFI33) and client present only in tenders with unnamed winners	[…]	[…]	[…]	[…]
	2019 ([…] tenders, […] of value)			
Value Share - Client of WTW in customer data (RFI33) and client present only in tenders with unnamed winners	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data and RFI33 WTW client data.

(179) In the period 2017-2019, Table 28 shows that, among the tenders where the winner is unnamed and which were part of the manual review, WTW's customers represent [a small percentage] of the value of these tenders. While the Commission notes that this proportion is lower than the win rate of WTW against Aon in Table 26 ([a significant percentage]), which does not confirm the assumption used in the 6(1)(c) Decision and suggesting that tenders with unknown winners refers to brokers different from WTW (which are likely to be local brokers according to the Notifying Party's argument), the Commission notes as well that no Tier-2 brokers ([…]) achieves a significant win rate against Aon. Moreover, the tender data to assess closeness of competition should be interpreted in conjunction with the market shares for large customers in the EEA, with a combined market share in the range of [70-80]% in Cyber, with the minor role played by brokers different from the Big-Three, and with the other evidence on closeness of competition (see Section 6.3.5.4 of the main body of the Decision).

(180) **Switching analysis.** Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Section 2.3.2), Table 29 reports the switching analysis for Aon in the Cyber market. However, the Commission considers that such analysis is not interpretable due to the small number of tenders and the corresponding uncertainty.

(a) In the period of 2017-2019, Aon was the incumbent and lost in […] competitive tenders, of which only […] tenders contained information identifying the competing tender winner. For 2019, […]. The Commission therefore considers that the switching analysis proposed by the Notifying Party is not interpretable given the small number of tenders.

(b) Similarly, as regards tenders when Aon was the incumbent and with 'unknown' and 'other' winners, the manual review carried out by the Commission, while covering 61.3% of the value of tenders with unnamed winner, leads only to […] additional tenders. The Commission considers that such switching analysis, covering overall […] tenders for the period 2017-2019, is not interpretable due to the small number of tenders considered.

Table 29: Switching analysis for 2017-2019 in EEA: Cyber, large customers, all opportunities where Aon lost and was the incumbent

	2017-2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

Table 30: Switching analysis for-2019 in EEA: large customers, all opportunities where Aon lost and was the incumbent

	2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(181) To conclude, as regards the switching analysis proposed by the Notifying Party, in addition to the reservations mentioned in Section 2.3.2, the Commission considers that in any event such analysis is not interpretable given the small number of tenders considered.

2.4.3.2. Competitive constraint of Aon on WTW

(182) As discussed in the 6(1)(c) Decision and in Section 2.3.8 above, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW. As an alternative, the Commission has used Aon tender data to perform a targeted incumbent analysis to assess the competitive constraint faced by WTW. The Commission notes that the Notifying Party did not provide an alternative analysis to assess the competitive constraint faced by WTW (see also Section 2.3.8).

(183) **Targeted incumbent for new business.** Table 31 reports the analysis for the new business (by value) that Aon tried to win from other incumbents. For the period 2017-2019, among the […] opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), only WTW and Marsh appear as incumbents: WTW was the incumbent for [a significant percentage] of the revenue, and Marsh was the incumbent for [a significant percentage]. Other Tier 2 brokers, such as […], do not appear as incumbents. A similar consideration applies for the year 2019.

(184) However, given the analysis above on the tenders with unnamed winners, the Commission considers that for Cyber the tender analysis is more uncertain.

Table 31: Aon's targeted incumbents for new business in Cyber (large customers) in 2017-2019

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

Table 32: Aon's targeted incumbents for new business in Cyber (large customers) in 2019

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

2.4.3.3. Conclusion

(185) Based on the above, the Commission considers that the analysis of tender data for large customers in EEA in Cyber, while showing that WTW had the second highest participation and loss rates against Aon (after Marsh, but significantly above any other Tier-2 brokers), is subject to some uncertainty due to tenders with unnamed winners. Similarly, the Commission considers that the targeted incumbent analysis, while showing that WTW (and Marsh) are the main incumbents against whom Aon participates, is subject to some uncertainty for the same reasons.

(186) However, while the Commission's review did not confirm the assumption used in the participation and loss analyses on tenders with unknown winners, suggesting that tenders with unknown winners refers to brokers different from WTW and which are likely to be local brokers according to the Notifying Party's argument, the Commission notes as well that no Tier-2 brokers ([…]) achieves a significant win rate against Aon. Moreover, the tender data to assess closeness of competition should be interpreted in conjunction with the market shares for large customers in the EEA, with a combined market share in the range of [a high percentage] in Cyber, with the minor role played by brokers different from the Big-Three, and with the other evidence on closeness of competition (see Section 6.3.5.4 of the main body of the Decision).

2.4.4. Aviation

2.4.4.1. Competitive constraint of WTW on Aon

(187) This section reports the results of the Commission's analysis of tender data in the Aviation market. In line with Section 6.3.5.11 of the main body of the Decision, the Commission considers all customers.

(188) As mentioned by the Notifying Party, the Aviation category in Aon's tender data corresponds to the Aircraft Operators and Aerospace Manufacturers markets combined. The Commission nevertheless considers that the results are consistent with the findings in the market investigation that the Parties are particularly close competitors for aerospace manufacturing.

(189) **Participation analysis.** Table 33 reports the participation analysis for Aon. In the Aviation market, Aon participated in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying one or more competing tender participants.

(190) For the period 2017-2019, the results show that Aon encounters WTW the most frequently. In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated, and Marsh participated in [a significant percentage] of the corresponding tender value.

(191) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a very small percentage] to [a small percentage]). The largest of these brokers, […], participated against Aon in [a small percentage] of tender value. Moreover, the Commission notes that […][89], which does not seem to correspond to the aerospace manufacturing market where the Commission finds a significant impediment to effective competition (see Section 6.3.5.11 of the main body of the SO/Decision).

(192) The second largest of these brokers, […], participated against Aon in [a small percentage] of tender value, […]. However, […] mentioned that since […] with a core focus on aviation insurance for the EEA market only. […] only competes against other brokers to a very limited extent and considers itself rather a client than a competitor of the global brokers.[90]

(193) Thus, in both cases ([…]), neither of these brokers are close competitors to Aon for aerospace manufacturing. Other brokers have even lower participation rates against Aon.

(194) As regards the direct channel ([a small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[91] Table 33 also shows a significant gap compared to the participation rates of WTW and Marsh against Aon. The Commission also notes that the participation rate in term of value ([a small percentage]) is lower compared to the participation rate in term of count ([a small percentage]), indicating that insurers participate against Aon primarily in low-value opportunities.

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89 Given the client was a […] rather than a standard airline or an airplane manufacture seeking insurance in this segment, the Commission considers that it is uncertain if this tender should be considered in the aviation segment.

90 Non-confidential minutes of conference call with […].

91 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 33: Participation analysis for 2017-2019 in EEA: Aviation, all customers, all opportunities where Aon participated

	2017-2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(195) Following the Notifying Party's Reply to 6(1)(c) Decision, in Table 34 the Commission also reports the participation analysis for 2019, which confirms the findings for the period 2017-2019.

(a) The Commission notes that the analysis for 2019 only is subject to some uncertainty due to the smaller number of tenders ([…] tenders, compared to […] tenders for the period 2017-2019).

(b) In the Aviation market, Aon participated in […] competitive tenders in 2019, of which […] tenders contained information identifying one or more competing tender participants.

(c) The results show that Aon encounters WTW the most frequently. In particular, WTW participated against Aon in tenders representing [a significant percentage] of the overall value of tenders where Aon participated.

(d) By contrast, there is a significant gap in the participation rates against Aon for all the other referenced brokers (in the range of [a small percentage] to [a significant percentage]). The largest of these brokers, […], participated against Aon in [a significant percentage] of tender value only. However, as discussed above in paragraph (191), the Commission considers that it is uncertain if […] should be considered in the aviation segment. The Commission notes that the considerations discussed in paragraphs (191)-(192) above apply as well.

(e) As regards the direct channel ([a small percentage] of tender value), and notwithstanding the exclusion of the direct channel from the relevant product market (see Section 6.1.3 of the Decision),[92] Table 34 also shows a significant gap compared to the participation rates of WTW against Aon. The Commission also notes that the participation rate in term of value ([a small percentage]) is lower compared to the participation rate in term of count ([a significant percentage]), indicating that insurers participate against Aon primarily in low-value opportunities.

Table 34: Participation analysis for 2019 in EEA: Aviation, all customers, all opportunities where Aon participated

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(196) **Loss analysis.** Table 35 reports the loss analysis for Aon. In the Aviation market, Aon participated and lost in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying the competing tender winner.

(197) The results show that WTW has the highest win rate against Aon ([a significant percentgage], by value). Marsh follows with a [a small percentage] win rate against Aon.

(198) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small percentage] to [a significant percentgage], by value). The Commission notes that the considerations discussed in paragraphs (191)-(192) for other brokers above apply as well. Similarly, and

92 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

notwithstanding the exclusion of the direct channel from the relevant product market,[93] insurers (direct channel) rarely won against Aon ([a vey small percentage] of tender value).

Table 35: Loss analysis for 2017-2019 in EEA: Aviation, all customers, all opportunities where Aon lost

	2017-2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(199) Following the Notifying Party's reply to 6(1)(c) Decision, in Table 36 the Commission also reports the loss analysis for 2019, which confirms the findings for the period 2017-2019.

(a) The Commission notes that the analysis for 2019 only is subject to some uncertainty due to a small number of tenders ([…] tenders).

(b) In the Aviation market, Aon lost in […] competitive tenders in 2019, of which […] tenders contained information identifying the competing tender winner.

(c) The results show that after Alkora ([a significant percentage] win rate against Aon, by value), WTW has the highest win rate against Aon ([a significant percentage], by value). However as discussed above, it is uncertain whether the […] should be considered in the aviation segment. More generally, the Commission notes that the considerations discussed in paragraphs (191)-(192) for […] apply as well.

(d) By contrast, there is a significant gap in the win rates against Aon for all other referenced brokers (in the range of [a very small percentage] to [a small percentage], by value). Similarly, insurers (direct channel) rarely won against Aon ([a very small percentage] of tender value).

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93 In line with its conclusions in section 6.1.3 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

Table 36: Loss analysis for 2019 in EEA: Aviation, all customers, all opportunities where Aon lost

	2019					
	[…]			**[…]**		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

(200) To conclude, the participation analysis and the loss analysis indicates that in the Aviation market: (i) WTW is the closest competitor to Aon, followed by Marsh, (ii) while other brokers and the direct channel are more distant competitors with limited competitive interactions in with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon.

(201) **Analysis of unknown tenders.** As regards unknown and other winners in tenders, the Commission has carried out a manual matching exercise between the tenders with unknown/other winners and WTW customer data as submitted in RFI 33 (see Section 2.3.3 for further details).

(202) Table 37 below describes the results in the period 2017-2019 and 2019 only for tenders where the winner is categorised as 'unknown' or 'other'. Given the smaller set of tender to review ([…] tenders) compared to P&C FinPro, and Cyber, the Commission carried out the manual review for all these tenders.

Table 37: Lost tenders in 2017-2019 and 2019 in Aviation with "Unknown" or "Other" winner (100% coverage)

	2017-2019 ([…] tenders, […] of value)			
	Number of tenders	Unknown and Other	Of which Unknown	Of which Other
Value Share - Client of WTW in customer data (RFI33) and client present only in tenders with unnamed winners	[…]	[…]	[…]	[…]
	2019 ([…] tenders, […] of value)			
Value Share - Client of WTW in customer data (RFI33) and client present only in tenders with unnamed winners	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data and RFI33 WTW client data.

(203) In the period 2017-2019, Table 37 shows that, among the tenders where the winner is unnamed, WTW's customers represent [a significant percentage] of the value of these tenders. This proportion is similar to the win rate of WTW against Aon in tenders with named winners ([a significant percentage] in Table 35). This finding confirms the Commission's assumption underlying the analysis above in paragraphs (196)-(199) (i.e., that the distribution of winners in the unnamed category is similar to the distribution of winners in the known category).

(204) Moreover, among these tenders, [a high percentage] is listed originally as 'other' winner and [a significant percentage] as 'unknown' winner. The Commission notes that the high proportion of WTW's customers in the sub-category of tenders where the winner is classified as 'other' contradicts the Notifying Party's claim that tenders where the winner is categorised as "other" correspond to winners different from WTW (see Section 2.3.3 above).

(205) As regards the analysis for 2019 only, the Commission notes that it is subject to a some uncertainty due to the small number of tenders. In any event, the Commission also notes that considering the period 2019 only leads to a similar finding. Among the tenders where the winner is unnamed and which were part of the manual review, WTW's customers represents [a small percentage] of the value of these tenders. While this proportion is lower than the win rate of WTW against Aon in Table 36 ([a significant percentage]), the share of tenders with unknown winner represents only [a small percentage] of the overall value. In other words, applying [a small percentage] to the share of unknown tenders would lead to a win rate close to [a significant percentage].

(206) To conclude, this analysis indicates that, in particular for the period 2017-2019, among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with named winners. This indicates that the Commission's assumption in the 6(1)(c) Decision is actually valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category). Moreover, among the tenders with unnamed winners and where the clients is also reported in WTW customer data provided in the Reply to RFI 33, a significant proportion corresponds to tenders where the winner is categorised as "other", which contradicts the claim of the Notifying Party that tenders where the winner is categorised as "other" correspond to winners different from WTW. Last, Section 2.3.3 presents additional considerations, which further explains why the Commission considers unlikely that the category of tenders with unnamed winners

includes a higher proportion of winners different from WTW compared to tenders with known winners.

(207) **Switching analysis.** Notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party (see Section 2.3.2), Table 38 reports the switching analysis for Aon in the Aviation market for the period 2017-2019, and Table 39 reports the results for 2019 only. However, the Commission notes the small number of tenders considered in this analysis. In the period of 2017-2019, Aon was the incumbent and lost in […] competitive tenders, of which only […] tenders contained information identifying the competing tender winner. For 2019, only […] tender includes information on incumbent.[94] The Commission considers that the switching analysis proposed by the Notifying Party is not interpretable given the small number of tenders.

Table 38: Switching analysis for 2017-2019 in EEA: Aviation, all customers, all opportunities where Aon lost and was the incumbent

	2017-2019					
	Including unknowns			Excluding unknowns		
Brokers	No. opps	Share (count)	Share (value)	No. opps	Share (count)	Share (value)
WTW	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
Direct	[…]	[…]	[…]	[…]	[…]	[…]
Unknown	[…]	[…]	[…]	[…]	[…]	[…]
Total Opportunities	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

94 When considering the manual review of tenders with unnamed winners, the number of tenders, Table 39 below shows that, for the period 2017-2019, tenders won by WTW when Aon was the incumbent account for [a significant percentage] of the value of these tenders ([…] tenders, [a very high percentage] of value). Applying this proportion to the share of unknown tenders in Table 38 ([a very high percentage]) would lead to a significant win rate of WTW against Aon of approximately [a significant percentage]. This analysis confirms the results of the loss analysis, showing the importance of WTW as a competitive constraint to Aon. Last, the Commission considers that the analysis for the year 2019 is not interpretable due to the small number of tenders considered ([…] tenders overall, […] tenders with known winners and […] tenders with unknown winners).

Table 39: Switching analysis for 2019 in EEA: Aviation, all customers, all opportunities where Aon lost and was the incumbent

	2019					
	Including unknowns			Excluding unknowns		
Brokers	No. opps	Share (count)	Share (value)	No. opps	Share (count)	Share (value)
WTW	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
Direct	[…]	[…]	[…]	[…]	[…]	[…]
Unknown	[…]	[…]	[…]	[…]	[…]	[…]
Total Opportunities	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

2.4.4.2. Competitive constraint of Aon on WTW

(208) As discussed in the 6(1)(c) Decision and in Section 2.3.1 above, the tender data provided by WTW does not enable a participation analysis and a loss analysis to be conducted to assess the competitive constraints faced by WTW. As an alternative, the Commission has used Aon tender data to perform a targeted incumbent analysis to assess the competitive constraint faced by WTW. The Commission notes that the Notifying Party did not provide an alternative analysis to assess the competitive constraint faced by WTW (see also Section 2.3.8).

(209) **Targeted incumbent for new business.** Table 40 reports the analysis for the new business (by value) that Aon tried to win from other incumbents. For the period 2017-2019, among the […] opportunities that Aon tried to win from other incumbents (i.e. Aon was not the incumbent for those customers), WTW and Marsh were the incumbents in more than [a high percentage] of the revenues corresponding to these opportunities (WTW was the incumbent for [a significant percentage] of the revenue, and Marsh was the incumbent for [a significant percentage]). Other incumbents, such as […], do not appear. As regards […], the considerations discussed in paragraphs (191)-(192) above apply as well. While the tender data provided by WTW do not allow for an assessment of the competitive constraints faced by WTW (see paragraphs (45)-(48)), this analysis of Aon tender data still indicates that WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh which is also close to WTW).[95]

(210) As discussed above in Section 2.3.3, the Commission's analysis confirms the validity of the assumption that the distribution of winners in the unknown category is similar to the distribution of winners in the known category as valid. Similarly, the Commission considers that there is no reason to believe that the targeted incumbent analysis would be biased when tenders with missing incumbents are excluded.

95 The Commission notes that there is no observation for 2019 where the incumbent is known.

Table 40: Aon's targeted incumbents for new business in Aviation (all customers)

	2017-2019					
	[…]			[…]		
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon tender data.

2.4.4.3. Conclusion

(211) Based on the above, the Commission considers that the analysis of tender data for Aviation shows that Aon and WTW are particularly close competitors compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon and WTW.

(212) As regards the competitive constraint faced by Aon:

(a) The participation analysis (paragraphs (189)-(195)) and the loss analysis (paragraphs (196)-(199)) for the period 2017-2019 indicate that in the P&C market: (i) after Marsh, WTW is the closest competitor to Aon, (ii) while other competitors and the direct channel are more distant competitors with limited competitive interactions with Aon, do not appear as credible alternatives to Aon, and thus exert a limited competitive pressure on Aon. The sensitivity analysis based on 2019 only is corroborates the baseline results for the period 2017-2019, even though the Commission notes that it is subject to a certain uncertainty due to a small number of observations. .

(b) In addition, the Commission finds that, among the tenders with unnamed winners reviewed by the Commission, WTW's customers represent a proportion (in term of value) which is similar than in the sample of tenders with named winners, in particular for the period 2017-2019. This indicates that the Commission's assumption used in the participation analysis and loss analysis is actually valid (i.e., that the distribution of winners in the unknown category is similar to the distribution of winners in the known category).

(c) Last, notwithstanding the Commission's reservations on the ranking/switching analysis proposed by the Notifying Party, the switching analysis is also reported. However, the Commission considers that the switching analysis proposed by the Notifying Party is not interpretable given the small number of tenders.

(213) As regards the competitive constraint faced by WTW, while a participation analysis and loss analysis cannot be carried out based on WTW tender data, the analysis of Aon tender data shows that, for the period 2017-2019, WTW and Marsh are the main incumbents targeted by Aon for new business, and therefore indicates that Aon is a particularly close competitor to WTW compared to almost all other brokers (with the exception of Marsh).[96]

3. TENDER DATA IN REINSURANCE BROKERAGE

3.1. Description of the Parties' submissions in pre-notification and in the Reply to the 6(1)(c) Decision

3.1.1. Analyses based on Aon's RFP data

(214) **Reply to RFI 2-Q20.** In the reply to RFI 2, question 20, the Notifying Party submitted a participation analysis based on a dataset on RFP, called "Aon RFP data". This dataset records the RFPs in which Aon participated. In order to respond to Question 20 of RFI 2, Aon amended this dataset with additional inputs from individual brokers involved in each of the opportunities recorded in the Aon RFP dataset. The "Aon RFP dataset" includes information on the brokers that participated against Aon, as well as the winner. According to the Parties, RFPs would cover around [a significant percentage] of the reinsurance business: Aon mentions that RFP tenders represent "*[...]*",[97] and WTW mentions that "*[...]*".[98]

(215) As mentioned by the Notifying Party, for some tenders, several brokers are indicated as winners, for example due to the selection of "lead broker" (who is typically assigned a larger share of placements) and "follow brokers". In these cases, an award to multiple brokers is assigned to each broker according to some weights (either equal weights, or with weights proportional to the share of placements if available).

(216) The Notifying Party submitted a participation analysis,[99] showing that both Parties participated against each other in more than half of the tenders.[100] The Notifying Party also mentions that the average number of participants in tenders cannot be interpreted due to incomplete information on participants. Nevertheless, the Commission still notes that there is a significant number of tenders where the Parties participate against each other (see Section 3.2.2 for further details).

(217) The Notifying Party also reported a loss analysis with the share of the RFPs lost by Aon that were won by other brokers.[101] According to the Notifying Party, "*[...]*", namely […] ([a very small percentage] at EEA, [a very small percentage] worldwide), […] ([a very small percentage] at EEA, [a very small percentage]

96 The Commission notes that there is no observation for 2019 only where the incumbent is known.
97 Reply to the 6(1)(c) Decision, paragraph 973.
98 Reply to the 6(1)(c) Decision, paragraph 757.
99 Reply to RFI 2, question 20, Table 2.
100 According to Table 2 of the reply to RFI 2, question 20, at a global level (resp. EEA level) both Parties participated in […] tenders (resp. […] tenders) across […] tenders (resp. […] tenders).
101 Reply to RFI 2, question 20, Tables 3 and 4. Also reported as tables Table 41 and Table 42 below.

Worldwide), […] ([a very small percentage] at EEA, [a very small percentage] Worldwide), and the direct channel represents a significant proportion of premium ([a very small percentage] at EEA, [a very small percentage] Worldwide). However, the Commission notes that Marsh ([a significant percentage] EEA, [a significant percentage] Worldwide), followed by WTW ([a significant percentage] at EEA, [a significant percentage] Worldwide) are the competitors with the highest win rates against Aon, with a significant gap to other brokers.

Table 41: Aon's RFP loss ratios in the EEA (2018-2020 Q2)

[…]	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	**[…]**	**[…]**	**[…]**

Source: Reply to RFI 2, question 20.

Table 42: Aon's RFP loss ratios globally (2018-2020 Q2)

[…]	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	**[…]**	**[…]**	**[…]**

Source: Reply to RFI 2, question 20.

(218) In the Reply to the 6(1)(c) Decision,[102] the Notifying Party argues that Aon's RFP data does not allow to assess the importance of the direct channel as a competitive constraint to Aon. As Table 41 and Table 42 show, the direct channel has only a minor win rate against Aon, as it represents approximately a [a very small percentage] and [a very small percentage] win rate at EEA and global level, respectively. According to the Notifying Party:

(a) A RFP ends with the identification of a "lead broker" by the customer, and its proposed strategy to ensure the risk is subsequently implemented.[103]

(b) Typically the lead broker places a larger share of risk but this is not necessarily the case, as clients do not commit to placing risks with brokers and always retain the ability to place risks directly in whole or in part (albeit using the strategies proposed by the brokers).[104]

(c) However, the Notifying Party mentions that customers "*[…]*",[105] and RFP data cannot capture this disciplining mechanism of the direct channel for brokers.

(d) In addition, the Notifying Party argues that customers also approach reinsurers directly with informal discussions, which is not captured by formal tenders (i.e. RFP).[106]

(219) The Notifying Party also argues that the participation analysis (see Table 47-Table 48 below in Section 3.2.2) should be interpreted at an aggregate level. In particular, according to the Notifying Party:

(a) "*WTW's participation rate ([a significant percentage]) hardly implies strong competition: it shows that there was no competition at all between the Parties in relation to [a significant percentage] of the formal tenders captured in the data*."[107]

(b) "*looking at the […] opportunities in which WTW competed with Aon, Aon observed at least one (and up to six) other competitor in […] ([a high percentage]) of these opportunities*."[108]

(c) "*The aggregate constraint posed by the remaining competitors […] is what ultimately matters*"[109], and the aggregation of the remaining competitors (excluding Marsh and WTW) represents a win rate against Aon of [a significant percentage], compared to [a significant percentage] for WTW and [a significant percentage] for Marsh.[110] On that basis, the Notifying Party argues that Marsh is the first competitive constraint to Aon, and implies that WTW is not a particularly important competitive constraint to Aon since the aggregation of other brokers represents a win rate against Aon similar to the win rate of WTW.

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102 Reply to the 6(1)(c) Decision, Annex 2, paragraphs 2-17.
103 Reply to the 6(1)(c) Decision, Annex 2, paragraph 6.
104 Reply to the 6(1)(c) Decision, Annex 2, paragraph 6.
105 Reply to the 6(1)(c) Decision, Annex 2, paragraph 7: "[…]."
106 Reply to the 6(1)(c) Decision, Annex 2, paragraph 8.
107 Reply to the 6(1)(c) Decision, Annex 2, paragraph 9.
108 Reply to the 6(1)(c) Decision, Annex 2, paragraph 13.
109 Reply to the 6(1)(c) Decision, Annex 2, paragraph 10.
110 Reply to the 6(1)(c) Decision, Annex 2, paragraph 14.

(220) Moreover, the Notifying Party believes that tenders with unknown winners/participants (see Table 41 and Table 42) are more likely to include smaller brokers than larger ones like WTW and Marsh.[111]

(221) Last, the Notifying Party argues that the WTW's win rate and participation rate against Aon may also be overstated, since Aon recorded Miller as WTW in some entries. However, following the proposed sale of Miller, Miller should be treated as a separate competitor in the assessment of the proposed Transaction.[112]

3.1.2. Analyses based on WTW tender data

3.1.2.1. Switching from WTW

(222) **Reply to RFI 2-Q22.** In the reply to Question 22 of RFI 2, WTW also submitted its own analysis of tender data (see Annex 1 of the Reply to Question 22 of RFI 2).[113]

(223) The first analysis is related to facultative reinsurance brokerage and is based on the CRB dataset described in paragraph (10) above for commercial risk. […]. According to WTW, [a high percentage] of the lost business by WTW (by count of customers) is due to clients retaining the risk internally (self-insured/in-house), [a small percentage] is due to the direct channel, [a small percentage] is due to Marsh, [a very small percentage] to Aon, and other brokers appears with a share close to [a very small percentage].

(224) The second analysis is related to treaty reinsurance brokerage and is based on a CRM dataset used by WTW. In particular, this CRM dataset includes information on: (i) the tender outcome (win/loss for WTW), (ii) the reason why opportunities were lost (e.g. risk retained by client, lost to a competitors), (iii) the competitor the opportunity was lost to, and (iv) the corresponding value for each tender.

(225) Table 43 below reports the WTW switching analysis for treaty reinsurance brokerage in the EEA:

(a) According to WTW, most of WTW losses are due to clients retaining the risk internally ([a high percentage] by value, [a high percentage] by count).

(b) Aon ([a small percentage] by value, [a small percentage] by count), followed by Marsh ([a small percentage] in value, [a small percentage] in count) are the two brokers with the highest win rates against WTW.

(c) WTW also mentions that some other brokers have won opportunities against WTW, including […], and some opportunities are also identified as lost to the direct channel. However, the Commission notes that win rates of these brokers are significantly lower compared to the win rates of Marsh and Aon.

111 Reply to the 6(1)(c) Decision, Annex 2, paragraph 15-16 .

112 Reply to the 6(1)(c) Decision, Annex 2, paragraph 17.

113 No participation analysis was submitted by WTW in the reply to question 20 of RFI 2 due to the lack of available data on participants in tenders in WTW's internal systems.

Table 43: WTW Switching Analysis – EEA (2017-2019)

[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Annex 1 of the Reply to RFI 2, question 20.

(226) Last, in response to a clarification question from the Commission on the recording of the different risk lines in reinsurance brokerage, WTW provided several possible segmentations.[114] WTW notes some data limitations in the segment classification provided:

(a) A segment, called "multiline", covers several categories. For example, this segment refers to instances where the portfolio of risks being reinsured extends to the reinsurer's entire business or multiple risk class areas of the reinsurer's business.

(b) A segment, called "unknown", covers the opportunities for which WTW could not conclusively identify the risk. In particular, it includes instances which were originally classified as "reinsurance", which is a catch-all category in instances where WTW do not feel that there is an appropriate option for the product class available in its internal system. This is therefore likely to cover reinsurance opportunities where the risk category is not well defined or situations where more than one risk class is being reinsured. This could also cover cases where a broker did not complete the database correctly and simply reverted to listing the Product Class as "Reinsurance".

(227) In the same response to RFI 2-Q22, the Notifying Party submitted another switching analysis from WTW to other brokers. According to the Notifying Party, part of the wins allocated to Aon in WTW tender dataset are not correct in WTW tender data.[115] The Notifying Party has therefore matched the tender data of WTW with a database of Aon (called Aon GRIDs dataset) which records opportunities won by Aon.

(228) In particular, Aon holds also a record of the reinsurance policies that are brokered by Aon in a database called GRIDS. Aon mentioned that this database includes wins of new business in addition to renewals of existing policies. In order to use this dataset

[114] WTW mentions that this classification was provided in line with the risk classes listed in Table 11 and Table 12 of the Parties' reply to RFI 2, question 6.

[115] Reply to RFI2, question 22, paragraph 48.

to assess switching from WTW to Aon, Aon matched its wins from Aon's GRIDS data with the losses of WTW from the opportunity dataset of WTW.

(229) As regards the matching algorithm to combine the Aon dataset and WTW tender dataset, Aon provides a description in Annex 2 of the reply to Question 22 of RFI 2. The Commission notes the following:

(a) Based on the matching algorithm, the Notifying Party reallocates several wins in WTW tender datasets to third-parties. Essentially, if Aon is recorded as winner in WTW data but Aon could not find the same opportunity in Aon tender data, this win is allocated to third-parties; if some wins are allocated to other brokers in WTW tender data, but the Notifying Party could find a matched opportunity in the dataset of Aon and if Aon was the winner, this tender is reallocated as a win to Aon.

(b) An opportunity is considered to be matched between the Aon and WTW tender datasets if several variables are identical across the two datasets, namely: (i) the customer names, (ii) the country location of the customers, (iii) the dates of the tender opportunities, (iv) the risk class, (v) the type of policies (proportional vs non-proportional policies), (vi) the tenures, and (vii) the magnitude of the tender revenues. The matched entries were then reviewed manually by the Notifying Party to mitigate the risk of false positive (that is, an opportunity was matched by the algorithm while it was not the same opportunity).

(230) After the matching procedure between the Aon and WTW datasets, the Notifying Party found that:

(a) At a global level, there is a limited number of losses from WTW to Aon in the range of [a small percentage] (by value), while losses to other brokers or direct is in the range of [a significant percentage] and losses due to clients retaining risks internally is at [a significant percentage].[116]

(b) For the EMEA region, there is a limited number of losses from WTW to Aon in the range of [a very small percentage]-[a small percentage] (by value), while losses to other brokers or direct are in the range of [a significant percentage] and losses due to clients retaining risks internally are at [a significant percentage].[117]

3.1.2.2. Switching from Aon

(231) **Reply to RFI 2 Q 22 and matching procedure.** In the reply to RFI 2, question 22, Aon also submitted an additional dataset called "Aon Win-Loss Data". This dataset includes information on Aon's wins and losses in reinsurance brokerage. The wins include newly brokered policies by Aon (excluding wins of renewals of existing opportunities). The losses include policies that were brokered by Aon in the previous quarter and are no longer brokered by Aon in the quarter of reporting (excluding new opportunities that Aon unsuccessfully competed for).

(232) Aon mentions that, while the Aon Win-Loss dataset does not record information on participants in tenders (and therefore could not be used for a participation analysis), some information on winner for tenders lost by Aon is included. However, the Commission notes that information on winner is sparsely populated in the Aon Win-

[116] Reply to RFI 2, question 20, Table 4.

[117] Reply to RFI 2, question 22, Table 5.

Loss dataset. In particular, Table 44 shows the information on wining brokers as reported in the Aon Win-Loss dataset: among the […] tenders recorded, there are […] tenders with missing information on winners, only […] wins are recorded to Marsh (Guy Carpenter) and […] wins recorded to WTW, and among the other tenders where a winner is indicated ([…] tenders) only few tenders actually include information on the winner ([…]).

(233) Due to these data limitations on the winning broker, Aon has not used this dataset on a standalone basis to assess the extent of switching from Aon to WTW. Instead, it performed a matching procedure (see also paragraph (229) above) between the Aon win-loss dataset and WTW tender dataset.[118] The Commission understands from Aon's submission that the main objective was to complete the missing information on winner in Aon's Win-Loss dataset.

Table 44: Overview of winners in Aon Win-loss dataset (raw data)

[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	**[…]**	[…]	[…]
[…]	[…]	[…]	**[…]**	[…]	[…]
[…]	[…]	[…]	**[…]**	[…]	[…]
[…]	[…]	[…]	**[…]**	[…]	[…]
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[…]	[…]	[…]	**[…]**	[…]	[…]
[…]	[…]	[…]	**[…]**	[…]	[…]
[…]	[…]	[…]	**[…]**	[…]	[…]
[…]	[…]	[…]	**[…]**	[…]	[…]

Source: Aon Win-Loss dataset

118 See paragraphs (223)-(227) for a description of WTW tender dataset.

(234) As regards the matching algorithm to combine the Aon datasets and WTW tender dataset, Aon provides a description in Annex 2 of the reply to Question 22 of RFI 2:

(a) Based on the matching algorithm, the Notifying Party reallocates several wins in Aon Win-Loss tender dataset to third-parties. Essentially, if WTW is recorded as a winner in Aon tender data but Aon could not find the same opportunity in WTW tender data, this win is allocated to third-parties; if some wins are allocated to other brokers in Aon Win-Loss tender data, but Aon could find a matched opportunity in the dataset of the other Party and if the other Party was the winner, this tender is reallocated as a win to WTW.

(b) An opportunity is considered to be matched between the Aon and WTW tender datasets if several variables are identical across the two datasets, namely: (i) the customer names, (ii) the country location of the customers, (iii) the dates of the tender opportunities, (iv) and the risk class. The matched entries were then reviewed manually by Aon to mitigate the risk of false positive (that is, an opportunity was matched by the algorithm while it was not the same opportunity).

(235) After the matching procedure between the Aon datasets and WTW dataset, Aon found that in the EMEA region, Aon loses to WTW between […] and […] opportunities (depending on the exact matching algorithm), representing a loss rate in the range of [a very small percentage] to [a small percentage] (by value). In contrast, the loss rate to other brokers is in range of [a high percentage] and the loss rate due to clients retaining risk internally is [a small percentage]. Results by count are similar. Aon also mentions that with a different matching procedure, the loss rate from Aon to WTW would decrease to [a small percentage] (by value and by count).

(236) In the Reply to the 6(1)c Decision, the Notifying Party also argues that Aon Win-Loss data shows that WTW is not an important competitive constraint to Aon, and instead "*the direct channel and risk retention are the two major constraints for Aon, far bigger than WTW and Guy Carpenter*".[119] Based on Aon Win-Loss data, [a significant percentage] of Aon's losses are due to risk retention, [a significant percentage] to direct or in-house brokers, [a small percentage] to the category "Other brokers", [a small percentage] to Guy Carpenter, and [a small percentage] to WTW.

3.2. The Commission's Assessment

3.2.1. The analyses based on the tender data from WTW and on the Win-Loss data from Aon are unlikely to be reliable

(237) The Commission considers that the analyses of tender data from WTW and of the Aon Win-Loss data (see Section 3.1.2) are unlikely to be reliable to assess the competitive effects of the proposed Transaction for the following reasons.

(238) First, both analyses identify risk retention as the first competitive constraint to Aon and WTW. The second competitive constraint is the direct channel. In comparison, Marsh appears significantly behind (see Table 45). However, the Commission considers that these results are implausible for the following reasons.

(a) The Notifying Party generally argues that Marsh is the first competitive constraint to the Parties.[120] The competitive constraint from Marsh is also confirmed by the market investigation, where the Big-Three brokers are close

[119] Reply to the 6(1)(c) Decision, Annex 2, Figure 1 and paragraph 49.
[120] FormCO; Reply to the 6(1)(c) Decision.

competitors (see Section 7.3.2 of the Decision). In contrast, according to the analysis of tender data from the Parties, Marsh would be a limited competitive constraint on the Parties. This contradiction on the competitive constraint exerted by Marsh with the Notifying Party' submissions during the course of the proceedings and the findings of the market investigation casts significant doubts on the reliability of Aon Win-Loss data and WTW tender data.

(b) Moreover, according to the Notifying Party's analysis of tender data, risk retention and the direct channel are the main competitive constraints, and even the only competitive constraint to the Parties. The Commission considers that these figures in Table 45 below are implausible. In particular, the market investigation indicates that risk retention and the direct channel are not part of the relevant market for reinsurance brokerage (see Section 7.1.5 of the main body of the Decision).

Table 45: Switching to risk retention and direct channel based on WTW tender dataset and Aon's Win-Loss dataset

	Switching to risk retention	Switching to the direct channel	Switching to Marsh
Aon Win-Loss data	[…]	[…]	[…]
WTW tender data	[…] by value / […] by count		[…] by value / […] by count

Source: Reply to RFI 2, question 20 and Question 22; Reply to the 6(1)(c) Decision, Annex 2, Figure 1 and paragraph 49.

(239) Second, the Commission also considers that the analysis of Aon switching based on the matching procedure of the Notifying Party (see paragraphs (233)-(236)) also suffers from a significant uncertainty for the following reasons.

(a) Given the unreliability in the Aon's Win-Loss dataset and WTW tender dataset, a matching procedure between these two datasets can only lead to an even higher uncertainty.

(b) A matching procedure on qualitative variables is difficult to implement and leads to some uncertainty since:

– There is no universal identifier that enables to match opportunities between the Parties' datasets;

– Matching on a series of qualitative variables (like customer names, risk types, etc) and a quantitative variable (like the order of magnitude of tender value) is subject to a significant uncertainty. As the Notifying Party mentions in its own submission on Commercial Risks (see paragraph (35)), there are several difficulties with identifying genuine identical opportunities between different datasets.

– The two datasets of Aon Win-Loss data and WTW tender data are not comprehensive datasets that include all opportunities, therefore a matching exercise cannot identify all opportunities in which the Parties met.

– For example, the Commission identified in the 6(1)(c) Decision some opportunities which are not matched by the algorithm across the Aon

Win-Loss dataset and WTW tender dataset, while they correspond to the same tenders.[121]

(240) Third, as regards the switching analysis of WTW tender data based on the matching procedure of the Notifying Party (see paragraphs (227)-(230)), the Commission considers as well that it suffers from a significant uncertainty for the following reasons.

(a) As noted above (see paragraph (239)(b)), such a matching is difficult to carry out and is likely to be unreliable;

(b) In order to illustrate the uncertainty in the matching exercise, Table 46 below reports how the reallocation of tenders won by Aon would change when some matching conditions on risk types and revenue are relaxed.

– Among the […] initial wins of Aon in WTW tender data, […] wins are reallocated to other brokers (that is, these opportunities listed as Aon's wins in WTW tender data were not matched with the opportunities recorded in the Aon tender dataset). In over words, after accounting for the different reallocations, only [a significant percentage] of WTW's original losses to Aon are matched in the Aon's tender dataset. In contrast, only […] wins are reallocated to Aon ([…] wins from other brokers, […] wins from unknown brokers). This leads to a net decrease of […] tenders for Aon's wins, that is only […] wins remain allocated to Aon (compared to […] wins initially).

– Relaxing the constraint on matching tenders with a revenue of a similar order of magnitude would instead lead to […] wins for Aon (close to the original […] wins): the number of Aon's wins reallocated to other brokers decreases to […] tenders (instead of […] tenders when the revenue condition is implemented), and […] wins are allocated to Aon ([…] tenders from other brokers and […] tenders from unknown winners). After accounting for the different reallocations, [a significant percentage] of WTW's original losses to Aon are matched in the Aon's tender dataset. The Commission considers that, in addition to the issues already mentioned by Aon in its commercial risk submission, matching tender opportunities based on revenue is subject to an even greater uncertainty: even if Aon has implemented a condition on the "*order of magnitude*" of the revenue, this condition is arbitrary.

– In addition, relaxing the constraint on identical risk types would actually increase the number of Aon's wins to […] (Aon's wins reallocated to other brokers decreases to […] tenders, while the numbers of tenders reallocated from other brokers and unknown brokers increase respectively to […] tenders and […] tenders). After accounting for the different reallocations, [a high percentage] of WTW's original losses to Aon are matched in the Aon's tender dataset. The Commission notes that risk type is also a qualitative variable, and the considerations made by Aon in its submission on commercial risk would apply as well for this variable: while Aon and WTW could record the tender data across similar risk types, there is no guarantee that the risk types will be defined

[121] The Commission reports two examples of unmatched opportunities across the Aon and WTW tender datasets, while they are likely to correspond to the same tenders: […].

in an identical way. This is further confirmed by WTW, for example WTW notes some data limitations in the segment classification (see paragraph (226)) and in the reply to RFI 17, Annex 3, WTW submits that for example, […].

– Overall, relaxing the matching constraints in the algorithm leads to: (i) a significant decrease in the number of wins reallocated from Aon to other brokers, (ii) an increase in the number of wins reallocated from unknowns competitors to Aon and (iii) a significant increase in the proportion of the original WTW losses to Aon matched by the algorithm in the Aon tender data (from [a significant percentage] to [a high percentage]). This indicates that the algorithm proposed by the Party is likely to suffer from a false-negative bias.[122] As a consequence, such algorithm is likely to understate the rate of switching from WTW to Aon.

(c) Moreover, the Commission also considers that it is not possible to interpret the figures from the switching analysis of the Parties (see paragraphs (230) and (235)) since the category "other brokers" provides only an aggregated view of many brokers which can be of a very different size (e.g. including Marsh and all other brokers). For example, it is not possible to compare the win rates against WTW of the different brokers […] to assess what are the credible alternatives to WTW.

(d) Last, while Aon notes that it has reviewed the matched opportunities between Aon and WTW tender datasets to avoid the risk of false positive (i.e. some opportunities are matched by the algorithm across both datasets, while they are different opportunities), the Commission notes that the Notifying Party did not precise if it has manually reviewed the unmatched opportunities which creates the risk of false negative (that is, some opportunities are not matched by the algorithm across both datasets, while they correspond to the same tenders). In its assessment, the Commission found such unmatched opportunities, while they correspond to the same tenders and clients.[123]

(241) For the reasons discussed above, the Commission considers that the Aon Win-Loss data and WTW tender data are unreliable to assess the competitive effects of the proposed Transaction.

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122 Particular examples of tenders which the Commission found as matches (but not considered as matches based on the Notifying Party's matching algorithm) are presented in footnote 123.

123 The Commission reports four examples of unmatched opportunities across the Aon and WTW tender datasets, while they are likely to correspond to the same tenders: […].

Table 46. Uncertainty in the matching procedure between the Aon GRIDS and WTW opportunity dataset

Category of WTW losses	Original WTW tender opportunity data (no matching)	Matching implemented by Aon (Annex 2 of Reply to Q22 of RFI 2)	Matching implemented by Aon – no condition on revenue	Matching implemented by Aon – no condition on risk types and revenues
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
Total	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon matching procedure.

(242) In the Reply to the 6(1)(c) Decision, the Parties makes the following observations on the matching procedure described above (see paragraphs (229)-(234)):[124]

(a) First, the Notifying Party argues that its pre-notification submission in Commercial Risk Brokerage on the difficulty and uncertainty of a matching exercise based on qualitative variable does not contradict its matching procedure implemented in reinsurance, since: (i) such matching difficulties are "*by no means insurmountable*",[125] (ii) there are major differences between the datasets in Commercial Risk Brokerage and reinsurance, such as a lower number of observations in reinsurance (allowing extensive manual review to be carried out in reinsurance), (iii) the submission of the Notifying Party on the uncertainty related to a matching procedure was related to participation analysis in commercial risk brokerage and not to a switching analysis carried out in reinsurance;[126]

(b) Second, the Notifying Party also explained that it has been conservative in its matching procedure based on the risk class variable. For example, the Notifying Party used broad reinsurance risk classes (e.g., "*Marine, Energy, & Construction*"), allowed risk class to match with retrocession wins, allowed the "*unknown*" risk class in WTW tender data (or with multiple risk classes) to match with wins of any risk class and vice versa, and losses in Casualty are allowed to match win wins in Motor and vice versa.[127] The Notifying Party

124 Reply to the 6(1)(c) Decision, Annex 2, paragraphs 18-41.
125 Reply to the 6(1)(c) Decision, Annex 2, paragraph 20.
126 Reply to the 6(1)(c) Decision, Annex 2, paragraph 21.
127 Reply to the 6(1)(c) Decision, Annex 2, paragraphs 25-28.

also mentioned that "*the Parties have not identified any examples of difficulties in matching risk classes in reinsurance*".[128]

(c) Third, the Notifying Party mentioned that the revenue constraint used in the matching procedure is "*very broad and thus conservative*".[129]

(d) Fourth, the Notifying Party considers that the filters used in the matching algorithm are reasonable.[130]

(e) Fifth, the Notifying Party mentions that, in a first step, "*manual checks*" have been carried out on a "*large sample of entries*" with "*extensive manual review of both matching and non-matching client names*". In a second step, the Notifying Party has further refined its matching algorithm with the different filters.[131]

(f) Last, in its analysis the Notifying Party reports switching between the Parties and from each of the Parties to all other brokers together (see paragraphs (230) and (235)). The Notifying Party argues that "*a switching analysis does not require comparing the switched to other competitors individually to be insightful*" since only the "*aggregate constraint posed by all competitors matters in a competitive assessment*".[132]

(243) However, the Commission disagrees with the Notifying Party's observations made in the Reply to the 6(1)(c) Decision for the following reasons.

(244) First, as noted above, the quality of both Aon Win-Loss data and WTW tender data appears unreliable to assess the competitive effect of the proposed Transaction.

(a) According to these two datasets, Marsh would not be a competitive constraint to both Aon and WTW (see paragraph (238)(a)). This is in contradiction with the Parties' submissions and the findings from the market investigation, where the Big-Three brokers are considered as close competitors in reinsurance brokerage.

(b) According to these two datasets, risk retention and the direct channel would be the main competitive constraints faced by Aon and WTW (se paragraphs (238)(b)). Given the importance of risk retention and the direct channel in the Notifying Party's analysis of tender data, even a merger between the big-three brokers (Aon, WTW, and Marsh) would not lead to competition concerns. The Commission considers that such a conclusion is implausible in light of the findings of the market investigation, in particular given that the Big-Three brokers are considered to be close competitors with a significant gap to other brokers, and that risk retention and the direct channel are not considered to be part of the relevant market for reinsurance brokerage.

(c) Given that both Aon-Win Loss and WTW tender datasets are unreliable, the Commission considers that a matching procedure that use both datasets as inputs cannot lead to reliable results to assess the proposed Transaction.

128 Reply to the 6(1)(c) Decision, Annex 2, paragraph 28.
129 Reply to the 6(1)(c) Decision, Annex 2, paragraphs 29-31.
130 Reply to the 6(1)(c) Decision, Annex 2, paragraph 32.
131 Reply to the 6(1)(c) Decision, Annex 2, paragraph 39.
132 Reply to the 6(1)(c) Decision, Annex 2, paragraphs 40-41.

(245) Second, such a high level of switching due to risk retention (see Table 43, [a high percentage] by value at the EEA level) is incompatible with the high level of margins (approximately [a significant percentage]).

(a) If risk retention (as an outside option) would be an alternative to reinsurance brokerage, the high level of risk retention in WTW switching analysis ([a high percentage] of WTW losses by value at the EEA level) would imply a high demand elasticity (i.e. customers would be very sensitive to a small change in (worse) terms and conditions from brokers) and therefore low gross margins for brokers.[133]

(b) However, the Commission notes that the margins for reinsurance brokerage are high, in the range of [a significant percentage].[134,135] This high level of margin indicates a low demand elasticity, and therefore that risk retention is not part of the relevant antitrust market (i.e. retaining the risk internally does not exert a significant competitive pressure on reinsurance brokerage).

(246) In the Reply to the 6(1)(c) Decision, the Notifying Party mentions that a high degree of switching to risk retention is compatible with a high level of margins since:

(a) "*The switching data does not show the level of switching to risk retention […], rather it shows that the proportion of switching to risk retention is higher than to other brokers*".[136]

(b) If a high level of margins would refute risk retention as a competitive constraint, according to the Notifying Party it would also refute the competitive constraint that Aon imposes on WTW.[137]

(247) The Commission disagrees with the Notifying Party for the following reasons:

(a) Such a high percentage of customers choosing risk retention is equivalent to customers having a high demand elasticity. In this case, the economic literature shows that one would expect to see low margins. As mentioned in the 6(1)(c) Decision, this is not the case in reinsurance brokerage with a [a significant percentage] margin. Moreover, the Parties did not provide any economic

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133 As mentioned by Katz and Shapiro (2003, "Critical Loss: Let's Tell the Whole Story," *Antitrust magazine*), Besen, Kletter, Moresi, Salop, Woodbury (2013, "An economic analysis of the AT&T-T-Mobile USA wireless merger". *Journal of Competition Law & Economics* 9, 23-47), and Moresi, Salop, and Woodbury (2017, "Market Definition in Merger Analysis", available here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906111), the observed pre-merger margins provide information about the price sensitivity of demand, and high margins typically imply that firms face a low demand elasticity (i.e. the actual loss from a price increase is small). See also Werden (1996): "Demand elasticities in Antitrust Analysis", *Antitrust Law Journal*.

134 Form CO, Table 6B.7 and Table 6B.8 (REINS) for Aon: at global level, [a significant percentage] in 2017, [a significant percentage] in 2018, and [a significant percentage] in 2019; for EMEA: [a significant percentage] in 2017, [a significant percentage] in 2018, [a significant percentage] in 2019. Form CO, Table 6B.9 and Table 6.10 for WTW: at global level, [a significant percentage] in 2018, [a significant percentage] in 2019; for the EEA, [a significant percentage] in 2018, [a significant percentage] in 2019. The Commission notes that the margins provided seems to include some fixed cost elements at least for Aon (Form CO, paragraph 935), where common costs were allocated in proportion to direct costs. Therefore, the gross margins are actually likely to be higher than the figures provided by the Notifying Party.

135 Both Aon and WTW mention that the margin provided are used in the normal course of business for the assessment of performance, and that they represent the measure of profitability used to capture management's pricing decisions (Form CO, paragraph 935 for Aon, paragraph 941 for WTW).

136 Reply to the 6(1)(c) Decision, Annex 2, paragraph 61.

137 Reply to the 6(1)(c) Decision, Annex 2, paragraph 62.

modelling to explain what it means by the difference between "*level of switching*" and "*proportion of switching*". In contrast, the Commission's observation is based on well-established economic literature. The Commission also notes that the Notifying Party did not engage in the Reply to the 6(1)(c) Decision with the economic literature mentioned by the Commission.

(b) In its second claim, the Notifying Party's argument refers to the concept of cross-price elasticity (i.e. substitution between brokers), while the Commission's observation is based on the concept of own-price elasticity (i.e., general sensitivity of customers to prices in reinsurance brokerage).

(248) Third, in the 6(1)(c) Decision, the Commission already showed some examples of tender opportunities in reinsurance which have not been matched by the Notifying Party's algorithm while they seem to correspond to the same tenders opportunities (see footnotes 121 and 123). The Commission notes that in the Reply to the 6(1)(c) Decision the Notifying Party did not comment on the Commission's specific examples. Instead, the Notifying Party just mentioned that manual checks have been carried out on both matched and unmatched customer names (see paragraph (242)(e)), it did not explain why these specific cases identified by the Commission were missed by the Notifying Party's algorithm and manual checks, and it did not provide evidence showing that manual checks that have been carried out systematically on the unmatched entries. The Commission therefore considers that the response of the Notifying Party is not sufficient to ensure that the matching procedure lead to reliable results.

(249) Fourth, as mentioned by the Notifying Party in their submission on commercial risk brokerage (see paragraph (35)), a matching procedure based across several datasets of Aon and WTW is likely to lead to significant uncertainty, for example because:

(a) There is no universal identifier that enables to match opportunities between the Parties' datasets;

(b) Matching on a series of qualitative variables (like customer names, risk types, etc) and a quantitative variable (like the order of magnitude of tender value) is subject to a significant uncertainty (as Aon mentions in paragraph (35)(c), there are several difficulties with identifying genuine identical opportunities between the datasets).

(c) Moreover, in the 6(1)(c) Decision (see footnotes 121 and 123) the Commission already mentioned some examples of specific tenders which have not been matched with the Notifying Party's algorithm, while corresponding to the same tender opportunities. The Notifying Party did not explain why these specific tenders have been missed by its matching algorithm. The Notifying Party did not provide as well evidence on the manual checks (in particular on unmatched entries) carried out in order to assess the reliability of its matching algorithm.

(d) In addition, in the 6(1)(c) Decision (see paragraph (240)), the Commission showed how the results of the Notifying Party's matching algorithm can change significantly when some of the constraints implemented are relaxed, such as the revenue constraint. The Commission notes that the Notifying Party did not provide any sensitivity analysis, in particular with regards to the impact of the revenue constraint in its matching algorithm.

(e) While the Notifying Party' submission applies to a participation analysis in commercial risk brokerage, the Commission considers that the issues discussed above applies as well to a switching analysis in reinsurance.

(250) Fifth, as regards the argument of the Notifying Party that only the "*aggregate constraint posed by all competitors matters in a competitive assessment*" (see paragraph (242)(f)), the Commission disagrees since:

(a) By aggregating all other brokers together (i.e., including Marsh, the smaller tier-2 brokers, and the local brokers), it is not possible for the Commission to assess whether the Notifying Party's analysis leads to plausible predictions, for example regarding Marsh (see paragraph (238)(a)).

(b) The Commission cannot consider that the aggregation of a competitive fringe, being generally composed of non-credible players (with the exception of Marsh), would be in the aggregate a competitive constraint to Aon (resp. WTW) which is comparable or even more important than WTW (resp. Aon). In other words, it is implausible that the aggregation of non-credible players would be a credible competitive constraint to the Parties in the aggregate (see Section 2.3.9).

(251) In order to conclude, based on the above, the Commission considers that the matching analysis carried out by the Notifying Party between the Aon tender datasets and the WTW tender datasets suffers from a significant uncertainty and is unreliable. In particular:

(a) The quality of both Aon Win-Loss dataset and WTW tender dataset appears unreliable and lead to implausible findings in light of the Notifying Party's arguments in several submissions, the findings of the market investigation, and the high level of margins;

(b) The fact that some identical tenders have been missed by the Notifying Party's algorithm, that no explanation was provided, and the absence of evidence on systematic manual checks carried out to identify tenders that were not matched while being identical.

(c) The inherent uncertainty when matching on qualitative variables, without any sensitivity analysis provided; Moreover, no evidence was provided to show if extensive manual checks on unmatched tenders have been carried out systematically after the matching algorithm;

(d) By aggregating all other brokers together (i.e., including Marsh, the smaller Tier-2 brokers, and the local brokers), it is not possible for the Commission to assess whether the Notifying Party's analysis leads to plausible predictions. Moreover, the Commission considers that it is implausible that the aggregation of a competitive fringe, being generally composed of non-credible players, would be in the aggregate a competitive constraint similar to the Big-Three brokers.

3.2.2. The analysis of Aon's RFP data shows that WTW is a particularly close competitor to Aon, only Marsh is equally close, while other brokers are distant competitors

(252) As regards the participation and loss analyses based on Aon RFP data (see Section 3.1.1), the Commission makes the following considerations:

(a) The participation analysis carried out by the Notifying Party indicates a significant competitive interaction between the Parties (see paragraph (216)), who participate against each other in more than half of the RFP tenders. This is further confirmed in the Commission's analysis (see paragraph (253), and Table 47-Table 48 below).

(b) The loss analysis carried out by the Notifying Party (see paragraph (217), and Table 41-Table 42 above) indicates that after Marsh, WTW has the highest win rate against Aon ([a significant percentage] at the EEA level, [a significant percentage] at the global level). Marsh's win rate against Aon is [a significant percentage] at the EEA level and [a significant percentage] at the global level. By contrast, there is a significant gap in the win rates against Aon for all other brokers. The largest broker after Marsh and WTW, […], only won against Aon in [a very small percentage] of tenders at the EEA level and [a very small percentage] at the global level.

(c) Notwithstanding the exclusion of the direct channel from the relevant product market (see Section 7.1.5 of the Decision)[138], the direct channel has only a minor win rate against Aon ([…]).

(d) This evidence therefore indicates that after Marsh, WTW is the closest competitor to Aon; in contrast, other brokers or the direct channel appears to be more distant competitors.[139]

(253) The Commission has further extended the participation analysis carried out by Aon by considering the competitive tenders only.[140] Table 47 and Table 48 below show that:

(a) Marsh participated against Aon in [a high percentage] of competitive tenders and WTW participated against Aon in [a high percentage] of competitive tenders. Other tender participants follow with a significant gap. The largest of these brokers, […], participated against Aon only in [a very small percentage] of the competitive tenders.[141] This evidence further indicates that the only Parties (with Marsh) are particularly close competitors to each other, and that other brokers are distant competitors.

(b) Results are similar at the EEA level.

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138 In line with its conclusions in section 7.1.5 of the Decision, the Commission considers that the direct channel does not belong to the same market as brokerage services.

139 As discussed below in paragraph (259), the Commission considers that the exclusion of the 'unknown' category of tenders is unlikely to affect the results.

140 These are tenders when other participants in addition to Aon were listed. The Commission notes that the Parties agree with this principle (see Reply to RFI 2, questions 20 and 22, Annex 1, footnote 14).

141 The category other aggregates numerous brokers that participated against Aon in one tender only. In addition, it includes unidentified brokers recorded in the raw data as "Other".

Table 47: Participation analysis using Aon's RFP data, Global

[…]	**[…]**	**[…]**
[…]	[…]	[…]
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Source: Commission's analysis of Aon RFP data

Table 48: Participation analysis using Aon's RFP data, EEA

[…]	**[…]**	**[…]**
[…]	[…]	[…]
[…]	[…]	[…]
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Source: Commission's analysis of Aon RFP data

(254) The Commission also notes that the participation analysis and the loss analysis are the most suited to assess closeness of competition in light of the significant uncertainty faced by bidders in the tender process (see Section 2.2 for further details):

(a) Tenders are characterised by lack of transparency, for example on opportunities available, on the different participants, on the outcome of opportunities, and on the term offered by rivals.[142]

(b) Pricing is not transparent;[143]

(c) The Parties have limited visibility in their competitors' behaviour.[144]

(255) As regards the comments made by the Notifying Party in the Reply to the 6(1)(c) Decision (see paragraphs (218)-(221) in Section 3.1.1), the Commission has the following observations.

(256) First, the Notifying Party argues that Aon RFP data cannot be used to assess the competitive importance of the direct channel (see paragraph (218)). The Commission

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142 Reply to the 6(1)(c) Decision, paragraph 969.

143 Reply to the 6(1)(c) Decision, paragraph 974.

144 Reply to the 6(1)(c) Decision, paragraph 972.

notes that the market investigation clearly indicated that the direct channel should be excluded from the market for Reinsurance Brokerage, and the Commission does not need to take a position on this specific issue in the analysis of Aon RFP data. In any event, the Commission notes that the direct channel appears rarely both in the participation analysis and the loss analysis.

(257) Second, the Notifying Party considers that the participation rates and the win rates of other brokers should be interpreted at an aggregate level (see paragraph (219)). However, the Commission disagrees for the following reasons:

(a) The Commission cannot consider that the aggregation of a competitive fringe, being generally composed of non-credible players, would be in the aggregate a competitive constraint to Aon which is comparable or even more important than WTW. In other words, it is implausible that the aggregation of non-credible players would be a credible competitive constraint to Aon in the aggregate. The lack of credibility of Tier-2 brokers and smaller/local brokers for reinsurance brokerage is also evidenced by the market investigation (see Section 7.3.2 of the main body of the Decision).

(b) The competitive effects from the proposed Transaction are driven by the degree of competitive interactions between the Parties. Both the participation analysis and the loss analysis indicate a relatively important competitive interaction between the merging parties since after Marsh, WTW is the closest competitor to Aon, while Tier-2 brokers are significantly behind. In other words, aggregating Tier-2 brokers does not change the fact that the degree of competitive interactions between the Parties is relatively high. Moreover, the quite high level of margin (around [a significant percentage] in this specific case) makes the diverted sales from Aon to WTW valuable, which leads to additional incentives for anti-competitive effects post-Transaction.[145]

(258) Third, the Notifying Party mentions that it believes that the unknown category is "*disproportionately likely to include smaller brokers than larger ones*".[146] However, the Commission notes that:

(a) The Notifying Party did not provide any evidence that other brokers would be more represented in the 'unknown' category compared to WTW (or Marsh);

(b) Among the main brokers mentioned by the Notifying Party ([…]), there is a significant gap between Marsh and WTW compared to these Tier-2 brokers;

(c) Even under a conservative approach that would allocate the [a significant percentage] 'unknown' win rate to the other […] categories in Table 41 and [a significant percentage] to the other […] categories in Table 42, there would still be to a significant gap between Marsh and WTW compared to the other brokers. In other words, WTW and Marsh would still be the two closest competitors to Aon, with a significant gap to other brokers.

(259) Last, as regards the argument that WTW participation rates and win rates "*may*" be overstated since the Notifying Party recorded Miller as being part of WTW in "*some entries*",[147] the Commission considers that it is unlikely to affect the results since Miller accounts for a small share of WTW: when considering the brokered channel

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145 For a presentation of the UPP framework, see Case M.6992 Hutchison 3G UK / Telefonica Ireland, Annex 1, and Case M.7018 Telefonica Deutschland/E-Plus, Annex A.

146 Reply to the 6(1)(c) decision, Annex 2, paragraph 15.

147 Reply to the 6(1)(c) Decision, Annex 2, paragraph 17.

for treaty and facultative reinsurance in overall non-life, the combined share of the Parties decreases only by [a very small percentage] point, both at the EEA-level and the global level.[148] Moreover, the Commission notes that it is the Notifying Party who decided to record Miller as part of WTW, and after the Reply to the 6(1)(c) Decision the Notifying Party did not make any attempt to identify the entries where Miller may have participated or won.

(260) To conclude, the Commission considers that the analysis of Aon RFP tender data indicates that WTW and Marsh are two particularly close competitors to Aon, while other competitors and the direct channel exert a limited competitive constraint on Aon and appear as distant competitors. This evidence therefore shows that WTW is a particularly close and significant competitive constraint to Aon compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon.

3.2.3. The analysis of Marsh's RFP data confirms that Aon, WTW, and Marsh are particularly close competitors, while other brokers are distant competitors

(261) The Commission also requested tender data from Marsh.[149] The data provided cover the years 2017, 2018, and 2019, and include RFP processes in the EMEA region. This dataset provides information on the client name, the participants, and the value of each of tenders, but it does not include information in the identity of the winner (except for Marsh).

(262) According to Marsh, formal RFP tenders represent approximately [a significant percentage] of tender opportunities. This is consistent with both Aon, which mentions that RFP tenders represent "*less than [a significant percentage] of the reinsurance business*",[150] and WTW, which mentions that "*[...] new business originates from RFPs*".[151]

(263) The analysis of Marsh tender data confirms the finding that the big-Three brokers are particularly close competitors, while other brokers are distant competitors.

(a) In 2019, among all tenders where Marsh participated, Aon participated in [a high percentage] of those tenders ([a very high percentage] by value), followed by WTW with a participation rate of [a high percentage] ([a high percentage] by value). In contrast, the next alternative is significantly behind with a participation rate of only [a small percentage] ([a small percentage] by value).

(b) In 2019, along all tenders won by Marsh, Aon participated in [a very high percentage] of those tenders ([a very high percentage] by value), followed by WTW with a participation rate of [a high percentage] ([a high percentage] by value). In contrast, the next alternative is significantly behind with a participation rate of only [a small percentage] ([a small percentage] by value).

(c) In 2019, among all tenders lost by Marsh, Aon participated in [a high percentage] of those tenders ([a high percentage] by value) and WTW in [a significant percentage] ([a high percentage] by value). In contrast, the next alternative is significantly behind with a participation rate of only [a small percentage] ([a significant percentage] by value).

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148 Notifying Party' submission "Willis Towers Watson's Sale of Miller Insurance Services LLP", dated 02 December 2020, Annex A.

149 See emails of 18 and 25 February 2021 received from Marsh (Document IDs 10349 and 10516).

150 Reply to the 6(1)(c) Decision, paragraph 973.

151 Reply to the 6(1)(c) Decision, paragraph 757.

(d) Similar considerations apply for the Marsh RFP data in 2017 and 2018.

(e) While the tender data provided by Marsh covers the EMEA region, the Commission considers that it is likely that a similar patterns applies at a worldwide level (as shown in Section 3.2.2, results are similar at the EEA-level and worldwide-level based on Aon's RFP data).

(264) Similar to the Notifying Party' data, the data provided covers only formal tender opportunities. However, Marsh mentioned that it does expect that the patterns observed from the RFP dataset are generally in line with the broader reinsurance business (such as informal tenders, bilateral negotiations).

3.2.4. Conclusion for reinsurance brokerage

(265) On the basis of the above, the Commission considers that in reinsurance: (i) WTW and Aon are two particularly close competitors, and (ii) except Marsh, all other brokers are distant competitors to Aon and WTW. This is based on the following:

(a) The participation analysis for Aon (based on Aon RFP data) shows that WTW (and Marsh) encounters Aon the most frequently (by value), and that there is a significant gap to other brokers. In other words, other brokers have limited competitive interactions with Aon. In particular, at a global level, Marsh participated against Aon in [a high percentage] of competitive tenders and WTW participated against Aon in [a high percentage] of competitive tenders; the largest of these other brokers […], participated against Aon only in [a very small percentage] of the competitive tenders.

(b) The loss analysis for Aon (also based on Aon RFP data) shows that after Marsh ([a significant percentage] by value), WTW has the highest win rate against Aon ([a significant percentage] by value). By contrast, there is a significant gap in the win rates against Aon for all other brokers and the direct channel. The largest broker after Marsh and WTW, […], only won against Aon in [a very small percentage] at the global level. This evidence therefore indicates that after Marsh, WTW is the closest competitor to Aon; in contrast, other brokers or the direct channel appear as distant alternatives to Aon.

(c) The analysis of Marsh's RFP data also confirm that the big-Three brokers are particularly close competitors, while other brokers are significantly behind.

(266) Overall, the Commission considers that this evidence therefore shows that in reinsurance brokerage, WTW is a particularly close and significant competitive constraint to Aon compared to almost all other brokers. Only Marsh is comparable to and equally close to Aon.

(267) Moreover, the switching analyses submitted by the Notifying Party based on the tender data from WTW and on the Win-Loss data from Aon are unlikely to be reliable for the following reasons:

(a) The quality of both Aon Win-Loss dataset and WTW tender dataset appear unreliable and lead to implausible findings in light of the Notifying Party's arguments in several submissions, the findings of the market investigation, and the high level of margins.

– According to the Notifying Party's submissions, Marsh would be a limited competitive constraint on the Parties. This contradiction on the competitive constraint exerted by Marsh with the Notifying Party' submissions during the course of the proceedings and the findings of the market investigation casts significant doubts on the reliability of Aon Win-Loss data and WTW tender data.

– According to the Notifying Party's submissions, risk retention and the direct channel are the main competitive constraints, and even the only competitive constraint to the Parties. However, the market investigation indicates that risk retention and the direct channel are not part of the relevant market for reinsurance brokerage. Moreover, such a high level of switching due to risk retention (see Table 43, [a high percentage] by value at the EEA level) is incompatible with the high level of margins of the Parties (approximately [a significant percentage]), indicating instead a low sensitivity of the demand to (worse) terms and conditions from brokers, and therefore that retaining the risk internally does not exert a significant competitive pressure on reinsurance brokerage.

– Given the importance of risk retention and the direct channel in the Notifying Party's analysis of tender data, even a merger between the big-three brokers (Aon, WTW, and Marsh) would not lead to competition concerns. The Commission considers that such a conclusion is implausible in light of the findings of the market investigation, in particular given that the Big-Three brokers are considered to be close competitors with a significant gap to other brokers.

(b) The significant uncertainty of the matching algorithm used by the Notifying in its switching analysis to match the Aon and WTW tender datasets, in particular due to matching on qualitative variables, without any sensitivity analysis provided. Moreover, the Commission notes that some identical tenders have been missed by the Notifying Party's algorithm, that no explanation was provided, and the absence of evidence on systematic manual checks carried out to assess the unmatched entries between the Aon and WTW datasets.

(c) By aggregating all other brokers together (i.e., including Marsh, the smaller tier-2 brokers, and the local brokers), it is not possible for the Commission to assess whether the Notifying Party's analysis leads to plausible predictions. Moreover, the Commission considers that it is implausible that the aggregation of a competitive fringe, being generally composed of non-credible players, would be in the aggregate a competitive constraint similar to the Big-Three brokers.

4. TENDER DATA FOR RETIREMENT BENEFIT CONSULTING (RBC) AND PENSION ADMINISTRATION (PA) IN GERMANY

(268) This section describes the Parties' submissions and the Commission's assessment for Retirement Benefit Consulting ("RBC") and Pension Administration ("PA") markets in Germany. The Commission finds a significant impediment to effective competition in the main body of the Decision in particular in PA in Germany. As mentioned above (paragraph (2)), while the Commission considers that it can be left open whether the proposed transaction would lead to a significant impediment of effective competition in the market for RBC in Germany as the final commitments submitted on 12 May 2021, with a view to addressing concerns for PA in Germany, would in any event address the concerns in the market for RBC in Germany, this Annex covers the tender data analysis also for RBC in Germany.

4.1. Description of the Notifying Party's submissions in pre-notification and in the Reply to the 6(1)(c) Decision

4.1.1. Description of Aon' submissions

(269) The main dataset used by Aon in its submissions on PA and RBC is the Aon Connect database (see paragraph (7)).[152]

(270) In a submission dated 5 November 2020, Aon submitted additional/ancillary datasets for the retirement and investment markets. […].[153] Some opportunities are included in both Aon Connect and these ancillary records, but it is not possible to systematically map opportunities between the different sources and to remove overlapping entries.

(271) For Germany, the ancillary dataset contains request for proposal ("RFP") tenders. For each tender, it gives comprehensive information such as client name, risk line, date of the tender, incumbent supplier, tender outcome (win or loss), the identity of the participants, the winner, the incumbent, as well as the value of the tender. The Commission does not comment on the other countries in the dataset since these fall outside of the scope of this assessment, since the Commission did not find competition concerns for […].

(272) Similarly to commercial risk brokerage, in response to the Commission's questions 20, 24 and 35 of RFI 4, Aon performed the following analyses with the above tender data:

(a) A participation analysis, considering which competitors are participating in tenders against Aon;

(b) A loss analysis (also called switching analysis in the Notifying Party' submissions), considering to which competitors Aon is losing tenders.

(273) In response to Commission's question 11 of RFI 11, Aon also performed the above participation analysis for the samples of all, large and very large customers using the Aon Connect database.

(274) For the Aon Connect dataset, these analyses correspond to Annex 2-Annex 3 of RFI 4 (dated 28 August 2020) and Annex 3 of RFI 11 (dated 30 October 2020). For the ancillary datasets, these analyses correspond to Annex 1 and Annex 2 of the Aon's submission of 5 November 2020.

(275) The submissions from Aon are summarised in Table 49 below. According to the Notifying Party, for the cases with a sufficient number of observations, both the participation analysis and the switching analysis in RBC and PA show that WTW exerts a limited competitive constraint on Aon.

(276) According to the Notifying Party, the participation analysis based on Aon Connect data shows that:

(a) The country level participation rates are [a very small percentage] in 2019 for both RBC and PA in Germany;

(b) The results are similar when considering WTW's participation rates in opportunities won by Aon, in the range of [a very small percentage] for both RBC and PA in Germany;

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152 Reply to RFI 4, Annex 2 and Annex 3.

153 Aon's submission "Ancillary RI opps data", Annex 1.

(c) WTW participated in fewer opportunities than Marsh in Germany (RBC and PA).

(277) According to the Notifying Party, the switching analysis based on Aon Connect data shows that:

(a) The proportion of opportunities lost by Aon in 2019 where WTW was identified as the winner was under [a very small percentage] across RBC and PA. When excluding losses to unknown competitors, the proportion of Aon losses won by WTW increases to [a significant percentage] for RBC in Germany, but this is based on only […] opportunities lost by Aon.

(b) Restricting attention to losses where Aon was the incumbent, of the […] lost opportunities, the identity of the winner is known in just […] cases and […] of these were lost to WTW.

(278) According to the Notifying Party, the participation analysis based on Aon's ancillary data shows that WTW's participation rate is the range of [a significant percentage], and a range of other competitors are also recorded as participants, including […] in Germany for PA. Marsh had comparable participation rates to WTW in Germany (RBC and PA). The sample sizes for the opportunities where Aon was the incumbent are too small for any meaningful analysis of switching rates.

Table 49: Overview of participation and switching analysis based on Aon Connect

		Aon Connect dataset		**Aon ancillary dataset**	
		Germany (RBC)	**Germany (PA)**	**Germany (RBC)**	**Germany (PA)**
Participation analysis					
Participation analysis, EEA, 2019 (all opportunities where Aon participated)	**Nb. Opportunities**	[…]	[…]	[…]	[…]
	Percentage of Opportunities in which both Aon and WTW participated	[…]	[…]	[…]	[…]
Participation analysis, EEA, 2019 (all opportunities where Aon is the winner)	**Nb. Opportunities**	[…]	[…]	[…]	[…]
	Percentage of opportunities won by Aon in which both Aon and WTW participated	[…]	[…]	[…]	[…]

		Aon Connect dataset		Aon ancillary dataset	
		Germany (RBC)	Germany (PA)	Germany (RBC)	Germany (PA)
Loss analysis					
Loss analysis (lost opportunities where Aon is incumbent, EEA, 2019)	Nb. Opportunities	[…]	[…]	[…]	[…]
	Loss percentage to WTW (all opportunities)	[…]	[…]	[…]	[…]
	Nb. Opportunities	[…]	[…]	[…]	[…]
	Loss percentage to WTW (excluding opportunities with 'unknown' winners)	[…]	[…]	[…]	[…]
Loss analysis (lost opportunities where Aon participated, EEA, 2019)	Nb. opportunities	[…]	[…]	[…]	[…]
	Loss percentage to WTW (all opportunities)	[…]	[…]	[…]	[…]
	Nb. Opportunities	[…]	[…]	[…]	[…]
	Loss percentage to WTW (excluding opportunities with 'unknown' winners)	[…]	[…]	[…]	[…]

Source: Reply to RFI 4, Annex 3, Table 3 – Table 5, Table 10 – Table 12, Ancillary RI opps data, Annex 2, Table 2 - Table 4, Table 8 - Table 10.

4.1.2. *Description of WTW' submissions*

(279) On 28 August 2020, WTW submitted several datasets that WTW maintains in the ordinary course of business for the retirement and investment markets.[154] The submission included several datasets, covering various national markets:

(a) For Germany, WTW provided the "TAS" dataset recording won/lost opportunities in Pension administration (PA). The TAS data provides information for each tender such as client name, risk line, date of the tender, tender outcome (win or loss), type of business (competitive vs. non-competitive), and value of the tender. For some tender opportunities, the TAS data also includes information on both where business was lost to and the other suppliers which participated against WTW.

(b) For several western European countries […], the retirement teams manage a range of CRM systems for retirement benefits consulting (RBC).[155] The CRM

154 Reply to RFI 4, Annex 4.

datasets include information such as client name, risk line, date of the tender, tender outcome (win or loss), incumbent supplier (where applicable), and value of the tender. […]. However, since no competition concerns are found for these markets, the Commission will not discuss these datasets.

(280) On 30 October 2020 as part of RFI 11, WTW submitted augmented datasets from its CRM system, and has identified other tender participants for opportunities located in Western Europe.

(281) In response to the Commission's questions 20, 24 and 35 of RFI 4, WTW performed the following analyses:

(a) A participation analysis, considering which competitors are participating in tenders against WTW based on TAS data for PA in Germany;

(b) A loss analysis (also called switching analysis), considering to which competitors WTW is losing tenders based on TAS data for PA in Germany.

(c) Similar analyses were also provided for the RBC in UK. In contrast, no analyses were provided for the remaining national markets.

(282) Regarding the TAS dataset for Germany, WTW presents participation rates of suppliers based on the sample of competitive tenders. Results are reported both including and excluding tenders with unknown competitors and considering the counts as well as the value weighting approach. All tenders are pooled across the years 2017-2019. Table 50 reports the results.

(283) According to WTW, of the named competitors, Aon participated in [a significant percentage] ([a small percentage] including unknowns) of opportunities ([a high percentage] or [a significant percentage] by value), followed by […] who bid in [a small percentage] ([a very small percentage] including unknowns) of opportunities ([a high percentage] or [a significant percentage] by value) and […] [a small percentage] ([a small percentage] including unknowns, [a small percentage] or [a very small percentage] by value). […] other competitors are also observed to have bid with limited frequency as well.

155 […].

Table 50: WTW participation analysis, PA Germany, 2017-2019

	[…]			**[…]**		
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 4, Annex 4, Table 5.

(284) For the switching analysis, a similar approach is followed. The results of the switching analysis are presented in Table 51 below.

(285) According to WTW, the sample size is small ([…] observations excluding 'unknowns') and no robust inference can be drawn from the results. However, WTW mentioned that only [a small percentage] ([…] including unknowns) of customers switch to Aon. This is higher on a value basis, with [a significant percentage] ([a significant percentage] including unknowns) of the tender value lost that switched to Aon. […] won [a small percentage] ([a small percentage] including unknowns) on a count basis and [a small percentage] ([a small percentage] including unknowns) on a value basis. Marsh won [a small percentage] ([a small percentage] including unknowns) of opportunities on a count basis but only [a very small percentage] ([a very small percentage] including unknowns) on a value basis. […]. Finally, the in-house channel also won [a small percentage] ([a small percentage] including unknowns) of opportunities ([a small percentage] by value).

Table 51: WTW loss analysis, PA Germany, 2017-2019

	[...]			[...]		
[...]	**[...]**	**[...]**	**[...]**	**[...]**	**[...]**	**[…]**
[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]
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[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]
[...]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Reply to RFI 4, Annex 4, Table 3

4.1.3. The Notifying Party's observations in the Reply to the 6(1)(c) Decision

(286) In the Reply to the 6(1)(c) Decision, the Notifying Party makes the following observations for both RBC and PA in Germany.

(287) First, according to the Notifying Party, a participation analysis is not suitable to assess closeness of competition (see also Section 2.2 for further details).[156] Instead, a closeness of competition analysis should be based on a switching analysis or a loss analysis.[157] Moreover there are some data limitations in both Aon Connect tender data and WTW's CRM system since these datasets are not a "*competitor monitoring tool*".[158] Only a loss/switching analysis should be used for RBC, and no conclusion can be drawn for PA even with a loss/switching analysis due to small number of tenders in PA (Aon's loss data has a sample size of just […] opportunities, while WTW's loss data has a sample size of just […] opportunities).[159] According to the Notifying Party, a loss analysis based on WTW data for PA shows that WTW loses opportunities to a range of players in the market and not predominantly to Aon.[160]

(288) Second, due to limitations in the Aon Connect software, some of the main competitors in Germany are not included in the Aon Connect tender data, such as […] for RBC and […] for PA, meaning that their constraint cannot be captured in the loss analysis (see also Section 2.3.3 for further details).[161] The Notifying Party mentions that tenders with unknown winners/participants should be included, by

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156 Reply to the 6(1)(c) Decision, Annex A, paragraph 5.15 for RBC and paragraph 5.22 for PA.

157 Reply to the 6(1)(c) Decision, paragraph 1110 for RBC and paragraphs 1223 and 1259 for PA.

158 Reply to the 6(1)(c) Decision, paragraph 1110.

159 Reply to the 6(1)(c) Decision, paragraph 1110 for RBC and paragraph 1223 for PA. See also Reply to the 6(1)(c) decision, paragraph 1260 for the small sample size in Aon Connect tender data and paragraph 1261 for the small sample size in WTW tender data for PA.

160 Reply to the 6(1)(c) Decision, paragraph 1245.

161 Reply to the 6(1)(c) Decision, paragraph 1111 for RBC and paragraphs 1245 and 1262 for PA. See also Reply to the 6(1)(c) Decision, Annex A, paragraph 5.17 for RBC and paragraph 5.24 for PA.

assuming that WTW is not present in this category. In RBC, only […] are the key competitors to Aon that could be recorded on the Aon Connect tender data.[162]

(289) Third, the Notifying Party considers that pooling together the years 2017, 2018, 2019, would underestimate the presence of smaller local providers, compared to an analysis where only 2019 is considered (see also Section 2.3.4 for further details).[163]

(290) Fourth, the Notifying Party mentions that value-weighting should be treated with caution (see also Section 2.3.5 for further details).[164]

(291) Sixth, the Notifying Party mentions the following results:

(a) For RBC, for 2019 only, Aon's loss results for Germany indicate that Aon lost only […] retirement benefits consulting opportunities to WTW out of […] lost opportunities, including losses to unknown competitors ([a very small percentage] including opportunities won by unknown competitors, compared to [a significant percentage] when excluding unknown winners).[165] For the period 2017-2019, Aon's 2017-2019 loss results also indicate that Aon lost only a very small percentage of mandates to WTW. WTW won only […] of the […] lost opportunities ([a very small percentage] including opportunities won by unknown competitors, compared to [a significant percentage] when excluding unknown winners).[166] On that basis, WTW's success rate ([a very small percentage] for 2019 or [a very small percentage] for 2017-2019) cannot possibly be considered indicative of closeness of competition between the Parties.[167]

(b) For PA, the Notifying Party considers that no conclusion can be drawn from Aon and WTW tender data. The Notifying Party also mentions that despite its small sample size, the WTW loss data shows that there is a wide range of credible competitors that are winning opportunities from WTW.[168]

4.2. The Commission's assessment

(292) This section first presents the Commission's assessment of the critique of the Notifying Party in the reply to the 6(1)(c) Decision (Section 4.2.1). The Commission describes its assessment of Aon tender data in Section 4.2.2 and the assessment of WTW tender data in Section 4.2.2.2. Section 4.2.2.3 concludes.

4.2.1. The Commission's assessment of the Notifying Party's observations made in the Reply to the 6(1)(c) Decision

(293) As regards the observations ma de by the Notifying Party in the Reply to the 6(1)(c) Decision, the Commission disagrees for the following reasons.

(294) First, the Commission considers that both a participation analysis and a switching analysis are relevant to assess closeness of competition in bidding markets, that is, to assess the degree of competitive interactions (i.e., the degree of closeness of competition) between the merging parties relative to other brokers (see Section 2.2

162 Reply to the 6(1)(c) Decision, paragraph 1114.
163 Reply to the 6(1)(c) Decision, paragraph 1112 for RBC and paragraph 1264 for PA.
164 Reply to the 6(1)(c) Decision, paragraph 1113 for RBC and paragraph 1263 for PA
165 Reply to the 6(1)(c) Decision, paragraph 1115.
166 Reply to the 6(1)(c) Decision, paragraph 1116.
167 Reply to the 6(1)(c) Decision, paragraphs 1117-1118.
168 Reply to the 6(1)(c) Decision, paragraph 1265.

for further details). These two analyses are also consistent with both (i) the characteristics of the tender process, and (ii) the Commission's case practice.

(295) While the Commission considers that the participation analysis and the loss analysis should be interpreted jointly (see Section 2.2 for further details), in the specific case of RBC and PA in Germany the Commission considers that:

(a) For PA: discarding the loss analysis on the basis of a small number of tenders is not a reason to also discard the participation analysis where a sufficient number of observations is available. In the absence of a loss analysis, a participation analysis alone still provides reliable evidence to assess closeness of competition.

(b) For RBC: the loss analysis is characterised by a particularly high proportion of tenders with unknown winners. While the Commission acknowledges that some competitors listed by the Notifying Party in Germany are not included in the pick list, it is also possible that WTW is included in the category of tenders with unknown winners (see Section 2.3.3 for further details). Moreover, the Commission notes that, when considering tenders with unknown winners, the loss rate to Marsh is also small, leading to the prediction that Marsh is not a competitive constraint to Aon, which is implausible and in contradiction with the other Notifying Party' submissions. Therefore, the Commission considers that the loss analysis is subject to a significant uncertainty and therefore cannot be used to assess the proposed Transaction. As regards the participation analysis, the Commission notes that, given the particularly high participation rate of WTW against Aon, even under a conservative assumption where WTW would be absent from the category of tenders with unknown participants, WTW would still have a significant participation rate against Aon (with the highest participation rate against Aon).

(296) In addition, while Aon Connect and WTW CRAM systems are not competitor monitoring tool, the Commission that there is no reasons why the participation rate of WTW relative to other suppliers would be biased. The Notifying Party did not provide any explanation as well.

(297) Second, as regards the category of tenders with unknown winners, the Commission notes that:

(a) A loss analysis is not interpretable in any event for PA due to the small number of observations, as also recognised by the Notifying Party in the Reply to the 6(1)(c) Decision (see paragraph (291)(b)).

(b) For RBC, the loss analysis is subject to a significant uncertainty and therefore cannot be used to assess the proposed Transaction (see paragraph (295)(b)).

(298) As regards the participation analysis, as discussed below in Sections 4.2.2.1 and 4.2.3.1, given the particularly high participation rate of WTW against Aon, even under a conservative assumption where WTW would be absent from the category of tenders with unknown participants, WTW would still have a significant participation rate against Aon (with the highest participation rate against Aon).

(299) Third, as regards the pooling of the years 2017-2019, the Commission notes that:

(a) The Notifying Party did not provide examples of any important supplier that would be missing in the year 2017-2018 compared to the year 2019.

(b) In any event, the Commission reports the analysis of tender data for both the pooled period 2017-2019, as well as 2019 only. The two cases lead to similar findings, in particular when a sufficient number of observations is available in 2019.

(300) Fourth, as regards the value-weighting approach, the Commission notes that the Notifying Party did not explain why a degree of uncertainty on tender value would systemically bias the results of the analysis. Second, as shown in Tables Table 52-Table 55 below, the differences between count and value indicate that tenders are very heterogeneous in term of value, and therefore the Commission considers that each tender cannot be given the same weight to draw conclusion. In fact, equal weighting of tenders of different values would bias the results. Hence, the Commission considers that value weighting as opposed to simple counting is more appropriate for the competitive assessment in this case.

(301) Fifth, as regards the results based on Aon and WTW tender data, the Commission reports its analysis in Section 4.2.2 for Aon tender data and Section 4.2.2.2 for WTW tender data.

4.2.2. Retirement Benefit Consulting in Germany

4.2.2.1. Assessment of Aon' submissions

(302) **Participation analysis.** Table 52 reports the participation analysis for Aon. In the RBC market in Germany, Aon participated in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying one or more competing tender participants.

(303) The results show that WTW and Marsh encounter Aon the most frequently. In particular, WTW participated against Aon in tenders representing [a high percentage] of the overall value of tenders where Aon participated ([a significant percentage] by count), and Marsh participated in [a significant percentage] of the corresponding tender value ([a significant percentage] by count). By contrast, there is a significant gap in the participation rates against Aon between the above competitors and all other suppliers. None of the other suppliers participated in more than [a very small percentage] of tender value ([a very small percentage] by count).

(304) Even under a conservative assumption where WTW would be absent from the category of tenders with unknown participants ([a high percentage] by value), WTW has the highest participation rate against Aon ([a significant percentage] by value), which is already significant. Moreover, the second supplier, Marsh, has a participation rate that is twice lower ([a small percentage], by value). […], the other key broker mentioned by the Notifying Party (see paragraph (288)), achieves only a participation rate against Aon of [a very small percentage].

(305) For 2019, the Notifying Party reports the results in Annex A of the Reply to the 6(1)(c) Decision, Table 12C:

(a) While Marsh's participation rate against Aon increases ([a high percentage] by value excluding unknown, [a significant percentage] by value including unknowns), WTW participation rate remains also high ([a significant percentage] by value excluding unknown, [a significant percentage] by value including unknowns).

(b) Therefore, WTW and Marsh are the closest competitor to Aon, with a significant gap in the participation rates against Aon for all other suppliers (the next biggest supplier, […], achieves a participation rate of [a very small percentage] by value, with and without the unknown category).

(306) To conclude, the participation analysis indicates that, for the period 2017-2019 and 2019 only, in the RBC market in Germany that: (i) WTW is a particularly close

competitor to Aon, (ii) only Marsh is comparable to WTW, and (iii) other suppliers are distant competitors with limited competitive interactions with Aon, and thus exert a limited competitive pressure on Aon.

Table 52: Participation analysis 2017-2019 Germany (all customers, all opportunities where Aon participated)

	[…]			[…]		
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
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[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon Connect tender data.

(307) **Loss analysis.** Table 53 reports the loss analysis for Aon. In the RBC market in Germany, Aon participated and lost in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying the winner.

(308) In the Reply to the 6(1)(c) decision, the Notifying Party essentially argues that the loss analysis should assume that the tenders in the category of unknown winners should be considered as being different from WTW (see paragraph (288)). On that basis, the Notifying Party concludes that WTW's win rate against Aon is [a very small percentage] only (by count) for 2019 and [a very small percentage] only (by count) for 2017-2019 (see paragraph (291)(a)). In Table 53, the corresponding figure is [a very small percentage] by count and [a small percentage] by value.

(309) However, since [a competitor] is also listed in the pick list, the Commission notes that the assumption of the Notifying Party would lead to the implausible prediction that [a competitor] is not a competitive constraint to Aon (with a [a very small percentage] win rate against Aon by count, [a small percentage] by value), which is also in contradiction with all submissions from the Notifying Party.

(310) Moreover, the Commission still notes that among the competitors listed in the pick list, […] does not even appear as a winner against Aon in Table 53, and other suppliers such as […] achieves a win rate against Aon significantly behind WTW.

(311) Last, given the high participation rate of WTW against Aon (see paragraphs (302)-(305)), the Commission considers that the Notifying Party's assumption that the tenders with unknown winners correspond to winners different from WTW (and Marsh) is likely to be incorrect.

(312) Similar considerations apply for 2019 only.[169]

(313) To conclude, the Commission considers that the loss analysis is subject to a significant uncertainty and therefore cannot be used to assess the proposed Transaction.

Table 53: Loss analysis 2017-2019 Germany: all customers, all opportunities where Aon participated

	[…]			**[…]**		
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon Connect tender data.

(314) **Conclusion.** Overall, the Commission considers that the evidence based on a participation analysis shows that WTW is a particularly close and significant competitive constraint to Aon compared to almost all other suppliers. Only Marsh is comparable to and similarly close to Aon.

4.2.2.2. Assessment of WTW' submissions

(315) The Commission carried out its assessment based on the augmented dataset submitted in the Reply to RFI 11 (see paragraph (280)). While this dataset includes information on tender participants (allowing to carry out a participation analysis), it does not allow to carry out a loss analysis (due to missing information on winner). Moreover, the Commission notes that it is not possible to carry out a reliable participation analysis for the RBC market in Germany due to the low number of observations. More specifically, WTW participated in […] tenders during the period of 2017-2019 containing information on the identity of participants.

169 Reply to the 6(1)(c) Decision, Annex A, Table 12A.

4.2.2.3. Conclusion

(316) Based on the above, the Commission considers that:

(a) WTW tender data does not allow to carry out a participation analysis and a loss analysis due to a small number of observations;

(b) Aon Connect tender data does not allow to carry out a reliable loss analysis due to the significant uncertainty given: (i) the implausible prediction that Marsh would not be a competitive constraint to Aon when tenders with unknown winners are included, and (ii) the likely presence of WTW in the category of tenders with unknown winners, based on the particularly high participation rates of WTW against Aon;

(c) Only a participation analysis can be carried out, showing that: (i) WTW is a particularly close competitor to Aon, (ii) only Marsh is comparable to WTW, and (iii) other suppliers are distant competitors with limited competitive interactions with Aon, and thus exert a limited competitive pressure on Aon. In particular, given the particularly high participation rates of WTW (and Marsh) against Aon, even the conservative assumption that the category of tenders with unknown winners corresponds to winners different from WTW and Marsh would not affect the Commission's conclusions.

4.2.3. Pension administration in Germany

4.2.3.1. Assessment of Aon' submissions

(317) **Participation analysis.** Table 54 reports the participation analysis for Aon. In the PA market in Germany, Aon participated in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying tender participants.

(a) The results show that WTW and Marsh encounter Aon the most frequently. In particular, WTW participated against Aon in tenders representing [a high percentage] of the overall value of tenders where Aon participated ([a significant percentage] by count), and Marsh participated in [a significant percentage] of the corresponding tender value ([a significant percentage] by count). The Commission also notes that WTW is participating against Aon mostly in high-value tenders, since the revenue-weighted participation rate of WTW exceeds the rate based on count ([a significant percentage]).

(b) The only other named supplier, […], participated against Aon in [a significant percentage] of tender value. However, the Commission notes that this is only connected to […]. Therefore, the Commission does not consider this supplier as a close competitor to Aon.

(c) As regards the direct channel, the Commission notes that the Notifying Party did not mention in the FormCO and in its Reply to the 6(1)(c) Decision why insurers/direct placement would be an alternative in Pension Administration (see section 8.1 of the main body of the Decision for further details).

(318) Even under a conservative assumption where WTW would be absent from the category of tenders with unknown participants ([a high percentage] by value), WTW has the highest participation rate against Aon ([a significant percentage] by value), which is already significant. Moreover, the second supplier, Marsh, has a participation rate that is twice lower ([a small percentage], by value).

(319) For 2019, the Notifying Party reports the results in Annex A of the Reply to the 6(1)(c) Decision, Table 14C:

(a) While Marsh's participation rate against Aon increases ([a high percentage] by value excluding unknown, [a significant percentage] by value including unknowns), WTW win rate remains also high ([a high percentage] by value excluding unknown, [a significant percentage] by value including unknowns).

(b) While […], which achieves a significant win rate against Aon ([a significant percentage] excluding unknown, [a significant percentage] including unknown), the Commission notes that this is related to […].

(c) Therefore, WTW and Marsh are the closest competitor to Aon as well when only the tenders in 2019 are considered.

(320) To conclude, the participation analysis indicates that, for the period 2017-2019 and 2019 only, in the PA market in Germany that: (i) WTW is a particularly close competitor to Aon, (ii) only Marsh is comparable to WTW, and (iii) other suppliers are distant competitors with limited competitive interactions with Aon, and thus exert a limited competitive pressure on Aon.

Table 54: Participation analysis 2017-2019 Germany (all customers, all opportunities where Aon participated)

	[…]			**[…]**		
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon Connect tender data.

(321) **Loss analysis.** Table 55 reports the loss analysis for Aon. In the PA market in Germany, Aon participated and lost in […] competitive tenders in the period of 2017-2019, of which […] tenders contained information identifying the winner.

Table 55: Loss analysis 2017-2019 Germany: all customers, all opportunities where Aon participated

	[…]			[…]		
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's analysis of Aon Connect tender data.

(322) The Commission considers that the sample size ([…] observations) for the loss analysis is too small does not allow for any robust inference. The Commission therefore does not rely on these results in its assessment. The Commission notes that the Notifying Party agrees with this assessment (see paragraph (287)).

(323) **Conclusion.** Overall, the Commission considers that the evidence based on a participation analysis shows that WTW is a particularly close and significant competitive constraint to Aon compared to all other suppliers. Only Marsh is comparable to and similarly close to Aon.

4.2.3.2. Assessment of WTW' submissions

(324) The Commission has not performed any additional analysis of WTW's data in the PA segment in Germany, since the framework adopted by WTW corresponds to the Commission's assessment (see paragraphs (282)-(285)). On the basis this analysis, the Commission concludes the following.

(325) The participation analysis described in Table 50 indicates that Aon encountered WTW the most frequently. In particular, Aon participated against WTW in tenders representing [a high percentage] of the overall value of tenders where WTW participated ([a significant percentage] by count). The second participant in terms of value was […] ([a high percentage] by value), although it participated against WTW in […] tenders only ([a small percentage] by count). The Commission notes that competitive interactions with Marsh are limited: Marsh participated against Aon in only [a small percentage] of tender value (although [a small percentage] by count), indicating that Marsh participated against WTW mostly in low-value tenders. None of the other brokers participated in a significant number of tenders.

(326) Even under a conservative assumption where WTW would be absent from the category of tenders with unknown participants ([a significant percentage] by value), WTW has the highest participation rate against Aon ([a high percentage] by value), which is already significant.

(327) For 2019, the Commission notes that only […] tenders are available. This does not allow to carry out a reliable participation analysis.

(328) The participation analysis therefore indicates that in the PA market in Germany: (i) Aon is the closest competitor to WTW and that (ii) other brokers (including Marsh) have more limited competitive interactions with WTW and therefore exert a limited competitive pressure on WTW.

(329) The Commission also disagrees with the Notifying Party's argument that a loss analysis based on WTW data for PA shows that WTW loses opportunities to a range of players in the market and not predominantly to Aon (see paragraph (287)).

(330) As regards the loss analysis (Table 51), the Commission disagrees with the Notifying Party that it shows that WTW loses opportunities to a range of players in the market and not predominantly to Aon (see paragraph (287). In particular:

(a) Although the number of observations in the loss analysis presented in Table 51 is limited ([…] observations), the Commission notes that the loss rates indicate that Aon is the most credible alternative to WTW (excluding unknown tenders, [a significant percentage] win rate by value; including unknown tenders, [a significant percentage] win rate by value).

(b) The next supplier won against WTW in […] of tender value compared to Aon, namely […]. Even Marsh appears significantly behind Aon ([a very small percentage] win rate by value, with and without unknown tenders).

(c) A range of small suppliers won […], implying that they have only limited ability to constrain WTW.

(d) Therefore, only Aon appears as a credible alternative to WTW.

(331) The Commission notes that a loss analysis would not be feasible for 2019 only, given the small number of observations in Table 51.

(332) Overall, the Commission considers that this evidence shows that Aon is a particularly close and significant competitive constraint to WTW in Germany in the PA market compared to almost all other suppliers.

4.2.3.3. Conclusion

(333) Based on the above, the Commission considers:

(a) A loss analysis based on Aon Connect tender data is not reliable given the small number of observations available ([…] tenders);

(b) A participation analysis based on Aon Connect data shows that in the PA market in Germany: (i) WTW is a particularly close competitor to Aon, (ii) only Marsh is comparable to WTW, and (iii) other suppliers are distant competitors with limited competitive interactions with Aon, and thus exert a limited competitive pressure on Aon.

(c) A participation analysis based on WTW tender data shows that: (i) Aon is the closest competitor to WTW and that (ii) other brokers (including Marsh) have more limited competitive interactions with WTW and therefore exert a limited competitive pressure on WTW.

(d) For the loss analysis based on WTW tender data, the Commission disagrees with the Notifying Party that it shows that WTW loses opportunities to a range of players. Although the number of observations in the loss analysis presented is limited ([…] observations), the Commission notes that the loss rates indicate that Aon is the most credible alternative to WTW, with a significant gap to other players (including Marsh).

(334) Overall, the Commission considers that the evidence above shows that the Parties are particularly close and significant competitive constraint to each other compared to all other suppliers. Only Marsh is comparable to WTW and similarly close to Aon; however, Marsh is not comparable to Aon when the competitive constraint to WTW is considered.

12 May 2021

Case M.9829 – Aon / WTW

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the ***Merger Regulation***), Aon plc. (***Aon*** or the ***Notifying Party***) hereby enters into the following Commitments (the ***Commitments***) vis-à-vis the European Commission (the ***Commission***) with a view to rendering the combination of Aon and Willis Towers Watson Public Limited Company (***WTW***) (the ***Concentration***) compatible with the internal market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision (the ***Effective Date***).

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the ***Decision***), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the ***Remedies Notice***).

For the purposes of these Commitments, any references to the EEA shall also include the UK.

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the ***Consolidated Jurisdictional Notice***).

   Answer: has the meaning given to it in paragraph 55.

Aon: Aon plc., incorporated under the laws of Ireland, with its registered office at The Leadenhall Building, 122 Leadenhall St, Lime Street, London EC3V 4AN, United Kingdom.

Arbitral Institution: has the meaning given to it in paragraph 53.

Arbitral Tribunal: has the meaning given to it in paragraph 59.

Assets: the assets that are necessary to ensure the viability and competitiveness of the Divestment Businesses as indicated in Section B, paragraph 5 (a), (b) and (c) and described more in detail in the Schedules.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Consultation Period: has the meaning given to it in paragraph 51.

CR AMS Divestment Business: WTW's global commercial risk broking business in relation to aerospace manufacturing and space, as defined in Schedule 1.

CR Divestment Business: the CR AMS Divestment Business, CR LMC Territorial Divestment Business and CR Cyber Specialty Divestment Business.

CR LMC Territorial Divestment Business: (i) […]; (ii) […]; (iii) […];[1] (iv) the transfer of […] WTW FinPro contracts with large multinational customers headquartered and serviced in the UK on a renewal rights basis; (v) […] UK based brokers servicing WTW's commercial risk broking EEA (including the UK) FinPro and property and casualty business with large multinational customers headquartered in France, Germany, the Netherlands and / or Spain, and the […] WTW FinPro contracts with large multinational customers headquartered and serviced in the UK; and (vi) additional Personnel dedicated to commercial risk brokerage that are servicing the divested customer contracts in the

1 […].

following key strategic locations: (a) […] brokers in Brazil, (b) […] brokers in Italy, (c) […] brokers in, at the option of Gallagher, either Hong Kong or Singapore; and (d) at the option of Gallagher, […] employees in each of Italy, Poland and Portugal ([…] employees in total), each of the above as defined and described in Schedule 2.

CR Cyber Specialty Divestment Business: WTW's cyber commercial risk broking business in the UK, as defined in Schedule 3.

Decision: decision by the European Commission pursuant to Article 8(2) of the Merger Regulation declaring the Concentration compatible with the internal market and the functioning of the EEA Agreement.

Dispute: has the meaning given to it in paragraph 54.

Divestiture Agreement(s): the final binding agreements with Gallagher and the German RBC and PA Purchaser for the sale and purchase of the Divestment Businesses.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Aon and who has/have received from Aon the exclusive Trustee Mandate to sell the Divestment Businesses to a purchaser at no minimum price.

Divestment Businesses: the CR AMS Divestment Business, CR LMC Territorial Divestment Business, CR Cyber Specialty Divestment Business, German RBC and PA Divestment Business and Reinsurance Divestment Business, as defined in these Commitments and the respective Schedules.

Effective Date: the date of adoption of the Decision.

Enabling Fac: Enabling Fac is a commercial risk brokerage solution for the benefit of the corporate insured whereby, in an integrated and transparent transaction, the transaction structure involves primary insurance being supported at a second level by insurers or reinsurers.

Fast Track Dispute Resolution Mechanism: has the meaning given to it in paragraph 50.

FinPro: means commercial non-life risk broking related to financial and professional services, i.e., professional indemnity risks, risks of directors, managers and employees, and financial exposures stemming from M&A transaction, excluding insurance of cyber risks.

First Divestiture Period: the period of […] from the Effective Date.

Gallagher: Arthur J. Gallagher & Co., incorporated in the state of Illinois in the United States, with its registered office at 2850 Golf Rd, Rolling Meadows, IL 60008, United States.

Gallagher Closing: the transfer of the legal title to the Gallagher Divestment Business to Gallagher.

Gallagher Closing Period: the period of […] from the approval of Gallagher as the Purchaser of the Gallagher Divestment Business and the terms of sale by the Commission.

Gallagher Divestment Business: the CR Divestment Business and Reinsurance Divestment Business, as defined in these Commitments and the respective Schedules.

German RBC and PA Closing: the transfer of the legal title to the German RBC and PA Divestment Business to the German RBC and PA Purchaser.

German RBC and PA Closing Period: the period of […] from the approval of German RBC and PA Purchaser as the Purchaser of the German RBC and PA Divestment Business and the terms of sale by the Commission.

German RBC and PA Divestment Business: Aon's retirement benefits consulting, pension administration and investment businesses in Germany, as defined in Schedule 4.

German RBC and PA Divestiture Agreement: the final binding agreements with the German RBC and PA Purchaser for the sale and purchase of the German RBC and PA Divestment Business.

German RBC and PA Purchaser: the Purchaser of the German RBC and PA Divestment Business.

Hold Separate Managers: the persons appointed by the Parties for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in each of the Schedules, including the Hold Separate Managers.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Aon, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Non-Compete Commitment: commitment by the Parties not to approach, contract with or accept any mandates from the customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

Non-Solicit Commitment: commitment by the Parties not to approach customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

Notice: has the meaning given to it in paragraph 53.

Parties: Aon (i.e. the Notifying Party) and WTW (i.e. the undertaking that is the target of the Concentration).

Party(ies) to the Arbitration: has the meaning given to it in paragraph 53.

Personnel: staff currently employed by Aon and WTW as listed in the Schedules for each of the Divestment Businesses.

Purchaser(s): the entity(ies) approved by the Commission as acquirer(s) of the Divestment Businesses in accordance with the criteria set out in Section D. Gallagher is the Purchaser of the CR Divestment Business and the Reinsurance Divestment Business.

Purchaser Criteria: the criteria laid down in paragraph 22 of these Commitments that the Purchaser(s) must fulfil in order to be approved by the Commission.

Reinsurance Divestment Business: WTW's global treaty and facultative reinsurance business (with the exclusion of WTW's reinsurance business in Mainland China and Hong Kong and Enabling Fac), as defined in Schedule 5.

Requesting Purchaser: has the meaning given to it in paragraph 51.

Rules: has the meaning given to it in paragraph 60.

Schedule(s): the schedule(s) to these Commitments describing in more detail the Divestment Businesses.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Trustee Proposal: shall have the meaning given to it in paragraph 52.

WTW: Willis Towers Watson Public Limited Company, incorporated under the laws of Ireland, with its registered office at 51 Lime St, Langbourn, London EC3M 7DQ, United Kingdom.

Section B. The commitment to divest the Divestment Businesses

<u>Commitment to divest the Gallagher Divestment Business</u>

1. In order to maintain effective competition, the Parties commit to divest to Gallagher the Gallagher Divestment Business.
2. The Concentration shall not be implemented before the Commission has approved Gallagher as the Purchaser of the Gallagher Divestment Business, and the terms of sale in accordance with paragraph 25.
3. The Parties shall be deemed to have complied with this commitment if the Gallagher Closing takes place within the Gallagher Closing Period.
4. In order to maintain the structural effect of the Commitments, Aon shall, for a period of 10 years after the Gallagher Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Gallagher Divestment Business, unless, following the submission of a reasoned request from Aon showing good cause and

accompanied by a report from the Monitoring Trustee (as provided in paragraph 76 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of Aon's influence over the Gallagher Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

The commitment to divest the German RBC and PA Divestment Business

5. In order to maintain effective competition, the Parties commit to divest, or procure the divestiture of the German RBC and PA Divestment Business by the end of the Trustee Divestiture Period as a going concern to the German RBC and PA Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 25 of these Commitments. To carry out the divestiture, the Parties commit to find the German RBC and PA Purchaser and to enter into a final binding sale and purchase agreement for the sale of the German RBC and PA Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the German RBC and PA Divestment Business in accordance with the procedure described in paragraph 37 in the Trustee Divestiture Period.
6. The Concentration shall not be implemented before the Parties or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the German RBC and PA Divestment Business and the Commission has approved the German RBC and PA Purchaser and the terms of sale in accordance with paragraph 25.

7. The Parties shall be deemed to have complied with this commitment if:

   a) by the end of the Trustee Divestiture Period, the Parties or the Divestiture Trustee have entered into the German RBC and PA Divestiture Agreement and the Commission approves the German RBC and PA Purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 25; and

   b) the German RBC and PA Closing of the sale of the German RBC and PA Divestment Business to the German RBC and PA Purchaser takes place within the German RBC and PA Closing Period.

8. In order to maintain the structural effect of the Commitments, Aon shall, for a period of 10 years after the German RBC and PA Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the German RBC and PA Divestment Business, unless, following the submission of a reasoned request from Aon showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 76 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of Aon's influence over the German RBC and PA Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

Structure and definition of the Divestment Businesses

9. The legal and functional structure of the Divestment Businesses as operated to date is described in Schedules 1-5. Each Divestment Business, described in more detail in the Schedules, includes all Assets and Personnel that are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   a) all tangible and intangible assets (including brand names associated with the relevant Divestment Businesses or rights to use the relevant brand names after the Gallagher Closing and the German RBC and PA Closing (as applicable), and other intellectual property rights as detailed in the respective Schedules);

   b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;

   c) all customer contracts, leases, customer, credit and other records of the Divestment Businesses as detailed in the respective Schedules; and

   d) the Key Personnel and Personnel; and

   e) a reasonable best efforts obligation to secure the transfer to the Purchasers of all customer contracts containing a change of control provision or requiring consent from the customer to the transfer. For the avoidance of doubt, the reasonable best efforts obligations to secure the transfer of all customer contracts also apply to transfer of renewal rights. This also includes but is not limited to the issuance of letters of recommendation, recommending Gallagher to the Parties' clients and explaining Gallagher's capabilities and offerings. These letters shall be issued either by the Parties alone, or jointly with Gallagher.

10. In addition, as described in more detail in Schedules 1-5, the Divestment Businesses include the benefit at the option of the Purchaser(s), for a transitional period of up to […] after the Gallagher Closing and the German RBC and PA Closing, respectively, which can be extended upon a reasonable request from the Purchaser(s) and with the approval of the Monitoring Trustee and after consultation with the Commission, and on terms and conditions equivalent to those at present afforded to the Divestment Businesses, of the current arrangements under which the Parties, their Affiliated Undertakings or third parties supply products or services to the Divestment Businesses, as detailed in the Schedules, unless otherwise agreed with the Purchaser(s). Any transitional sub-leasing office sharing arrangements between Aon and the German RBC and PA Purchaser as specified in Schedule 4 shall not exceed the period of […] after the German RBC and PA Closing. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements will not be shared with, or passed on to, anyone outside the relevant business line providing the product/service within the Parties.

Section C. Related commitments

<u>Preservation of viability, marketability and competitiveness</u>

11. From the Effective Date until the Gallagher Closing and the German RBC and PA Closing, the Parties shall preserve or procure the preservation of the economic viability,

marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular the Parties undertake:

a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;

b) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans;

c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

<u>Hold-separate obligations</u>

12. The Parties commit, from the Effective Date until the Gallagher Closing and the German RBC and PA Closing, to procure that the respective Divestment Businesses are kept separate from the businesses that the Parties will be retaining and, after closing of the Concentration to keep the Divestment Businesses separate from the businesses that the Parties are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by the Parties have no involvement in the Divestment Businesses (other than as required by these Commitments); (ii) the Key Personnel and Personnel of the Divestment Businesses have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Businesses.

13. Until the Gallagher Closing and the German RBC and PA Closing, the Parties shall assist the Monitoring Trustee in ensuring that the respective Divestment Businesses are managed as distinct and saleable businesses separate from the business(es) which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint one or more Hold Separate Managers. The Hold Separate Managers, who shall be part of the Key Personnel, shall manage the Divestment Businesses independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Managers shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Managers shall be subject to the procedure laid down in paragraph 7c) of

these Commitments. The Commission may, after having heard the Parties, require the Parties to replace one or more of the Hold Separate Managers.

14. To ensure that the Divestment Businesses are held and managed as separate entities the Monitoring Trustee shall exercise the Parties' respective rights as shareholders in the legal entity or entities that constitute the Divestment Businesses (except for their rights in respect of dividends that are due before the Gallagher Closing and the German RBC and PA Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, Aon and / or WTW shall resign as members of the boards or shall cause such members of the boards to resign.

Ring-fencing

15. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis the Parties' appointees on the supervisory board and/or board of directors of the Divestment Businesses. In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. The Parties may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to the Parties is required by law.

Personnel non-solicitation clause

16. The Parties undertake not to solicit, hire, employ or engage and to procure that its Affiliated Undertakings do not solicit, hire, employ or engage from the Purchaser(s), the Key Personnel transferred with the Divestment Businesses for a period of […] from the Gallagher Closing and the German RBC and PA Closing, respectively. The Parties also undertake not to solicit, and to procure that its Affiliated Undertakings do not solicit, all other Personnel transferred with the Divestment Businesses for a period of […] from the Gallagher Closing and the German RBC and PA Closing, respectively.

17. To preserve the viability of the Divestment Businesses, Aon commits to put in place appropriate incentive packages for selected Key Personnel of each of the Divestment Businesses to incentivise their transfer to and retention by the Purchasers, as detailed in each Schedule.

Customer non-compete and non-solicitation clause

18. In accordance with customary commitments terms, the Parties commit and will procure that their Affiliated Undertakings undertake:

    a) For the CR Divestment Business:

        (i) For transfer of contracts: (a) for a period of […] from the Gallagher Closing a Non-Compete Commitment vis-à-vis Gallagher for the scope of the work covered by the customer contracts to be divested for each relevant customer; and (b) for a further period of […] a Non-Solicit Commitment vis-à-vis Gallagher for the scope of the work covered by the customer contracts to be divested for each relevant customer.

        (ii) For transfer of renewal rights of customer contracts: (a) for the longer of […] from the Gallagher Closing or the next renewal date (inclusive of such renewal) a Non-Compete Commitment vis-à-vis Gallagher for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer; and (b) for a further period of […] thereafter, a Non-Solicit Commitment vis-à-vis Gallagher for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

        (iii) For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred contracts or renewal rights where there is an existing co-brokering arrangement in place, to the extent that Aon does not increase its revenue proportion of the co-brokering arrangement to the detriment of Gallagher for a period of […] from the Gallagher Closing.

    b) For the Reinsurance Divestment Business, as follows:

        (i) For transfer of contracts: for a period of […] from the Gallagher Closing a Non-Compete Commitment vis-à-vis Gallagher for the scope of the work covered by the customer contracts to be divested for each relevant customer.

        (ii) For transfer of renewal rights of customer contracts: for the longer of […] from the Gallagher Closing or the next renewal date (inclusive of such renewal) a Non-Compete Commitment vis-à-vis Gallagher for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

        (iii) For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred contracts or renewal rights where there is an existing co-brokering arrangement in place, to the extent that Aon does not increase its revenue proportion of the co-brokering arrangement to the detriment of Gallagher for a period of […] from the Gallagher Closing.

c) For the German RBC and PA Remedy, for a period of […] from the German RBC and PA Closing not to compete with the German RBC and PA Purchaser for the scope of the work covered by the customer contracts to be divested for each relevant customer, which is associated with the relevant customers' needs in Germany under the relevant contracts.

d) The Parties undertake to inform the relevant customers of the Divested Businesses of their obligations under this Paragraph as soon as reasonably practicable after the Gallagher Closing and the German RBC and PA Closing, respectively.

Due diligence

19. In order to enable potential purchasers of the German RBC and PA Divestment Business to carry out a reasonable due diligence of the German RBC and PA Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

a) provide to potential purchasers sufficient information as regards the German RBC and PA Divestment Business;

b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

20. Aon shall submit written reports in English on potential purchasers of the German RBC and PA Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Aon shall submit a list of all potential purchasers having expressed interest in acquiring the German RBC and PA Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

21. Aon shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchasers

22. In order to be approved by the Commission, each of the Purchasers must fulfil the following criteria:

a) The Purchasers shall be independent of and unconnected to Aon and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

b) The Purchasers shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with Aon and other competitors.

c) The acquisition of the Divestment Businesses by the Purchasers must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchasers must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

23. As the Purchaser of the Gallagher Divestment Business, Gallagher shall have the following to allow it to run the Gallagher Divestment Business competitively:

a) An operating commercial risk broking business with a proven track record in serving large customers for complex risks.

b) Credible presence, infrastructure and required licences in the UK covering at least the risk categories of property & casualty, FinPro and cyber necessary to incorporate the CR LMC Territorial Divestment Business and CR Cyber Specialty Divestment Business.

c) An infrastructure to integrate the CR LMC Territorial Divestment Business, with the geographic reach allowing it to serve internationally the divested large multinational customers at least for the two risk types, property & casualty and FinPro, with proven capabilities in those countries where the divested large multinational customers require support.

d) Capacity to absorb the Personnel of the Gallagher Divestment Business who will have to be relocated as their respective offices/the legal entities who they work for will not transfer, including Personnel of the CR Cyber Specialty Divestment Business currently based in Ipswich, Leeds, London, and Manchester.

e) Hold required licenses to operate the Gallagher Divestment Business or demonstrate ability to acquire them in a timely manner in those countries or regions where the licenses do not transfer with the Gallagher Divestment Business.

f) Own broking platforms/data bases that allow to integrate the opportunity and customer data to be transferred as part of the Gallagher Divestment Business.

g) Global coordination capabilities, the geographic reach to integrate and run competitively the AMS Divestment Business and claims handling capabilities suitable for aerospace manufacturing risk.

h) Be active in reinsurance broking.

i) Be the acquirer of any divested commercial risk brokerage and reinsurance brokerage assets by the Parties in […] to the extent that such divestments are required by the relevant competition authorities in these jurisdictions in order to obtain merger control approval of the Concentration.

24. The German RBC and PA Purchaser shall have the following to allow it to run the German RBC and PA Divestment Business competitively:

(i) Be active in retirement benefits consulting and pension administration with access to a pension administration software comparable to Aon's.

(ii) Capacity to absorb Aon's supporting team based in Budapest.

(iii) Capacity to absorb the Personnel which is sitting in the same office space as the personnel to be retained by Aon in Germany.

(iv) Experience and expertise in both (i) servicing German retirement customers and (ii) providing retirement benefits consulting and pensions administration services outside of Germany.

25. The final binding Divestiture Agreements (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission's approval. When the Parties have reached an agreement with each Purchaser, Aon shall submit a fully documented and reasoned proposal, including a copy of the final Divestiture Agreement(s), within one week to the Commission and the Monitoring Trustee. Aon must be able to demonstrate to the Commission that each Purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that each Purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchasers.

Section E. Trustee

I. Appointment procedure

26. Aon shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Aon commits not to close the Concentration before the appointment of a Monitoring Trustee.

27. If the Parties have not entered into the Divestiture Agreement(s) one month before the end of the First Divestiture Period or if the Commission has rejected a Purchaser proposed by Aon at that time or thereafter, Aon shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

28. The Trustee shall:

a) at the time of appointment, be independent of Aon, WTW and their respective Affiliated Undertakings;

b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

c) neither have nor become exposed to a Conflict of Interest.

29. The Trustee shall be remunerated by Aon in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Aon

30. No later than two weeks after the Effective Date, Aon shall submit the name or names of one or more natural or legal persons whom Aon proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Aon shall submit a list of one or more persons whom Aon proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 28 and shall include:

a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

31. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Aon shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Aon shall be free to choose the Trustee to be appointed from among the names approved. The Trustee

shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Aon

32. If all the proposed Trustees are rejected, Aon shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 26 and 31 of these Commitments.

Trustee nominated by the Commission

33. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Aon shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

34. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Aon, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

35. The Monitoring Trustee shall:

    a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

    b) oversee, in close co-operation with the Hold Separate Managers, the on-going management of the Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

        (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 11 and 12 of these Commitments;

(ii) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 13 of these Commitments;

(iii) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses,

- in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses,

- make sure that any Confidential Information relating to the Divestment Businesses obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties and

- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;

(iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and the Parties or Affiliated Undertakings;

c) propose to Aon such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(i) potential purchasers receive sufficient and correct information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(ii) potential purchasers are granted reasonable access to the Personnel;

e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

f) provide to the Commission, sending Aon a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

g) promptly report in writing to the Commission, sending Aon a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;

h) within one week after receipt of the documented proposal referred to in paragraph 25 of these Commitments, submit to the Commission, sending Aon a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed Purchaser and the viability of the Divestment Businesses after the sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed Purchaser;

i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

36. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

37. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to one or more Purchasers, provided that the Commission has approved both the Purchaser(s) and the Divestiture Agreements (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 22 and 25 of these Commitments. The Divestiture Trustee shall include in the Divestiture Agreements (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the Divestiture Agreements such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

38. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Aon.

III. Duties and obligations of the Parties

39. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Businesses shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Businesses shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

40. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Aon shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

41. The Parties shall grant or procure their respective Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the Divestiture Agreement(s) (including ancillary agreements), the Gallagher Closing and the German RBC and PA Closing (as applicable) and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Gallagher Closing and the German RBC and PA Closing (as applicable), including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Gallagher Closing and the German RBC and PA Closing (as applicable) to be duly executed.

42. The Parties shall indemnify the Trustee and its employees and agents (each an ***Indemnified Party***) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

43. At the expense of Aon, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Aon's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Aon refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Aon. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 42 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Aon during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

44. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

45. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

46. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

47. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    a) the Commission may, after hearing the Trustee and Aon, require Aon to replace the Trustee; or

    b) Aon may, with the prior approval of the Commission, replace the Trustee.

48. If the Trustee is removed according to paragraph 47 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 26-33 of these Commitments.

49. Unless removed according to paragraph 47 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. Fast Track Dispute Resolution Procedure

50. In the event any of the Purchasers informs Aon and the Monitoring Trustee in writing that Aon has failed to comply with its obligations arising from the Commitments with respect to that Purchaser, the relevant Purchaser shall have recourse to a fast track dispute resolution procedure pursuant to this Section F (***Fast Track Dispute Resolution Procedure***).

51. The Purchaser that wishes to avail itself of the Fast Track Dispute Resolution Procedure (***Requesting Purchaser***) shall inform Aon and the Monitoring Trustee in writing, setting out in detail the reasons leading the Requesting Purchaser to believe that Aon is failing to comply with the requirements in the Commitments. The Requesting Purchaser and Aon will use commercially reasonable efforts to settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding 15 working days (such period being extendable by mutual consent of Aon and the Requesting Purchaser) (***Consultation Period***) after receipt of the request.

52. The Monitoring Trustee shall present its own proposal (***Trustee Proposal***) for resolving the dispute within eight working days, specifying in writing the rationale for the Trustee Proposal, and the action, if any, to be taken by Aon in order to ensure compliance with Commitments vis-à-vis the Requesting Purchaser.

53. Should the Requesting Purchaser and Aon (each individually a ***Party to the Arbitration*** and together, the ***Parties to the Arbitration***) fail to resolve their differences of opinion in the Consultation Period, then the Requesting Purchaser may, within 20 working days after the Consultation Period has expired, serve a notice (***Notice***), in the sense of a request for arbitration, to the International Chamber of Commerce (***Arbitral Institution***), with a copy of such Notice and request for arbitration to Aon.

54. The Notice shall set out in detail the dispute, difference or claim (***Dispute***) and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g., documents, agreements,

expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by Aon and the Trustee Proposal, including a comment as to its appropriateness.

55. Aon shall, within ten working days from receipt of the Notice, submit its answer (***Answer***), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g., documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which Aon proposes to undertake vis-à-vis the Requesting Purchaser and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

Appointment of the Arbitrators

56. The Arbitral Tribunal shall consist of three persons. The Requesting Purchaser shall nominate its arbitrator in the Notice; Aon shall nominate its arbitrator in the Answer. The arbitrator nominated by the Requesting Purchaser and by Aon shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators.

57. Should the Requesting Purchaser wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Requesting Purchaser and Aon shall agree on the nomination of a sole arbitrator within five working days from the communication of the Answer, communicating this to the Arbitral Institution.

58. Should Aon fail to nominate an arbitrator, or if the two arbitrators fail to agree on the chairman, or should the Parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution.

59. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the ***Arbitral Tribunal***.

Arbitration Procedure

60. The Dispute shall be finally resolved by arbitration under the International Chamber of Commerce Rules of Arbitration, with such modifications or adaptations as foreseen herein or necessary under the circumstances (***Rules***). The arbitration shall be conducted in London, United Kingdom, in the English language. For good cause, Aon or the Requesting Purchaser may apply to the Arbitral Institution (or Arbitral Tribunal as may be appropriate) for an extension of the timelines provided in this Annex.

61. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of email for the exchange of documents.

62. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the

Parties to the Arbitration. Terms of reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitral Tribunal at the organizational meeting or thereafter and a procedural timetable shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.

63. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the bearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the Parties to the Arbitration agree.

64. The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting confidential information in particular by restricting access to confidential information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.

65. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Purchaser must produce evidence of a prima facie case; and (ii) if the Requesting Purchaser produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Purchaser unless Aon can produce evidence to the contrary. If Aon produces such evidence and the arbitration is not decided in favour of the Requesting Purchaser on the basis of prima facie evidence, then the issues in dispute in the arbitration will be decided on the basis of the evidence presented by the Parties to the Arbitration on the balance of probabilities.

Involvement of the Commission

66. The Commission shall be allowed and enabled to participate in all stages of the procedure by:

    a) Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;

    b) Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including terms of reference and procedural timetable);

    c) Giving the Commission the opportunity to file amicus curiae briefs; and

    d) Being present at the hearing(s) and with the permission of the Arbitral Tribunal, it may also make oral observations.

67. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.

68. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's

interpretation of the Commitments before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

Decisions of the Arbitral Tribunal

69. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

70. Upon request of the Requesting Purchaser, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.

71. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by Aon in order to comply with the Commitments vis-à vis the Requesting Purchaser. The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

72. The final award shall, as a rule, be rendered within six months after the confirmation of the Arbitral Tribunal. The timeframe shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitments if asked by the Arbitral Tribunal.

73. The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award. The Parties to the Arbitration, the Arbitral Tribunal, all other persons participating in the proceedings and all further persons involved, i.e. in the administration of the arbitral proceedings, shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings. All proceedings will be held in private and remain confidential.

74. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation.

Section G. The review clause

75. The Commission may extend the time periods foreseen in the Commitments in response to a request from Aon or, in appropriate cases, on its own initiative. Where Aon requests an extension of a time period, it shall submit a reasoned request to the Commission no

later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Aon. Only in exceptional circumstances shall Aon be entitled to request an extension within the last month of any period.

76. The Commission may further, in response to a reasoned request from Aon showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Aon. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section H. Entry into force

77. The Commitments shall take effect upon the date of adoption of the Decision.

[signed]

……………………………………
duly authorised for and on behalf of
Aon plc.

[signed]

……………………………………
duly authorised for and on behalf of
Willis Towers Watson Public Limited Company

Annex B - WTW's Divestment Businesses Financials

[…]

SCHEDULE 1: The CR AMS Remedy

A. Description of the CR AMS Remedy

1. The **CR AMS Remedy** consists of the transfer of the relevant personnel, renewal rights of customer contracts (or for space, at the option of the Purchaser, Inspace Customer Contracts as defined below), and tangible and intangible assets used in WTW's global commercial risk broking business in relation to aerospace manufacturing and space risk globally (the ***CR AMS Divestment Business***, the sale of which is referred to as the ***CR AMS Remedy***).

2. In particular, the CR AMS Remedy will include:

   - a team of […] employees from WTW's businesses in the UK, the US, Canada, France,[1] Italy, Norway, Malaysia, Spain and Sweden, across different levels of seniority ranging from executive leaders to client management and placement teams, who are capable of managing all activities relating to WTW's global commercial risk brokerage business for aerospace manufacturing and space, including all sales and marketing, broking, client relationship management, and technical expertise ***(Personnel)***;

   - transfer of the right to invite WTW's aerospace manufacturing and inspace customers to renew their respective insurance products that cover the risks associated, respectively, with (i) the damage and liability arising out of the manufacture of aerospace products (the ***Aerospace Manufacturing Customer Contracts***); and (ii) loss from damage to or failure of satellite launches and / or satellites in orbit, including coverage for launch vehicles and satellite assets prior to launch (pre-launch), as well as third party liability at all stages of a launch (the ***Inspace Customer Contracts***, together the ***Renewal Rights of AMS Customer Contracts***), or only in the case of Inspace Customer Contracts, at the option of the Purchaser, the transfer of all Inspace Customer Contracts to the Purchaser instead of on a renewal rights basis[2]; and

   - all relevant intangible assets and know-how used exclusively or primarily in WTW's global commercial risk brokerage businesses for aerospace manufacturing and space, including all relevant documentation and copies of customer records.

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1 The total figures provided above include […] aerospace manufacturing employees and […] space employees in France who will be transferred to the Purchaser as part of the CR LMC Divestment Business, which will consist of the sale of the entirety of WTW's commercial risk broking operations in France. The CR LMC Divestment Business will be sold to the same Purchaser as the CR AMS Divestment Business. As these employees perform functions related to the CR AMS Divestment Business, they are included here for completeness.

2 For the avoidance of doubt, the Aerospace Manufacturing Customer Contracts will be transferred to the Purchaser on a renewal rights basis under both circumstances.

3. The CR AMS Divestment Business functions as […]. However, the CR AMS Divestment Business […]. The CR AMS Remedy will be structured as a transfer of applicable assets, Personnel, the Renewal Rights of AMS Customer Contracts (or, at the option of the Purchaser, the transfer of Inspace Customer Contracts)[3] to the purchaser of the CR AMS Divestment Business (the ***Purchaser***). Aon would work with the Purchaser and the Monitoring Trustee to determine the easiest and most efficient way of implementing the transaction, subject to the approval by the Commission.

4. Aon commits for the same Purchaser to acquire the CR AMS Divestment Business, the CR Cyber Specialty Divestment Business (see Schedule 3), and the CR LMC Territorial Divestment Business, which includes additional WTW aerospace manufacturing broking operations in France and Spain, and additional WTW space broking operations in France (see Schedule 2).

B. Elements of the CR AMS Divestment Business

5. The CR AMS Divestment Business shall include the following elements.

a. the following Personnel (including Key Personnel):

6. Subject to applicable labour laws, the CR AMS Divestment Business will include the Personnel necessary to operate and maintain the viability and competitiveness of the business. In particular, the CR AMS Divestment Business will include, subject to applicable labour laws and consents, the following:

   - With respect to the provision of commercial risk broking services for ***aerospace manufacturing,*** […] employees located in the UK, Canada, France, Italy, Norway, Spain and Sweden, as set out in further detail in **CR AMS Annex 3**.

   - With respect to the provision of commercial risk broking services for ***space***, […] employees located in the UK, the US, France and Malaysia, as set out in further detail in **CR AMS Annex 3**.

   - These include […] aerospace manufacturing employees and […] space employees in France who will be transferred to the Purchaser as part of the CR LMC and Cyber Specialty Divestment Business, which the Parties commit will be sold to the same Purchaser as the CR AMS Divestment Business.

   - These also include […] claims handling personnel who spend on average more than 50% of their time on claims handling for aerospace manufacturing. The inspace claims are handled exclusively by the personnel that will transfer with the CR AMS Divestment Business.

7. The Personnel will provide the Purchaser with all necessary know-how and functional expertise in commercial risk brokerage for aerospace manufacturing and

[3] For the avoidance of doubt, the Aerospace Manufacturing Customer Contracts will be transferred to the Purchaser on a renewal rights basis under both circumstances.

space to allow the Purchaser to continue as a viable standalone competitor globally and throughout the EU.

8. Nevertheless, to the extent necessary to ensure the viability of the proposed divestment business and at the option the Purchaser, Aon can offer to provide the necessary centralized support services as part of a transitional support services agreement. At the option the Purchaser, Aon can also offer some of […] capabilities as part of a transitional support services agreement.

9. The Personnel that comprise the CR AMS Divestment Business work in office facilities that are shared with other retained WTW businesses. As such, these Personnel will either be relocated to the Purchaser's premises or a new commercial office location designated by the Purchaser, as the Purchaser prefers.

10. To preserve the viability and competitiveness of the CR AMS Divestment Business, Aon will undertake not to solicit, hire, employ or engage and procure that its affiliated undertakings[4] do not solicit, hire, employ or engage from the Purchaser, the Key Personnel transferred with the CR AMS Divestment Business for a period of […] from closing of the remedy transaction. […] for a period of […] from closing of the remedy transaction.

11. To preserve the viability of the CR AMS Divestment Business, Aon commits to put in place appropriate incentive packages for selected Key Personnel that will transfer to the Purchaser as part of the CR AMS Divestment Remedy to incentivise their transfer to and retention by the Purchaser.

b. the Renewal Rights of AMS Customer Contracts:

12. The CR AMS Divestment Business includes the Renewal Rights of AMS Customer Contracts (or, at the option of the Purchaser, the Inspace Customer Contracts in which case only the Aerospace Manufacturing Customer Contracts will be transferred on a renewal rights basis), as well as all other available customer specific information, including but not limited to copies of, customer records, pre-tendering and tendering documents, customer reports, claims, transactional data, customer insurance policies and historical records for a period of time as agreed with the Purchaser and the Monitoring Trustee, subject to local regulatory requirements and industry practice. The list of the CR AMS Divestment Business' inspace and aerospace manufacturing customers are set out in **CR AMS Annexes 4** and **5**, respectively.

13. The Renewal Rights of AMS Customer Contracts that will transfer to the Purchaser will be identified as follows:

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[4] Undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

- From those policies that fall within the broader aviation business, the Parties will exclude policies relating to those clients whose operations clearly fall within aircraft operations: airlines, airports, charter operators, and other customers whose operations with respect to the aerospace and aviation sectors are clearly limited to the operation of the aircraft.

- For the remaining customers, the Parties would identify on a policy-by-policy basis those policies that fit within the Article 6(1)(c) Decision's definition of aerospace manufacturing policies.

- This exercise will be updated until immediately prior to closing of the CR AMS Remedy transaction in order to ensure that the CR AMS Remedy includes all relevant policies active at the time of closing.

14. In the case of contracts that include business not covered by the CR AMS Remedy, Aon will use its best reasonable endeavours to transfer the renewal rights (or the part of the contract in case of a transfer of the Inspace Customer Contracts) relating to the part of the contract that relates exclusively to the CR AMS Divestment Business to the Purchaser. Where this is not possible, subject to applicable laws and consents, Aon will retain the contract and use its best reasonable endeavours to sub-contract the portion related to the CR AMS Divestment Business to the Purchaser or agree to other contractual arrangements with the Purchaser so as to pass the applicable financial benefits and burdens to the Purchaser and act at the Purchaser's direction with respect to the portion of the contract that relates exclusively to the CR AMS Divestment Business.

15. In order to maintain the structural effect of the CR AMS Divestment Business and in accordance with customary commitments terms, Aon commits and will procure that its affiliated undertakings commit for the CR AMS Divestment Business:

    a. For transfer of renewal rights of customer contracts: (i) for the longer of […] from Closing or the next renewal date (inclusive of such renewal) not to compete[5] with the Purchaser for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer; and (ii) for a further period of […] thereafter, not to solicit[6] from the Purchaser the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

    b. For transfer of contracts: (i) for a period of […] from Closing not to compete with the Purchaser for the scope of the work covered by the

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5 A non-compete commitment means the commitment by the Parties not to approach, contract with or accept any mandates from the customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

6 A non-solicit commitment means the commitment by the Parties not to approach customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

customer contracts to be divested for each relevant customer; and (ii) for a further period of […], not to solicit from the Purchaser the scope of the work covered by the customer contracts to be divested for each relevant customer.

For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred renewal rights where there is an existing co-brokering arrangement in place, to the extent that Aon does not increase its revenue proportion of the co-brokering arrangement to the detriment of the Purchaser for a period of […] from Closing.

The Parties undertake to inform the relevant customers of the CR AMS Divestment Business of their obligations under this paragraph as soon as reasonably practicable after Closing.

c. The following main intangible assets:

16. The CR AMS Divestment Business will include all intangible assets that are needed to maintain the viability and competitiveness of the CR AMS Divestment Business in the hands of the Purchaser. In particular:

- **Know-how**. Aon will transfer specific know-how and any other IP that are exclusively or primarily related to the CR AMS Divestment Business. Such know-how to be transferred shall only include know-how that is proprietary to WTW today and not owned by third parties. Any other proprietary WTW know-how or IP not exclusively or primarily related to the CR AMS Divestment Business, but used in the CR AMS Divestment Business and needed for its viability will be licensed to the Purchaser on a transition basis. The critical know-how relevant to the CR AMS Divestment Business sits with the Personnel, who will transfer to the Purchaser. In addition, the following know-how exclusively or primarily used by the CR AMS Divestment Business will be made available to the Purchaser:
    - copies of any relevant training presentations, user manuals, data sheets, protocol specifications, manuals (or the relevant portions thereof); and
    - copies of customer records relating to transferring customers, in particular available copies of certificates of project completion, reference documents, customer recommendation letters, pre-tendering documentation, and records of customer order intake, and historical records within a mutually agreeable time period. To the extent that customer records relate to any retained business, they will be appropriately redacted. To the extent that a customer requests that its claims handling be transferred, Aon will transfer all records relating to this claim.
- **Software/databases.** The following software/databases used exclusively or primarily by the CR AMS Divestment Business will be made available to the Purchaser in the manner described below. These will be included in the CR

AMS Divestment Business, and the CR AMS Divestment Business will include personnel who have the necessary know-how to maintain them going forward or to the extent necessary, transition support:

  - Databases containing customer data on policy, claims handling, claims history, transactions (including premium/claims), and ledger balances to the extent they can be transferred using Aon's reasonable best efforts, stored in secure databases hosted in WTW's data centres and the Azure cloud to the extent they contain data that is related to the CR AMS Divestment Business. Copies of certain documents will need to be retained to comply with local legal requirements. Should any database contain data on other risk lines, the CR AMS Divestment Business data will: (i) either be extracted for the Purchaser, or, in the event an extraction is not possible; (ii) the Purchaser will receive a copy of the database with data unrelated to the CR AMS Divestment Business expunged, with the original database remaining in Aon's ownership and expunging the data related to the CR AMS Divestment Business, to the extent reasonable possible and without prejudice to the legal and contractual obligations regarding document preservation.

    Neither the aerospace manufacturing nor the inspace businesses own any proprietary software that is exclusively used for these two businesses. The aerospace manufacturing business relies on WTW proprietary software which is also used by other business lines within WTW, and the inspace business only relies on third-party vendor software such as Eclipse that any suitable purchaser would either already license or would be able to do so without any difficulties.

- Any other assets identified by the Purchaser and the Parties in the asset purchase agreement.

17. All intellectual property divestments, transfers of technology, non-exclusive licenses, or TSAs will be executed subject to any relevant third parties' rights (where necessary, Aon will undertake best efforts to obtain the relevant authorisations).

d. The following main licenses, permits, and authorisations

Brokerage licence / registration

18. The CR AMS Divestment Business is required (i) to hold (and does hold) brokerage licences […]; and (ii) to be registered with […] and […] since it is engaged in insurance distribution activities in Canada, France, Italy, Malaysia, Norway, Spain, Sweden, the UK, and the US.

19. The CR AMS Remedy is structured as an asset sale. Therefore, the current brokerage licenses and registrations would not transfer to the Purchaser. However, as the CR AMS Divestment Business will be sold to a Purchaser already active in commercial risk broking globally, the Parties will endeavour that a suitable Purchaser will already have most or all of the necessary licenses and if it does not, it could obtain these easily and at limited cost. In particular, a suitable Purchaser will

have an entity in its group with the necessary brokerage licences in the UK and at least one separate EU domiciled entity with an insurance brokerage licence. An EU domiciled authorised insurance broker can perform insurance distribution activities across the EEA under the EU's financial services passporting regime, including France, Germany, Italy, Netherlands, Norway, Spain and Sweden. Aon will assist the Purchaser in procuring the necessary licenses or registrations to the extent required. If the Purchaser has not obtained the required licences, Aon will discuss with the Purchaser the suitability of offering a fronting arrangement and/or a joint venture in the interim period, with both options being made available to the Purchaser where suitable.

e. the following customer, credit and other records:

20. Copies of customer records that relate to the CR AMS Divestment Business, in particular: available copies of certificates of project completion, reference documents, customer recommendation letters, pre-tendering and tendering documentation, claims, and records of customer order intake, and historical records for a period of time as agreed with the Purchaser and the Monitoring Trustee.

21. To the extent that customer records relate to any of WTW's retained businesses, they will be appropriately redacted with the agreement of the Monitoring Trustee.

f. The following main tangible assets:

22. At the option of the Purchaser, the CR AMS Divestment Business will include all tangible assets that the Purchaser requires to maintain the viability and competitiveness of the CR AMS Divestment Business. This will include any dedicated or shared moveable tangible assets that are currently used to operate the CR AMS Divestment Business, including but not limited to:

    - all office inventory and office equipment used exclusively or primarily by the Key Personnel and Personnel at the time of the closing of the CR AMS Remedy transaction (for the avoidance of doubt, this does not include office inventory and office equipment primarily used by other business lines);
    - existing sales and promotional material to the extent that it is designed for or used in connection with the CR AMS Divestment Business;
    - copies of all physical records and information to the extent that they relate to current, past and prospective customers of the CR AMS Divestment Business, including but not limited to customer lists and files, logs of customer support issues and written correspondence with customers, subject to local regulatory requirements;[7]
    - copies of all electronic records and information to the extent that they relate to current, past and prospective customers of the CR AMS Divestment

[7] To the extent, historic run-off activity (e.g. claims) dates back further than two years, such information will be included.

Business, including but not limited to customer lists and files, logs of customer support issues and written correspondence with customers, subject to local regulatory requirements;

- copies of all physical contracts, records and information to the extent that they relate to the CR AMS Divestment Business concerning insurance companies, subject to local regulatory requirements;

- copies of all electronic contracts to the extent that they relate to the CR AMS Divestment Business concerning insurance companies, subject to local regulatory requirements;

- all business plans and forecasts to the extent that they relate to to the CR AMS Divestment Business; and

- copies of credit and other business records to the extent that they are currently held by the CR AMS Divestment Business.

g. **the arrangements for the supply with the following services by Aon or Affiliated Undertakings for a transitional period of up to […] after Closing:**

23. To the extent required by the Purchaser, Aon will provide, through a TSA, centralised functional support with purchasing, contract and human resources, finance, compliance, IT and other administrative functions such as technology, sales and client management, client insight and analysis, risk and analytics, operations, and claims.

24. Aon estimates that transitional services may be required for up to […] after the closing of the CR AMS Remedy, but Aon (and the Purchaser) will have every incentive to complete the transition of the CR AMS Business and discontinue transitional services as soon as reasonably practicable after closing.

25. It cannot be entirely ruled out at this time that there may be limited areas where the applicable transition services may be required for longer than […]. However, even in those cases, Aon would work with the Purchaser to complete any required transitional services as soon as reasonably practicable after closing. For this reason, Aon offers a TSA period of up to […], which can be extended, with respect to any transitional services for which transition is not complete, at the reasonable request of the Purchaser with the approval of the monitoring trustee.

26. Further, for a period of between […] to […] post-Closing, unless another period of time is agreed with the Purchaser, the Parties will grant a right to the Purchaser to use brand names which are exclusively or primarily related to the CR AMS Divestment Business in relation to WTW's position as the previous owner of the CR AMS Divestment Business, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the CR AMS Divestment Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.

C. Excluded elements from the CR AMS Divestment Business

27. The CR Aerospace Manufacturing Business shall not include the following items:

- Any office facilities (except those outlined in Schedule 2 which covers the divestment of WTW's entire Commercial Risk and Broking business in France, Germany, the Netherlands, and Spain).

- Any customer contracts or portions thereof, employees, tangible and intangible assets, know-how, accounts, books domain names, products or services, or other trademarks, as well as any other asset which are not exclusively or primarily used by the CR AMS Divestment Business.

- Employees other than the Personnel and Key Personnel, responsible for centralised back-office functions not embedded in the CR AMS Divestment Business, such as purchasing, contract and human resources, finance, compliance, IT and other administrative functions such as technology, sales and customer management, customer insight and analysis, risk and analytics, operations, and claims. A suitable Purchaser will already have these services embedded within its own organization and will cooperate with the Purchaser to provide necessary support services through a TSA over a limited transitional period while the Purchaser incorporates the CR AMS Divestment Business into its own operations.

- Any personnel other than the Key Personnel and the Personnel.

- Any licenses, permits or authorisations issued by government regulators that attach to the CR AMS Divestment Business by means of a legal entity but transfer of which is not possible.

- Third-party, commercially available software, unless used exclusively for the CR AMS Divestment Business (with access to existing software and systems to be provided on a transitional basis until migration to the purchaser's systems can take place).

- Books and records that are not expressly included in the CR AMS Divestment Business, provided that copies of such documents (or portions thereof) necessary for the CR AMS Divestment Business shall be provided to the Purchaser, upon request.

- Tangible and intangible assets (including intellectual property rights and know-how) which are not used exclusively or primarily in the current operation of the CR AMS Divestment Business.[8] A suitable Purchaser for the CR AMS Divestment Business likely will already have any necessary systems in its own operations, but to the extent that any gaps exist Aon will

[8] Aon would assist the Purchaser in obtaining a license for suitable, commercially available alternatives and transferring all necessary data to the systems of the Purchaser's choice. Beyond these systems, WTW has not identified any material tangible or intangible assets that are not used exclusively or primarily in the CR AMS Divestment Business that are required for the operation of that business.

assist the Purchaser in obtaining a license for or purchasing a suitable, commercially available alternative and transferring all necessary data to the systems of the Purchaser's choice.

- Other contracts with third parties that are not expressly included in the CR AMS Remedy.
- Any domain names, product or services, or other trademarks, as there are no specific trademarks for the divested business.
- WTW's company name, general brand name, mark, or logo in any form or deviations thereof.
- General books of account and books of original entry that comprise WTW's accounting or tax records, unless specific to the CR AMS Divestment Business; provided that copies of such documents (or portions thereof) necessary for the ongoing CR AMS Divestment Business shall be provided to the Purchaser, upon request.

28. If there is any asset or Personnel which is not covered by Section B of this Schedule but which is used by the CR AMS Divestment Business and necessary for the continued viability and competitiveness of that business in the hands of the Purchaser, then Aon will have the option to offer the Purchaser one of that asset or an adequate substitute of that asset, and the Purchaser will have the option to choose between (i) that asset or an adequate substitute of that asset, as offered by Aon, or (ii) the provision of that asset pursuant to a transitional service agreement.

29. In the event any assets primarily used for and transferred to the Purchaser as part of the CR AMS Divestment Business are also required by Aon to operate the retained assets and businesses, then the Purchaser will provide a reverse transition services (to be limited – if required at all – as much as possible in scope and duration) pursuant to which it will supply the asset/service to Aon for use in its retained businesses.

30. If there is any asset or personnel which is covered by the CR AMS Divestment Business, but which the Purchaser would prefer not to acquire, for example because it already has the relevant asset or function within its owned operations, the Purchaser may elect to exclude this asset or employee from the CR AMS Divestment Business subject to verification from Monitoring Trustee, under the supervision of the Commission, that the Purchaser's existing assets or operations are sufficient such that exclusion will not affect the continued viability and competitiveness of the CR AMS Divestment Business.

Annex 1 – Aon/WTW – CR AMS – Release Agreement

[…]

Annex 2 – Aon/WTW – CR AMS – Sale and Purchase Agreement

[…]

Annex 3 – Aon/WTW – CR AMS – Aero Manufacturing and Space Personnel List

[…]

Annex 4 – Aon/WTW – CR AMS – CRB client list – 2019 and 202 – Space

[...]

Annex 5 – Aon/WTW – CR AMS – CRB client list 2019 and 2020 – Aviation: Aerospace Manufacturers

[…]

SCHEDULE 2: The CR LMC Territorial Remedy

A. Description of the CR LMC Territorial Remedy

1. The **CR LMC Territorial Remedy** consists of the transfer of:

- the relevant legal entities, personnel, contracts, know-how, and tangible and intangible assets used in WTW's commercial risk broking (***CRB***) business (including *inter alia* assets related to WTW's P&C, FinPro, and Cyber businesses that sit in those countries) in France, Germany, the Netherlands, and Spain, supplemented by:
  - WTW's entire CRB EEA (including the UK)[1] FinPro and P&C business with LMCs headquartered in France, Germany, the Netherlands and/or Spain;
  - WTW's entire P&C and FinPro contracts serviced[2] in the U.S., Brazil and, at the option of the Purchaser in, either Hong Kong or Singapore, entered into with LMCs headquartered in France, Germany, the Netherlands and/or Spain;[3]
  - 12 WTW LMC CRB FinPro contracts serviced in the UK (see **CR LMC Annex 1)**;
  - […] additional brokers in the UK to serve WTW's entire CRB EEA (including the UK) FinPro and P&C business with LMCs headquartered in France, Germany, the Netherlands and/or Spain, and the relevant WTW LMC CRB FinPro contracts serviced in the UK (see above); and
  - additional brokers dedicated to CRB in the following […] locations which are servicing the divested customer contracts: (i) […] brokers in Brazil, (ii) […] brokers in Italy, and (iii) at the option of the Purchaser, […] brokers in either Hong Kong or Singapore.

(together, the ***CR LMC Territorial Divestment Business***, the sale of which is referred to as the ***CR LMC Territorial Remedy***).[4]

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1 For the purposes of the Commitments, EEA includes the UK, as set out in the European Commission's 6(1)(c) Decision.

2 Serviced means the country where the risk is brokered by WTW.

3 With respect to P&C and FinPro contracts serviced in the U.S., Brazil, Hong Kong and Singapore, this includes contracts with LMCs headquartered in one of the four countries whose activities in the EEA are captured by the CR LMC Territorial Remedy.

4 The CR LMC Territorial Divestment Business will also include (i) WTW's Enabling Fac business in the relevant territories, which is an integral part of WTW's Commercial Risk and Broking business; and (ii) at the option of the Purchaser, 2 employees in each of Italy (Arianna Botti and Massimiliano Banfi), Poland (Jakub Plocienniczak and Sylwia Kozłowska) and Portugal (Jorge Tobias and Lara Rodrigues) (i.e., 6 employees in total). In addition to the CR LMC Territorial Divestment Business,

2. The CR LMC Territorial Divestment Business will be sold to the same purchaser as the CR Cyber Specialty Divestment Business (see Schedule 3) and the CR AMS Divestment Business (see Schedule 1).

3. In particular, the CR LMC Territorial Remedy will include:

- all legal entities incorporated in France, Germany, the Netherlands, and Spain that are exclusively or primarily related to the CR LMC Territorial Divestment Business at the time of the closing of the CR LMC Territorial Remedy transaction (***Closing***) (***Legal Entities***);

- all licenses held by the Legal Entities;

- approx. […] employees that comprise WTW's CRB businesses in France, Germany, the Netherlands, and Spain, across different levels of seniority ranging from executive leaders to client management and placement teams as well as ancillary support staff, who are capable of managing all activities relating to, and who are exclusively or primarily dedicated to WTW's commercial risk brokerage business in these countries, including personnel with all sales and marketing, broking, client relationship management, and technical expertise, including employees;

- […] UK based employees to serve WTW's entire CRB EEA (including the UK) FinPro and P&C business with LMCs headquartered in France, Germany, the Netherlands and/or Spain, and the relevant WTW LMC CRB FinPro contracts serviced in the UK;

- […] brokers in Brazil, […] brokers in Italy, and, at the option of the Purchaser, […] brokers in, either Hong Kong or Singapore, which are servicing the divested customer contracts;

- at the option of the Purchaser, […] employees in each of Italy, Poland and Portugal (together, the ***Personnel***)[5]; and

- transfer of all CR customer contracts entered into by the Legal Entities;

- the transfer of the renewal rights for WTW's FinPro and P&C contracts serviced in the U.S., Brazil and, at the option of the Purchaser in, either Hong Kong or Singapore, entered into with LMCs headquartered in France, Germany, the Netherlands and/or Spain;

- the transfer of the renewal rights for WTW's entire CRB EEA (including the UK)[6] FinPro and P&C business with LMCs headquartered in France, Germany, the Netherlands and/or Spain;

WTW's H&B businesses in France (including H&B Paris metropolitan area business), Spain and Germany will also be transferred to the Purchaser.

5 At the option of the Purchaser the following […] employees will be transferred: (i) […] in Italy: […], (ii) […] in Portugal: […], and (iii) […] in Poland: […].

- the transfer of the renewal rights for the 12 WTW LMC CRB FinPro contracts serviced in the UK; and
- all relevant tangible and intangible assets as well as know-how used exclusively or primarily in the CR LMC Territorial Divestment Business, including all relevant documentation, training materials, databases, and copies of customer records.

4. The CR LMC Territorial Divestment Business currently operates largely separately from the retained WTW business in each of the countries that will be divested. The large majority of the assets and employees that comprise the CR LMC Territorial Divestment Business sit within specific legal entities in France, Germany, the Netherlands and Spain. […].[7] These assets and employees will be transferred to the purchaser of the CR LMC Territorial Divestment Business (the ***Purchaser***). Aon will work with the Purchaser and the Monitoring Trustee to determine the easiest and most efficient way of implementing the transaction, subject to the approval by the Commission.

5. Aon commits for the same Purchaser of the CR LMC Territorial Divestment Business to also acquire the CR Cyber Specialty Divestment Business (see Schedule 3) and the CR AMS Divestment Business (see Schedule 1). The CR LMC Territorial Divestment Business includes all (i) WTW cyber broking operations in France, Germany, Spain, and the Netherlands; (ii) WTW aerospace and space broking operations in France; and (iii) WTW aerospace broking operations in Spain that will strengthen the viability and commercial attractiveness of the CR AMS Divestment Business and CR Cyber Specialty Divestment Business.

B. Elements of the CR LMC Territorial Divestment Business

6. The CR LMC Territorial Divestment Business shall include the following elements.

a. the following Legal Entities:

7. The CR LMC Territorial Divestment Business will include all WTW legal entities incorporated in France, Germany, the Netherlands, and Spain which are exclusively or primarily related to the CR LMC Territorial Divestment Business at the time of the Closing, and their licenses.

8. The table below lists the Legal Entities that will be included in the CR LMC Territorial Divestment Business:

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6 For the purposes of the Commitments, EEA includes the UK, as set out in the European Commission's 6(1)(c) Decision.

7 Further, for those LMCs headquartered in France, Germany, the Netherlands and/or Spain, the FinPro and P&C contracts serviced in the U.S., Brazil and, at the option of the Purchaser in, either Hong Kong or Singapore, will also be transferred to the Purchaser on a renewal rights basis. With respect to P&C and FinPro contracts serviced in the U.S., Brazil, Hong Kong and Singapore, this includes contracts with LMCs headquartered in one of the four countries whose activities in the EEA are captured by the CR LMC Territorial Remedy.

- **Table 1: List of Legal Entities included in the CR LMC Territorial Divestment Business**

Country	Legal Entities
France [8]	[…]
	[…]
	[…]
Germany	[…]
	[…][9]
The Netherlands	[…]
Spain	[…]
	[…]

9. The risk lines covered by each of the country businesses that make up the CR LMC Territorial Divestment Business are set out below:

   - **France**: […].
   - **Germany**: […].
   - **The Netherlands**: […].
   - **Spain**: […].

10. At the option of the Purchaser, the CR LMC Territorial Divestment Business will include any owned, leased, or sub-leased offices that are exclusively or primarily related to the CR LMC Territorial Divestment Business. For each office, the Parties will work with the Purchaser to reach a suitable agreement as to whether employees will be relocated to the Purchaser's premises or a new commercial office location designated by the Purchaser, or whether the Parties will remove retained WTW employees to another facility. To the extent that the Purchaser will take over commercial office space that is leased by WTW, Aon will use its reasonable best efforts to transfer the lease (or part of the lease) to the Purchaser or sublease to the Purchaser. The CR LMC Territorial Divestment Business does not require any specialised facilities and can be operated from general commercial office space.

b. the following Personnel (including Key Personnel):

11. The CR LMC Territorial Divestment Business will include the Personnel necessary to operate and maintain the viability and competitiveness of the business. The CR LMC Territorial Divestment Business includes:

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8 The entities […] will also be transferred as part of the CR LMC Remedy.

9 For the avoidance of doubt, the CR LMC Territorial Divestment Business includes the transfer of […].

- approx. […] Personnel employed by the Legal Entities in France, Germany, the Netherlands, and Spain, and who are exclusively or primarily dedicated to the operation of the CR LMC Territorial Divestment Business;

- […] UK based employees to serve WTW's entire CRB EEA (including the UK) FinPro and P&C business with LMCs headquartered in France, Germany, the Netherlands and/or Spain, and the relevant WTW LMC CRB FinPro contracts serviced in the UK;

- […] brokers in Brazil, […] brokers in Italy, and […] brokers in, at the option of the Purchaser, either Hong Kong or Singapore, which are servicing the divested customer contracts; and

- at the option of the Purchaser, […] employees in each of Italy, Poland and Portugal.

12. Further detail regarding the Personnel is set out in **CR LMC Annexes 3-7.**

13. In particular, the CR LMC Territorial Divestment Business will include, subject to applicable labour laws and consents, the following personnel in each of the four countries to be divested:

    - **France**: The CR LMC Territorial Divestment Business includes approx. […] employees based in France. Out of the […] employees, […]. In France, approx. […] employees are exclusively or primarily dedicated to servicing LMCs. The CR Business in France also includes approx. […] employees which provide GSS services.

    - **Germany**: The CR LMC Territorial Divestment Business includes approx. […] employees based in Germany. Out of the […] employees, […]. In Germany approx. […] employees are exclusively or primarily dedicated to servicing LMCs. The CR Business in Germany also includes approx. […] employees that provide GSS services.

    - **The Netherlands**: The CR LMC Territorial Divestment Business includes approx. […] employees based in the Netherlands. Out of the […] employees, […]. In the Netherlands, approx. […] employees are exclusively or primarily dedicated to servicing LMCs.

    - **Spain**: The CR LMC Territorial Divestment Business includes approx. […] employees based in Spain. Out of the […] employees, […]. In Spain approx. […] employees are exclusively or primarily dedicated to servicing LMCs. The CR Business in Spain also includes approx. […] employees that provide GSS services.

14. In addition, the CR LMC Territorial Divestment Business will also include the following additional employees:

    a. […] UK based employees to serve WTW's entire CRB EEA (including the UK) FinPro and P&C business with LMCs headquartered in

France, Germany, the Netherlands and/or Spain, and the relevant WTW LMC CRB FinPro contracts serviced in the UK;

b. […] brokers in Brazil, […] brokers in Italy, and […] brokers in, at the option of the Purchaser, either Hong Kong or Singapore, which are servicing the divested customer contracts; and

c. at the option of the Purchaser, […] employees in each of Italy, Poland and Portugal.

15. The Personnel have all necessary know-how and functional expertise in commercial risk brokerage for a variety of risk lines, including P&C, FinPro, and Cyber, to allow the Purchaser to continue as a viable standalone competitor for commercial risk broking for all risk classes and all customer sizes in France, Germany, the Netherlands, and Spain, throughout the EU, and globally.

16. For the avoidance of doubt, the WTW main point of contact for any CRB customer in these four EU countries will be included in the CR LMC Territorial Divestment Business, as this person would generally be considered either as Key Personnel or, given his or her role as main point of contact, these would be exclusively or primarily dedicated to the commercial risk and broking activities in those countries.

17. To preserve the viability and competitiveness of the CR LMC Territorial Divestment Business, Aon will undertake not to solicit, hire, employ or engage and procure that its affiliated undertakings[10] do not solicit, hire, employ or engage from the Purchaser, the Key Personnel transferred with the CR LMC Divestment Business for a period of […] from Closing of the CR LMC Remedy. Aon will also undertake not to solicit, and procure that its affiliated undertakings do not solicit all other Personnel transferred with the CR LMC Divestment Business for a period of […] from Closing of the CR LMC Remedy.

18. To preserve the viability of the CR LMC Territorial Divestment Business, Aon commits to put in place appropriate incentive packages for selected Key Personnel that will transfer to the Purchaser as part of the CR LMC Divestment Remedy to incentivise their transfer to and retention by the Purchaser.

c. the following customer contracts (or renewal rights of customer contracts where applicable):

19. The CR LMC Territorial Divestment Business will include all CR customer contracts, entered into by the Legal Entities, as well as all other available customer specific information related to such contracts, including but not limited to copies of, customer records, pre-tendering and tendering documents, customer reports, claims, transactional data, customer insurance policies and historical records for a period of time as agreed with the Purchaser, subject to local regulatory requirements and

[10] Undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

industry practice. The contracts for which run-off activity is still being undertaken (e.g., claims), are also included in the CR LMC Territorial Divestment Business. The list of the CR LMC Territorial Divestment Business' customers is attached as **CR LMC Annex 1**.

20. The CR LMC Territorial Divestment Business also includes the renewal rights for the following customer contracts: (i) all CR EEA (including UK) FinPro and P&C customer contracts entered into with LMCs headquartered in France, Germany, Spain and the Netherlands (but which are serviced in the EEA[11] outside of these four countries); (ii) the 12 WTW LMC CRB FinPro customer contracts serviced in the UK; and (iii) all FinPro and P&C customers contracts serviced in the U.S., Brazil and, at the option of the Purchaser, either in Hong Kong or in Singapore, entered with LMCs headquartered in France, Germany, the Netherlands and/or Spain[12](***Renewal Rights of CR LMC Territorial Customer Contracts***) as well as all other available client specific information, including but not limited to copies of, customer records, pre-tendering and tendering documents, customer reports, claims, transactional data, clients insurance policies and historical records for a period of time as agreed with the Purchaser, subject to local regulatory requirements and industry practice. The customers whose renewal rights will be transferred as part of the of the CR LMC Territorial Divestment Remedy are included in **CR LMC Annex 1.**

21. Aon will use its reasonable best efforts to transfer all CR customer contracts entered into by the Legal Entities to the Purchaser by working with its customers to obtain consent from the customer where required. In turn, the transfer of renewal rights applicable to the Renewal Rights of CR LMC Territorial Customer Contracts does not require customer consent.

22. The Purchaser will also acquire all the commission entitlements and servicing obligations of the transferred business on a continuing basis.

23. To the extent any customer contracts include activities that are retained, Aon will use its reasonable best efforts to transfer the part of the contract (or the renewal rights for the part of the contract, in the case of Cyber Specialty contracts or Renewal Rights of CR LMC Territorial Customer Contracts) that relates exclusively to the CR LMC Territorial Divestment Business to the Purchaser. Where this is not possible, subject to applicable laws and consents, Aon will retain the contract and use its reasonable best efforts to sub-contract the portion related to the CR LMC Territorial Divestment Business to the Purchaser or agree to other contractual arrangements with the Purchaser so as to pass the applicable financial benefits and burdens to the Purchaser and act at the Purchaser's direction with respect to the portion of the contract that relates exclusively to the CR LMC Divestment Business.

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11 For the purposes of the Commitments, EEA includes the UK, as set out in the European Commission's 6(1)(c) Decision.

12 With respect to P&C and FinPro contracts serviced in the U.S., Brazil, Hong Kong and Singapore, this includes contracts with LMCs headquartered in one of the four countries whose activities in the EEA are captured by the CR LMC Territorial Remedy.

24. In order to maintain the structural effect of the CR LMC Territorial Divestment Business transaction and in accordance with customary commitments terms, Aon will commit and will procure that its affiliated undertakings commit for the CR LMC Territorial Divestment Business:

(i) For transfer of contracts: (i) for a period of […] from Closing not to compete[13] with the Purchaser for the scope of the work covered by the customer contracts to be divested for each relevant customer; and (ii) for a further period of […] not to solicit[14] from the Purchaser the scope of the work covered by the customer contracts to be divested for each relevant customer.

(ii) For transfer of renewal rights of customer contracts: (i) for the longer of […] from Closing or the next renewal date (inclusive of such renewal) not to compete with the Purchaser for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer; and (ii) for a further period of […] thereafter, not to solicit from the Purchaser the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

25. For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred contracts or renewal rights where there is an existing co-brokering arrangement in place, to the extent that Aon does not increase its revenue proportion of the co-brokering arrangement to the detriment of the Purchaser for a period of […] from Closing.

26. The Parties undertake to inform the relevant customers of the CR LMC Territorial Divestment Business of their obligations under this paragraph as soon as reasonably practicable after Closing.

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13 A non-compete commitment means the commitment by the Parties not to approach, contract with or accept any mandates from the customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

14 A non-solicit commitment means the commitment by the Parties not to approach customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

d. The following main intangible assets:

27. The CR LMC Territorial Divestment Business will include all intangible assets that are needed to maintain the viability and competitiveness of the CR LMC Territorial Divestment Business in the hands of the Purchaser. In particular:

- **Know-how.** The primary know-how relevant to the CR LMC Territorial Divestment Business sits with the Key Personnel, who will transfer to the Purchaser. Aon will also transfer to the Purchaser specific know-how and any other IP that are exclusively or primarily related to the CR LMC Territorial Divestment Business. Any other proprietary WTW know-how or IP not exclusively or primarily related to the CR LMC Territorial Divestment Business, but used in the CR LMC Territorial Divestment Business and needed for its viability will be licensed to the Purchaser on a transitional basis. Such know-how to be transferred shall only include know-how that is proprietary to WTW today and not owned by third parties. In addition, the following know-how necessary to the operation of the CR LMC Territorial Divestment Business will be made available to the Purchaser:

    - Copies of any relevant training presentations, user manuals, data sheets, protocol specifications, manuals (or the relevant portions thereof); and

    - Databases containing customer data on policy, claims handling, claims history, transaction (including premium/claims) and ledger balances to the extent they can be transferred using Aon's' reasonable best efforts, […] to the extent they contain data that is related to the CR LMC Territorial Divestment Business. Copies of certain documents will need to be retained to comply with local legal requirements. Should any database contain data on any other WTW business, the CR LMC Territorial Divestment Business data will: (i) either be extracted for the Purchaser, or, in the event an extraction is not possible; (ii) the Purchaser will receive a copy of the database with the data not related to the CR Cyber Specialty Divestment Business expunged, with the original database remaining in Aon's ownership and expunging the data related to the CR LMC Territorial Divestment Business, to the extent reasonable possible and without prejudice to the legal and contractual obligations regarding document preservation.

- **Brands and Trademarks**. The CR LMC Territorial Divestment Business will include all brands and trademarks rights exclusively or primarily related to the CR LMC Territorial Divestment Business, and in particular:

    - […]

    - […].

The Parties note that they may agree with the Purchaser to use […] brand with respect to the retained Affinity and only for a limited period of time under a temporary transition services agreement.

- **Proprietary software / databases.** The following proprietary software / databases used exclusively by the CR LMC Territorial Divestment Business will be made available to the Purchaser in the manner described below. These will be included in the CR LMC Territorial Divestment Business, and the CR LMC Territorial Divestment Business will include Personnel who have the necessary know-how to maintain them going forward or to the extent necessary, transition support:
    - […]
    - […].
- **Third-party software / databases.** The CR LMC Territorial Divestment Business also uses the following software / databases that are licensed from third parties and are used in day-to-day support activities for *inter alia* policy administration, billing, invoicing, and accounting:
    - […];
    - […]
    - […].

  To the extent required, Aon will assist the Purchaser with these third parties to secure a license to and transfer all relevant data.

28. All intellectual property divestments, transfers of technology, non-exclusive licenses, or transition service agreements (***TSA***) will be executed subject to any relevant third parties' rights (where necessary, Aon will undertake its reasonable best efforts to obtain the relevant authorisations).

29. **Other Assets**. Any other assets identified by the Purchaser and the Parties as being necessary for the effective operation of the CR LMC Territorial Divestment Business, and as agreed with the Commission.

e. The following main licenses, permits, and authorisations

30. The CR LMC Territorial Divestment Business requires regulatory registrations and licenses to provide commercial risk brokerage services in certain jurisdictions. **CR LMC Annex 9** lists the Legal Entities included in the CR LMC Territorial Divestment Business that hold licenses that allow it to provide commercial risk services in the EEA, including the type of license and the granting authority. Although the Parties endeavor to be able to quickly and easily transfer these registrations and licenses to the Purchaser together with the Legal Entities, the Parties will need to comply with the regulatory approval and notification processes in the following jurisdictions:

31. **France.** As the divestiture will be structured as a share sale of the Legal Entities, the change of shareholder would not require any pre- or post-completion financial service regulatory notifications and thus have no impact on the continuance of their registration.

32. **The Netherlands.** The relevant license will automatically transfer to the Purchaser together with the relevant legal entity following the regulatory approval and notification processes. Under the regulatory processes, provided they had not previously been screened, the executive director(s) of the Purchaser would need to be screened and pre-approved by the Netherlands Authority for the Financial Markets (***AFM***) on trustworthiness. If previously screened, a pre-notification to the AFM would be sufficient for the licence to automatically transfer.

33. **Spain.** Prior to Closing, a non-objection from Spain's General Directorate of Insurance and Pension Funds (***DGSFP***) is required with respect to the transfer of […]. After Closing, a written letter should be submitted to DGSFP with respect to […] confirming completion of the transaction.

f. the following customer, credit and other records:

34. Copies of customer records that relate to the CR LMC Territorial Divestment Business, in particular: available copies of certificates of project completion, reference documents, customer recommendation letters, pre-tendering and tendering documentation, claims, and records of customer order intake, and historical records for a period of time as agreed with the Purchaser and the Monitoring Trustee.

35. To the extent that customer records relate to any of the retained businesses, they will be appropriately redacted.

g. The following main tangible assets:

36. At the option of the Purchaser, the CR LMC Territorial Divestment Business will include all tangible assets that the Purchaser requires to maintain the viability and competitiveness of the CR LMC Territorial Divestment Business. This will include the following tangible assets:

    - All office inventory and office equipment used exclusively or primarily by the Key Personnel and the Personnel of the CR LMC Territorial Divestment Business at the time of the Closing (for the avoidance of doubt, this does not include office inventory and office equipment used exclusively or predominately by other business lines).
    - Existing sales and promotional material to the extent designed for and used in the CR LMC Territorial Divestment Business;
    - Copies of all physical and electronic records and information to the extent related to current, past and prospective customers of the CR LMC Territorial Divestment Business, including but not limited to customer lists and files, logs of customer support issues and written correspondence with customers, subject to local regulatory requirements;
    - Copies of all physical and electronic contracts, records and information to the extent related to the CR LMC Territorial Divestment Business concerning insurance companies, subject to local regulatory requirements;
    - All business plans and forecasts to the extent related to the CR LMC Territorial Divestment Business; and

- Copies of credit and other business records currently to the extent held for the CR LMC Territorial Divestment Business.

- Copies of all research material, data, models, information, analyses and market studies to the extent related to the CR LMC Territorial Divestment Business.

37. Hence, the Purchaser will receive a copy of all the necessary information and data required to service the customers whose contracts will be transferred as part of the CR LMC Territorial Divestment Business.

h. the arrangements for the supply with the following services by Aon or Affiliated Undertakings for a transitional period of up to […] after Closing:

38. To the extent required by the Purchaser, Aon will provide, through a TSA, centralised functional support with human resources, accounting, tax, compliance and other administrative functions such as technology, sales and client management, client insight and analysis, risk and analytics, operations, and claims.

39. Aon estimates that transitional services may be required for up to […] after the closing of the CR LMC Territorial Remedy, but Aon (and the Purchaser) will have every incentive to complete the transition of the CR LMC Territorial Business and discontinue transitional services as soon as reasonably practicable after closing.

40. It cannot be entirely ruled out at this time that there may be limited areas where the applicable transition services may be required for longer than […]. However, even in those cases, Aon would work with the Purchaser to complete any required transitional services as soon as reasonably practicable after closing. For this reason, Aon offers a TSA period of up to […], which can be extended, with respect to any transitional services for which transition is not complete, at the reasonable request by the Purchaser with the approval of the Monitoring Trustee.

41. Further, for a period of between […] to […] post-Closing, unless another period of time is agreed with the Purchaser, the Parties will grant a right to the Purchaser to use brand names which are exclusively or primarily related to the CR LMC Territorial Divestment Business in relation to WTW's position as the previous owner of the CR LMC Territorial Divestment Business, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the CR LMC Territorial Divestment Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.

C. Excluded elements from the CR LMC Territorial Divestment Business

42. The CR LMC Divestment Business shall not include the following items:

- WTW’s Affinity businesses in France, Germany, the Netherlands and Spain.

- Any WTW H&B business performed by the CR LMC Territorial Divestment Business, apart from WTW's France, Spain and Germany H&B businesses which will be also transferred to the Purchaser, in addition to the CR LMC Territorial Divestment Business.

- Employees (other than the Personnel) responsible for centralised back office functions not embedded in the CR LMC Divestment Business, such as purchasing, contract and human resources, finance, compliance, IT and other administrative functions. A suitable Purchaser will already have these services embedded within its own organization, and will cooperate with the Purchaser to provide necessary support services through the transition services agreement (***TSA***) over a limited transitional period while the Purchaser incorporates the CR LMC and CR Cyber Divestment Business into its own operations.

- Any personnel other than the Key Personnel and the Personnel.

- Any customer contracts or portions thereof, tangible and intangible assets, know-how, accounts, books domain names, products or services, or other trademarks, as well as any other asset which are not exclusively or primarily related to the current operation of the CR LMC Territorial Divestment Business.[15]

- Any domain names, product or services, or other trademarks, other than those expressly included in the CR LMC Territorial Divestment Business.

- WTW's company name, general brand name, mark, or logo in any form or deviations thereof.

- Books and records that are not expressly included in the CR LMC Territorial Divestment Business, provided that copies of such documents (or portions thereof) necessary for the CR LMC Territorial Divestment Business shall be provided to the Purchaser, upon request.

- Third-party, commercially available software; the CR LMC Territorial Divestment Business does not own proprietary software / IT tools[16] other that the software owned by WTW's French and German CRB Businesses (please refer to para. 21 above) but uses third party software / IT tools which can easily be licensed from third parties: […]. These software / IT tools are designed to cover the requirements of all CR lines of business and are not targeted at any one particular line of business. A suitable Purchaser for the CR LMC Territorial Divestment Business likely will already have any necessary systems in its own operations. As such, Aon will not provide third party arrangements for such third-party software / IT tools, but will instead use its reasonable best efforts to coordinate with the Purchaser in procuring such services, to the extent these are needed. If so, Aon will assist the

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15 WTW would assist the Purchaser in obtaining a license for suitable, commercially available alternatives and transferring all necessary data to the systems of the Purchaser's choice.

16 The CRB businesses in Germany, Spain and the Netherlands use […].

Purchaser in obtaining a license for or purchasing a suitable, commercially available alternative and transferring all necessary data to the systems of the Purchaser's choice.

- General books of account and books of original entry that comprise WTW's accounting or tax records, unless specific to the CR LMC Territorial Divestment Business; provided that copies of such documents (or portions thereof) necessary for the ongoing CR LMC Territorial Divestment Business shall be provided to the Purchaser, upon request.

43. If there is any asset or Personnel which is not covered by Section B of this Schedule but which is used by the CR LMC Territorial Divestment Business and necessary for the continued viability and competitiveness of that business in the hands of the Purchaser, then Aon will have the option to offer the Purchaser one of that asset or an adequate substitute of that asset and the Purchaser will have the option to choose between (i) that asset or, an adequate substitute of that asset, as offered by Aon; or (ii) provision of that asset pursuant to a transitional service agreement.

44. In the event any assets predominately used for and transferred to the Purchaser as part of the CR LMC Territorial Divestment Business are also required by Aon to operate its retained assets and businesses, then the Purchaser will provide a reverse transition services pursuant to which it will supply the asset/service to Aon for use in its retained businesses. The Parties as of yet have not identified any areas where a reverse TSA will be required.

45. If there is any asset or Personnel which is covered by the CR LMC Territorial Divestment Business, but which the Purchaser would prefer not to acquire, for example because it already has the relevant asset or function within its owned operations, the Purchaser may elect to exclude this asset or employee from the CR LMC Territorial Divestment Business subject to verification from the Monitoring Trustee, under the supervision of the Commission that the Purchaser's existing assets or operations are sufficient such that exclusion will not affect the continued viability and competitiveness of the CR LMC Territorial Divestment Business.

SCHEDULE 3: The CR Cyber Specialty Remedy

A. Description of the CR Cyber Specialty Remedy

1. The **CR Cyber Specialty Remedy** consists of, as further specified in this Schedule, the transfer of:

   - a team of […] employees from WTW's Cyber Specialty business, across different levels of seniority ranging from executive leaders to client management and placement teams as well as ancillary support staff, who are capable of managing all activities relating to, and who are exclusively or primarily dedicated to WTW's commercial risk brokerage business for cyber in the UK, including personnel with all sales and marketing, broking, client relationship management, and technical expertise ***(Personnel)***;

   - the right to invite WTW's cyber risk customers to renew their respective insurance products that cover the risks associated with loss from business disruption arising from cyber threats on the basis that their existing team is now located within the divestment purchaser's operations and they possess all the relevant know-how and records in relation to the previous contract of insurance with respect to cyber risks (***Renewal Rights of Cyber Specialty Customer Contracts***); and

   - all relevant tangible and intangible assets as well as know-how used exclusively or primarily in WTW's commercial risk brokerage business for cyber risk in the UK, including all relevant documentation and copies of customer records (all three components together referred to as the ***CR Cyber Specialty Divestment Business***).

2. Aon commits for the same purchaser of the CR Cyber Speciality Divestment Business (the ***Purchaser***) to acquire the Cyber Specialty Divestment Business, the CR LMC Territorial Divestment Business, which includes additional WTW cyber broking operations in France, Germany, Spain, and the Netherlands (see Schedule 2) and the CR AMS Divestment Business (see Schedule 1).

B. Elements of the CR Cyber Specialty Divestment Business

3. The CR Cyber Specialty Divestment Business shall include the following elements.

a. the following Personnel (including Key Personnel):

4. The CR Cyber Specialty Divestment Business will include the Personnel necessary to operate and maintain the viability and competitiveness of the business. The CR Cyber Specialty Divestment Business includes […] Personnel located in the UK, as set out in further detail in **CR LMC Annex 8.** The Personnel would provide the Purchaser with all necessary know-how and functional expertise in commercial risk brokerage for cyber risks, including 2 cyber risk consultants that provide cyber risk management advice to WTW's clients and prospects, to allow the Purchaser to continue as a viable standalone competitor for cyber risk broking in the UK and (together with the CR LMC Territorial Divestment Business) throughout the EU.

5. The Personnel that comprises the CR Cyber Specialty Divestment Business works in office facilities in the UK that are shared with other retained businesses. As such, these Personnel will be relocated to the Purchaser's premises or a new commercial office location designated by the Purchaser.

6. To preserve the viability and competitiveness of the CR Cyber Specialty Divestment Business, Aon will undertake not to solicit, hire, employ or engage and procure that its affiliated undertakings[1] do not solicit, hire, employ or engage from the Purchaser, the Key Personnel transferred with the CR Cyber Specialty Business for a period of […] from Closing of the CR Cyber Specialty Remedy transaction. Aon will also undertake not to solicit, and procure that its affiliated undertakings do not solicit all other Personnel transferred with the CR Cyber Specialty Business for a period of […] from Closing of the CR Cyber Specialty Remedy transaction.

7. To preserve the viability of the CR Cyber Specialty Business, Aon commits to put in place appropriate incentive packages for selected Key Personnel that will transfer to the Purchaser as part of the CR Cyber Specialty Divestment Remedy to incentivise their transfer to and retention by the Purchaser.

b. the Renewal Rights of Cyber Specialty Customer Contracts:

8. The CR Cyber Specialty Divestment Business includes the Renewal Rights of Cyber Specialty Customer Contracts, as well as all other available client specific information, including but not limited to copies of, customer records, pre-tendering and tendering documents, customer reports, claims, transactional data, clients insurance policies and historical records for a period of time as agreed with the Purchaser and the Monitoring Trustee, subject to local regulatory requirements and industry practice. The list of the CR Cyber Specialty Divestment Business' customers is set out in **CR LMC Annex 2**.

9. The transfer of Renewal Rights of Cyber Specialty Customer Contracts does not require customer consent, so significantly facilitates the transfer of the broker relationship to the Purchaser.

10. To the extent any customer contracts include activities that are retained, Aon will use its best reasonable efforts to transfer the part of the contract that relates exclusively to the CR Cyber Specialty Divestment Business to the Purchaser. Where this is not possible, subject to applicable laws and consents, Aon will retain the contract and use its best reasonable efforts to sub-contract the portion related to the CR Cyber Specialty Divestment Business to the Purchaser or agree to other contractual arrangements with the Purchaser so as to pass the applicable financial benefits and burdens to the Purchaser and act at the Purchaser's direction with respect to the portion of the contract that relates exclusively to the CR Cyber Specialty Divestment Business.

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[1] Undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

11. In order to maintain the structural effect of the CR Cyber Specialty Divestment Business transaction and in accordance with customary commitments terms, Aon will commit and will procure that its affiliated undertakings commit for the CR Cyber Specialty Divestment Business (i) for a period of […] from Closing or the next renewal date (inclusive of such renewal) not to compete[2] with the Purchaser for the scope of the work covered by the customer contracts the renewal rights of which will be divested for the relevant customers; and (ii) for a further period of […] thereafter, not to solicit[3] from the Purchaser the scope of the work covered by the customer contracts the renewal rights of which will be divested for each relevant customer.

12. For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the renewal rights where there is an existing co-brokering arrangement in place, to the extent that Aon does not increase its revenue proportion of the co-brokering arrangement to the detriment of the Purchaser for a period of […] from Closing.

13. The Parties undertake to inform the relevant customers of the CR Cyber Specialty Divestment Business of their obligations under this paragraph as soon as reasonably practicable after Closing.

c. The following main intangible assets:

14. The CR Cyber Specialty Divestment Business will include all intangible assets that are needed to maintain the viability and competitiveness of the CR Cyber Specialty Divestment Business in the hands of the Purchaser. In particular:

- **Know-how.** Aon will transfer specific know-how and any other IPs that are exclusively or primarily related to the CR Cyber Divestment Business. Such know-how which will be transferred shall only include know-how that is proprietary to WTW today and not owned by third parties. Any other proprietary WTW know-how or IP not exclusively or primarily related to the CR Cyber Divestment Business, but used in the CR Cyber Divestment Business and needed for its viability will be licensed to the Purchaser on a transition basis. The primary know-how relevant to the CR Cyber Specialty Divestment Business sits with the Key Personnel, who will transfer to the Purchaser. In addition, the following know-how necessary to the operation of the CR Cyber Specialty Divestment Business will be made available to the Purchaser:

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2 A non-compete commitment means the commitment by the Parties not to approach, contract with or accept any mandates from the customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

3 A non-solicit commitment means the commitment by the Parties not to approach customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer.

- Copies of any relevant training presentations, user manuals, data sheets, protocol specifications, manuals (or the relevant portions thereof); and

- Databases containing customer data on policy, claims handling, claims history, transaction (including premium/claims), and ledger balances to the extent they can be transferred using Aon's reasonable best efforts, […] to the extent they contain data that is related to the CR Cyber Specialty Divestment Business. Copies of certain documents will need to be retained to comply with local legal requirements. Should any database contain data on other risk lines, the CR Cyber Specialty Divestment Business data will: (i) either be extracted for the Purchaser, or, in the event an extraction is not possible; (ii) the Purchaser will receive a copy of the database with the data not related to the CR Cyber Specialty Divestment Business expunged, with the original database remaining in Aon's ownership and expunging the data related to the CR Cyber Specialty Divestment Business, to the extent reasonable possible and without prejudice to the legal and contractual obligations regarding document preservation.

- **Brands and trademarks.** The CR Cyber Specialty Divestment Business will include all brands and trademarks rights owned by WTW with regards to […], and other such rights exclusively or primarily related to the CR Cyber Specialty Divestment Business;

- **Proprietary software / databases.** The following proprietary software / databases used exclusively by the CR Cyber Specialty Divestment Business will be made available to the Purchaser. These will be included in the CR Cyber Specialty Divestment Business and the CR Cyber Specialty Divestment Business will include Personnel who have the necessary know-how to maintain them going forward or to the extent necessary, transition support:

  - […]; and

  - […].

- **Third-party software / databases.** The CR Cyber Specialty Divestment Business also uses the following software / database that is licensed from third parties.

  - […].

  To the extent required, Aon will assist the Purchaser with these third parties to secure a license to and transfer all relevant data.

15. All intellectual property divestments, transfers of technology, non-exclusive licenses, or TSAs will be executed subject to any relevant third parties' rights (where necessary, Aon will undertake reasonable best efforts to obtain the relevant authorisations).

16. **Other Assets**. Any other assets identified by the Purchaser and Aon as being necessary for the effective operation of the CR Cyber Specialty Divestment Business, and as agreed with the Commission.

d. The following main licenses, permits, and authorisations

17. The CR Cyber Specialty Divestment Business is required to hold (and does hold) a brokerage licence from the UK's Financial Conduct Authority (FCA) since it is engaged in insurance distribution activities in the UK.

18. The CR Cyber Specialty Remedy is structured as an asset sale. Therefore, the current brokerage licenses and registrations would not transfer to the Purchaser. However, as the CR Cyber Specialty Divestment Business will be sold to a Purchaser already active in commercial risk broking globally, a suitable Purchaser will already have the necessary licenses and if it does not, it could obtain these easily and at limited cost. Aon will assist the Purchaser in procuring the necessary licenses or registrations to the extent required.

19. Aon commits that the CR Cyber Specialty Divestment Business will be sold to a purchaser that already has commercial risk broking operations in the UK (where it is included as a purchaser criterion in the Commitments that a suitable Purchaser must already have a "credible presence" at least in relation to Property & Casualty and FinPro businesses). As such, the Purchaser should already hold a brokerage license from the FCA, in which case no new application for a new brokerage licence would be needed. However, if the Purchaser assigns some of the transferred employees to senior management roles (i.e. roles with ultimate decision-making responsibility in their respective departments/areas), then those employees would need to be re-approved by the FCA to carry out their roles. In practice, though, the Purchaser would be able to submit a simplified version of the approval forms on the basis that the persons either have or have had such approval within the previous six months. The use of simplified approval forms would mean that the FCA would not need to carry out any new fitness and propriety checks on the candidate for approval and, therefore, the approval process would be streamlined.

e. the following customer, credit and other records:

20. Copies of customer records that relate to the CR Cyber Specialty Divestment Business, in particular: available copies of certificates of project completion, reference documents, customer recommendation letters, pre-tendering and tendering documentation, claims and records of customer order intake, and historical records for a period of time as agreed with the Purchaser and the Monitoring Trustee.

21. To the extent that customer records relate to any of the retained businesses, they will be appropriately redacted.

f. The following main tangible assets:

22. At the option of the Purchaser, the CR Cyber Specialty Divestment Business will include all tangible assets that the Purchaser requires to maintain the viability and competitiveness of the CR Cyber Specialty Divestment Business. This will include the following tangible assets:

- All office inventory and office equipment used exclusively or primarily by the Key Personnel and Personnel at the time of the Closing (for the avoidance of doubt, this does not include office inventory and office equipment predominately used by other business lines).
- Existing sales and promotional material to the extent that it is designed for or used in connection with the CR Cyber Specialty Divestment Business.
- Copies of all physical and electronic records and information to the extent that they relate to current, past and prospective clients of the CR Cyber Specialty Divestment Business, including but not limited to customer lists and files, logs of client support issues and written correspondence with clients, subject to local regulatory requirements.[4]
- Copies of all physical and electronic contracts, records and information to the extent that they relate to the CR Cyber Specialty Divestment Business concerning insurance companies, subject to local regulatory requirements.
- All business plans and forecasts to the extent that they relate to the CR Cyber Specialty Divestment Business.
- Copies of credit and other business records to the extent that they are relate currently held by the CR Cyber Specialty Divestment Business.

23. Hence, the Purchaser will receive a copy of all the necessary information and data required to service the customers whose contracts will be transferred as part of the CR Cyber Specialty Divestment Business.

g. the arrangements for the supply with the following services by Aon or Affiliated Undertakings for a transitional period of up to […] **after Closing:**

24. To the extent required by the Purchaser, Aon will provide, through a TSA, centralised functional support with human resources, accounting, tax, compliance and other administrative functions such as technology, sales and client management, client insight and analysis, risk and analytics, operations, and claims.

25. Aon estimates that the transitional services may be required for up to […] after the Closing of the CR Cyber Specialty Remedy, but Aon (and the Purchaser) will have every incentive to complete the transition of the CR Cyber Specialty Divestment

[4] To the extent historic run-off activity (e.g. claims) dates back further than two years, such information will be included.

Business and discontinue transitional services as soon as reasonably practicable after closing.

26. It cannot be entirely ruled out at this time that there may be limited areas where the applicable transition services may be required for longer than […]. However, even in those cases, Aon would work with the Purchaser to complete any required transitional services as soon as reasonably practicable after closing. For this reason, Aon offers a TSA period of up to […], which can be extended, with respect to any transitional services for which transition is not complete, at the reasonable request of the Purchaser with the approval of the Monitoring Trustee.

27. Further, for a period of between […] to […] post-Closing, unless another period of time is agreed with the Purchaser, the Parties will grant a right to the Purchaser to use brand names which are exclusively or primarily related to the CR Cyber Speciality Divestment Business in relation to WTW's position as the previous owner of the CR Cyber Speciality Divestment Business, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the CR Cyber Speciality Divestment Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.

C. Excluded elements from the CR Cyber Specialty Divestment Business

28. The CR Cyber Specialty Divestment Business shall not include the following items:

- Employees (other than the Personnel) responsible for centralised back office functions not embedded in the CR Cyber Divestment Business, such as purchasing, contract and human resources, finance, compliance, IT and other administrative functions. A suitable Purchaser will already have these services embedded within its own organization, and will cooperate with the Purchaser to provide necessary support services through the transition services agreement (***TSA***) over a limited transitional period while the Purchaser incorporates the CR LMC and CR Cyber Divestment Business into its own operations.
- Any personnel other than the Key Personnel and the Personnel.
- Any customer contracts or portions thereof, tangible and intangible assets, know-how, accounts, books domain names, products or services, or other trademarks, as well as any other asset which are not related to the current operation of the CR Cyber Specialty Divestment Business[5]. A suitable Purchaser for the CR Cyber Specialty Divestment Business likely will already have any necessary systems in its own operations, but to the extent that any gaps exist Aon will assist the Purchaser in obtaining a license for or

[5] Aon would assist the Purchaser in obtaining a license for suitable, commercially available alternatives and transferring all necessary data to the systems of the Purchaser's choice.

purchasing a suitable, commercially available alternative and transferring all necessary data to the systems of the Purchaser's choice.

- Any domain names, product or services, or other trademarks, other than those expressly included in the CR Cyber Specialty Divestment Business.
- WTW's company name, general brand name, mark, or logo in any form or deviations thereof.
- Books and records that are not expressly included in the CR Cyber Specialty Divestment Business, provided that copies of such documents (or portions thereof) necessary for the CR Cyber Specialty Divestment Business shall be provided to the Purchaser, upon request.
- Licenses, permits and authorizations issued by government regulators pertaining to the CR Cyber Specialty Divestment Business, given that such transfer is not permissible by law.
- Third-party, commercially available software;
- General books of account and books of original entry that comprise WTW's accounting or tax records, unless specific to the CR Cyber Specialty Divestment Business; provided that copies of such documents (or portions thereof) necessary for the ongoing CR Cyber Specialty Divestment Business shall be provided to the Purchaser, upon request.

29. If there is any asset or Personnel which is not covered by Section B of this Schedule but which is used by the CR Cyber Specialty Divestment Business and necessary for the continued viability and competitiveness of that business in the hands of the Purchaser, then Aon will have the option to offer the Purchaser one of that asset or an adequate substitute of that asset and the Purchaser will have the option to choose between (i) that asset or an adequate substitute of that asset, as offered by Aon; or (ii) provision of that asset pursuant to a transitional service agreement.

30. In the event any assets predominately used for and transferred to the Purchaser as part of the CR Cyber Specialty Divestment Business are also required by Aon to operate its retained assets and businesses, then Purchaser will provide a reverse transition services pursuant to which it will supply the asset/service to Aon for use in its retained businesses. The Parties as of yet have not identified any areas where a reverse TSA will be required.

31. If there is any asset or Personnel which is covered by the CR Cyber Specialty Divestment Business, but which the Purchaser would prefer not to acquire, for example because it already has the relevant asset or function within its owned operations, the Purchaser may elect to exclude this asset or employee from the CR Cyber Specialty Divestment Business subject to verification from the Monitoring Trustee, under the supervision of the Commission that the Purchaser's existing assets or operations are sufficient such that exclusion will not affect the continued viability and competitiveness of the CR Cyber Specialty Divestment Business.

Annex 1 – Aon/WTW -CR LMC – CRB client lists

[…]

Annex 2 – Aon/WTW – CR LMC – UK Cyber client lists 2019 and 2020

[…]

Annex 3 – Aon/WTW – CR LMC – CRB France Personnel List

[…]

Annex 4 – Aon/WTW – CR LMC – CRB Germany Personnel List

[…]

Annex 5 – Aon/WTW – CR LMC – CRB Netherlands Personnel List

[…]

Annex 6 – Aon/WTW – CR LMC – CRB Spain Personnel List

[…]

Annex 7 – Aon/WTW – CR LMC – Personnel associated with CRB Finpro and P&C LMCs remedy supplement

[…]

Annex 8 – Aon/WTW – CR LMC – Cyber UK Personnel List

[…]

Annex 9 – Aon/WTW – CR LMC – CRB Licenses

[…]

Annex 10.1 – Aon/WTW – CR LMC – Services Agreement

[…]

Annex 10.2 – Aon/WTW – CR LMC – Addendum to Services Agreement dated 24 February 2012

[…]

Annex 10.3 – Aon/WTW – CR LMC – Addendum to Services Agreement dated 24 February 2012

[…]

Annex 11.1 – Aon/WTW – CR LMC – Novation and Amendment Agreement

[…]

Annex 11.2 – Aon/WTW – CR LMC – Variation Agreement

[…]

Annex 11.3 – Aon/WTW – CR LMC – Variation Agreement

[…]

Annex 11.4 – Aon/WTW – CR LMC – Variation Agreement

[…]

Annex 11.5 – Aon/WTW – CR LMC – Variation Agreement

[…]

Annex 12.1 – Aon/WTW – CR LMC – Professional Services Agreement

[…]

Annex 12.2 – Aon/WTW – CR LMC – Variation Agreement

[…]

Annex 12.3 – Aon/WTW – CR LMC – Order Form

[…]

Annex 13.1 – Aon/WTW – CR LMC – Willis Limited General Terms of Business Agreement

[…]

Annex 13.2 – Aon/WTW – CR LMC – Willis Limited Standard Broker Services Fee Agreement

[…]

Annex C – Aon/WTW – CR LMC – Memorandum on concerns raised in market testing and revised CR remedy package

[…]

SCHEDULE 4: The German RBC and PA Remedy

A. Description of the German RBC and PA Remedy

1. The **German RBC and PA Remedy** consists of the personnel, contracts, and tangible and intangible assets that comprise Aon's retirement benefits consulting (***RBC***), pension administration (***PA***) and entire investment (***Investment***) business lines in Germany, that would be divested to a suitable Purchaser as further specified in this Schedule (***German RBC and PA Business***).

2. The German RBC and PA Business currently operates largely separately from the broader Aon business. The assets and employees that comprise the German RBC and PA Business sit within the following two German legal entities:

   - […].
   - […].[1]

3. […] also includes a rewards business, […] employees working in its M&A consulting team and […] with responsibilities relating to the Aon Connect system in Germany (which is used by multiple Aon business lines), which are separate from the RBC, PA and Investment businesses and unrelated to the Commission's concerns expressed during the State of Play meeting of 5 March 2021. As such, these employees will not be divested to the Purchaser.

4. The divestment of the German RBC and PA Business will be structured as a share transfer of the relevant legal entities that comprise its RBC, PA and Investment businesses in Germany ([…]). This transaction structure will involve the prior retention of the rewards business and the […] employees described in the paragraph above, who are not part of Aon's RBC, PA and Investment businesses but currently sit within […]. Aon undertakes to work with the Purchaser and the Monitoring Trustee to determine the easiest and most efficient structure that would most easily and efficiently effect the transaction, subject to the approval of the Commission.

5. The terms of the customer contracts typically do not require consent of the customer in the event of a change of control; however, there are a limited number of customer contracts (Aon estimates [a small percentage] of the contracts to be divested) that require consent in order to assign its contract to a third party if the Purchaser and Aon determine to effectuate the disposition in the form of an asset sale. In any event, Aon will use best reasonable efforts to obtain consents required by the applicable contracts or law and to secure the transfer to the Purchasers of all such customer contracts.

6. The Combined Entity will retain a limited number of […] customer contracts that relate to customers for whom the primary relationship for the relevant business line sits outside of Germany, under which a limited amount of work is performed in Germany, typically for […]. The retained revenues relate only to […], which is

1 For completeness, please note that […] and […] together include the entirety of Aon's investment business in Germany.

recorded under separate contracts to any other RBC, PA and Investment activities that Aon provides to these customers in Germany (which will not be retained by Aon). The German […] work performed for these customers is a small portion of the total […] business generated by those customers (see **Table 47** below) and, in respect of the relevant business line, these customers should be considered customers of Aon's RBC or PA business in the jurisdiction where the relationship sits. They are not, therefore, part of the German RBC and PA business, and will not be conveyed to the Purchaser on grounds of proportionality. The RBC revenue generated from these contracts in Germany was approximately EUR […] in 2020 and accounted for approximately [a very small percentage] of the total RBC revenue of the German RBC and PA business in 2020. Applying the same proportions to Aon's estimated [a small percentage] RBC market share in Germany for 2019, Aon estimates that the retained RBC activities amounts to a market share of only [a very small percentage] in Germany. The list of those RBC customers for which certain contracts will be retained is provided in Section 5.1 of the Form RM.

7. Limited assets and personnel sit outside of Germany in a separate legal entity, in particular approximately […] FTEs located in Aon's office in […]. Aon has identified these resources and undertakes that the relevant employees and/or assets in […] will be carved out and transferred to the Purchaser as part of the German RBC and PA Business. For completeness, approximately […] FTEs based in […] who support Aon's retirement activities other than the German RBC and PA Business will be excluded from the German RBC and PA Business and retained by Aon since these are unrelated to the concerns set out in the Article 6(1)(c) Decision.

8. If there is any asset or personnel which is not covered by Sections A or B or expressly excluded in Section C of the Schedule, but which is both used in any of the German RBC and PA Business and necessary for the continued viability and competitiveness of that business in the hands of the Purchaser, then Aon will have the option to offer to the Purchaser one of that asset or an adequate substitute of that asset and the Purchaser will have the option to choose between (i) that asset or, an adequate substitute of that asset, as offered by Aon; or (ii) transition services.Where the asset relates to platforms that are required to operate a business line retained by Aon, it will be offered pursuant to a transition services agreement (***TSA***).

B. Elements of the German RBC and PA Business

9. The German RBC and PA Business shall include the following elements.

a. the following Personnel (including Key Personnel):

10. The German RBC and PA Business will include all personnel required to operate and maintain the viability and competitiveness of the business (***Personnel***), including those indispensable for the operation of the business (***Key Personnel***). The German RBC and PA Business includes approximately […] personnel located across […] offices in Germany ([…]) and […]. The Personnel would provide the functional expertise across RBC (including brokerage), PA and Investment to maintain the viability and competitiveness of the business on a standalone basis. In addition, if the Purchaser requires operational support (e.g., personnel who are dedicated to support the IT assets transferring to the Purchaser), then Aon commits to consider either transferring such personnel or providing operational support via a TSA, as the Purchaser requires.

11. The Personnel work in office facilities that are shared with other retained Aon businesses. The Personnel sit in areas of Aon's offices that are separate from Aon employees that will be retained by Aon. A breakdown for each relevant office of the personnel that will be transferred and retained is set out in Table 2 of the Form RM.

12. Aon will offer the option of transferring its lease in full to the Purchaser only for its […] office, where no employees will be retained.[2] For all other locations, it is highly unlikely that the Purchaser would be interested in acquiring the entire relevant lease, as the property size would far exceed the requirements of the German RBC and PA Business.

13. In respect of the […] offices, Aon undertakes to explore with the Purchaser and the relevant commercial landlords the possibility of Aon sub-letting or surrendering (with the Purchaser acquiring a new lease with the relevant landlord) a portion of the lease that relates to areas occupied by the German RBC and PA Business, for a transitionary period of up to […]. In the event that the Purchaser acquires part of the lease in respect of the offices in which the German RBC and PA Business is currently located, appropriate ring-fencing safeguards will be put in place and either Aon or the Purchaser will surrender their respective lease or sub-lease and move to new office space within […] from closing of the remedy transaction.

14. The German RBC and PA Business does not require any specialised facilities and can be operated from general commercial office space. To the extent that the Purchaser requires new office space for the German RBC and PA Business, suitable alternatives are widely available in the areas in which Aon's offices are located.

15. To preserve the viability and competitiveness of the German RBC and PA Business, Aon undertakes not to solicit, hire, employ or engage and procure that its affiliated undertakings do not solicit, hire, employ or engage from the Purchaser, the Key Personnel transferred with the German RBC and PA Business for a period of […] from closing of the remedy transaction. Aon also undertakes not to solicit, and procure that its affiliated undertakings do not solicit, all other Personnel transferred with the German RBC and PA Business for a period of […] from closing of the remedy transaction.

16. To preserve the viability of the German RBC and PA Business, Aon commits to put in place an incentive package for the selected Key Personnel to incentivise their transfer to and retention by the Purchaser.

17. In particular, the German RBC and PA Business will include the following Personnel,[3] subject to applicable labour laws and consents, as well as consultation with the relevant works council in Germany:

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[2] Note that Aon's investment business will be included in the German RBC and PA Business, therefore no employees currently based in […] will be retained.

[3] The list of Personnel reflects the employees of the German RBC and PA Business as of 1 April 2021. Where total employee numbers for a given office have fluctuated since Aon last centrally recorded the distribution of employees between roles, Aon has provided an estimate of the distribution of employees.

Table 44: […].

[…]	**[…]**	**[…]**	**[…]**
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[…]	**[…]**	**[…]**	**[…]**
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		[…]	[…]
[…]			
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]

18. The table below shows the name and current role of the Key Personnel.

Table 45: […].

[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
[…]	[…]
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[…]	[…]
[…]	[…]

b. the following main contracts, agreements, leases, commitments and understandings:

19. Subject to applicable consents and mandatory provisions of law, Aon commits to use best reasonable endeavours to transfer the customer contracts associated with the clients that are set out in **Annex 1**. The German RBC and PA Business has a diversified customer base, which consists of over […] customers, with the top […] customers representing approximately [a high percentage] of total revenue in 2019. Additionally, no single customer makes up more than [a very small percentage] of the total revenue of the German RBC and PA Business.

20. A list including the top 10 customers of the German PA and RBC Business including the total turnover generated by Aon with each of these customers is provided below.

Table 46: […][4]

[…]	**[…]**	**[…]**
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]
[…]	[…]	[…]

4 For completeness, Aon has lost […] with effect from June 2020. These clients will therefore not be transferred to the Purchaser. Aon has also lost […] to WTW with effect as of December 2021. This move is unrelated to the Proposed Transaction. […].

[…]	**[…]**	**[…]**
[…]	[…]	[…]

21. The terms of the customer contracts typically do not require consent of the customer in the event of a change of control; however, there are a limited number of customer contracts (Aon estimates [a small percentage] of the contracts to be divested) that require consent in order to assign its contract to a third party if the Purchaser and Aon determine to effectuate the disposition in the form of an asset sale. In any event, Aon commits to use best reasonable efforts to obtain consents required by the applicable contracts or law and to secure the transfer to the Purchasers of all such customer contracts.

22. The German RBC and PA Business does not have any contracts in Germany that relate also to retained activities (including health and benefits consulting).

23. In order to maintain the structural effect of the German RBC and PA Remedy, Aon undertakes for a period of […] from closing of the remedy transaction not to compete[5] with the Purchaser for the scope of the work covered by the customer contracts to be divested for each relevant customer, which is associated with the relevant customers' needs in Germany under the relevant contracts. The Parties undertake to inform the relevant customers of the German RBC and PA Business of their obligations under this paragraph as soon as reasonably practicable after the closing of the remedy transaction.

c. The following main intangible assets:

24. The German RBC and PA Business will include all intangible assets that are needed to maintain the viability and competitiveness of the German RBC and PA Business in the hands of the Purchaser. In particular:

- Ownership of all intangible assets that are currently used to operate the German RBC and PA Business, consisting of the following:
    - **Know-how.** The primary know-how relevant to the German RBC and PA Business, which sits with the Key Personnel who will transfer to the Purchaser. In addition, the following know-how necessary to the operation of the German RBC and PA Business will be made available to the Purchaser:
        - Copies of any relevant training presentations, user manuals, data sheets, protocol specifications, manuals; and
        - […] models used by the German RBC and PA Business to facilitate actuarial valuations and other services.

[5] A non-compete commitment means the commitment by the Parties not to approach, contract with or accept any mandates from the customers of the Divestment Businesses for the scope of the work covered by the customer contracts to be divested, as relevant, for each relevant customer.

- **Proprietary software / databases.** The following proprietary software / databases used by the German RBC and PA Business will be made available to the Purchaser:

  - […];[6]
  - […];
  - […];
  - […];
  - […];
  - […]; and
  - […].

  These will be included in the German RBC and PA Business, and the German RBC and PA Business will include personnel who have the necessary know-how to maintain them going forward or to the extent necessary, transition support.

- The German RBC and PA Business also uses proprietary software/databases that are used by Aon globally, including […]. […] will be retained by Aon, but Aon undertakes to assist the Purchaser in transferring all relevant data from Aon's system to the system of the Purchaser's choice. […] will transfer to the Purchaser, and Aon will retain a copy for its own use.

- In addition, the German RBC and PA Business uses the following software/databases that are licensed from third parties:

  - […];
  - […];
  - […]; and
  - […].

  To the extent required, Aon commits to assist the Purchaser with these third parties to secure a license to and transfer all relevant data. Further, as Aon's relevant contracts with […] are entered into by the legal entities that would transfer if the transaction is structured as a share sale, the German RBC and PA Business' licenses for the […] would transfer automatically to the Purchaser.

25. All intellectual property divestments, transfers of technology, non-exclusive licenses, or TSAs will be executed subject to any relevant third parties' rights (where necessary, Aon undertakes to use best reasonable efforts to obtain the relevant authorisations).

6 […].

26. Further, for a period of […] from the closing of the remedy transaction, unless another period of time is agreed with the Purchaser, Aon will grant a right to the Purchaser to use brand names which are exclusively or primarily related to the German RBC and PA Business in relation to Aon's position as the previous owner of the German RBC and PA Business, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the German RBC and PA Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.

d. The following main licenses, permits, and authorisations

27. The German RBC and PA Business requires regulatory registrations and licenses to provide certain regulated pensions consulting and brokerage services. However, suitable Purchasers may already have the necessary licenses and, as the German RBC and PA Remedy is structured as a share sale of […] (which hold the relevant licences), the transaction will have no impact on the licences that the German RBC and PA Business currently holds in Germany.

28. **Brokerage services.** Further, the German RBC and PA Business is required to hold a brokerage licence from the Chamber of Industry and Commerce (pursuant to the German Trade Regulation (*Gewerbeordnung*)) as it acts as a broker of direct insurance-based pension plans, pension-liability insurances for the funding of pension plans and other insurance-linked pension plans. This licence is held by […].

29. **Consulting services.** The German RBC and PA Business holds licences with the Chamber of Industry and Commerce for Insurance Consulting. This licence is held by […]

30. **Investment services.** In order to provide investment consulting services, the German RBC and PA Business is required to hold a Financial Investment Intermediary licence from the Chamber of Industry and Commerce. This licence is held by […].

31. **Legal services.** The German RBC and PA Business is required to be registered as a Pensions Consultancy on the Legal Services Register in order to provide legal advice relating to pensions. This registration is held by […].

32. **PA services.** There are no regulatory licences or registrations required for the German RBC and PA Business to provide pension administration services in Germany.

33. **Actuarial services.** To provide actuarial services in Germany, actuaries must have the appropriate professional qualifications. Actuaries in Germany are generally expected to register with the German Actuarial Association, although this is not mandatory. The registration requires evidence of an appropriate university degree and the completion of the relevant training program. The relevant actuarial registrations will transfer with the employee, as the change in employer has no impact on these individual qualifications and registrations. Aon notes that the […] Team does not require any regulatory licences at entity level to continue supporting the German RBC and PA Business.

34. For regulatory approvals, depending on the identity of the Purchaser, Aon anticipates that a German merger control filing will be required for the remedy transaction. No other regulatory approvals will be required. In terms of works council requirements, given the remedy transaction is structured as a share deal, no formal 'balancing of interest' process within the meaning of §111 et seq. BetrVG is required. Aon's German works council will merely be informed and consulted on the remedy transaction.

e. the following customer, credit and other records:

35. Customer records that relate to the German PA and RBC Business, in particular: available copies of certificates of project completion, reference documents, customer recommendation letters, pre-tendering documentation, and records of customer order intake, and historical records within a mutually agreeable time period.

36. To the extent that customer records relate to any of Aon's retained businesses (including any customer management information in Aon Connect), they will be appropriately redacted with the agreement of the Monitoring Trustee (if applicable).

f. The following main tangible assets:

37. At the option of the Purchaser, the German RBC and PA Business will include all tangible assets that the Purchaser requires to maintain the viability and competitiveness of the German RBC and PA Business. This will include any dedicated or shared moveable tangible assets that are currently used to operate the German RBC and PA Business, including but not limited to:

- IT equipment;
- Telecommunications equipment; and
- Office furniture.

g. the arrangements for the supply with the following services by Aon or Affiliated Undertakings for a transitional period of up to […] after Closing:

38. To the extent required by the Purchaser, Aon undertakes to provide, through a TSA, centralised functional support with purchasing, contract and human resources, finance, compliance, IT and other administrative functions such as technology, sales and client management, client insight and analysis, risk and analytics, operations, and claims.

39. Aon estimates that transitional services may be required for up to […] after the closing of the German RBC and PA Remedy, but Aon (and, the Purchaser) will have every incentive to complete the transition of the German RBC and PA Business and discontinue transitional services as soon as reasonably practicable after closing. The goal of both Aon and the Purchaser will be to limit the duration of each transitional service to only as long as is reasonably necessary for the Purchaser to fully transition the applicable service to its own systems and back office functions (or those of a third party selected by the Purchaser). […].

40. It cannot be entirely ruled out at this time that there may be limited areas where the applicable transition services may be required for longer than […]. However, even in those cases, Aon commits to work with the Purchaser to complete any required transitional services as soon as reasonably practicable after closing. For this reason, Aon offers a TSA period of up to […], which can be extended, with respect to any transitional services for which transition is not complete, at the reasonable request of the Purchaser with the approval of the monitoring trustee.

41. Further, for a period of […] from the closing of the remedy transaction, unless another period of time is agreed with the Purchaser, Aon will grant a right to the Purchaser to use brand names which are exclusively or primarily related to the German RBC and PA Business in relation to Aon's position as the previous owner of the German RBC and PA Business, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the German RBC and PA Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.

C. Excluded elements from the German RBC and PA Business

42. The German RBC and PA Business shall <u>not</u> include:

- Employees other than the Personnel, responsible for centralised functions not embedded in the German RBC and PA Business, such as purchasing, contract, human resources, finance, compliance, IT and other administrative functions; however, Aon undertakes to cooperate with the Purchaser to provide necessary support services through the TSA;
- Any other personnel other than the Key Personnel and the Personnel;
- Contracts listed in **Table 47** below relating to […] customers for whom the primary relationship for these business lines sits outside Germany, under which a limited amount of […] work is performed in Germany, typically for […]. In respect to the relevant services, the German work performed for these customers is a small portion of the total business for those customers and these customers should be considered […] customers of Aon's RBC business in the jurisdiction where the relationship sits. They are not, therefore, part of the German RBC and PA business on grounds of proportionality and will not be conveyed to the Purchaser. The retained revenues relate only to […] work, which is recorded under separate contracts to any other RBC, PA and Investment activities that Aon provides to these customers in Germany (which will not be retained by Aon). The RBC revenue generated from these retained contracts in Germany was approximately EUR […] in 2020[7] and accounted for approximately [a very small percentage] of the total RBC revenue of the German RBC and PA business in 2020;

7 […].

Table 47 also includes the RBC, PA and Investment revenues generated in Germany in 2020 by such customers which will not be retained, as well as the total revenues generated by these customers outside of Germany in 2019.[8]

Table 47: […]

[…]	[…][9]	[…]	[…][10]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
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[…]	[…]	[…]	
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[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]

- Contracts with third parties that are not included in the German RBC and PA Remedy;
- Tangible and intangible assets (including intellectual property rights and know-how) which are not used exclusively or primarily in the current

8 These figures are not currently available for 2020.
9 […].
10 Subsidiaries for which the primary relationship sits with the same parent company have been grouped together.

operation of the German RBC and PA Business, in particular […] (any such assets being limited in scope, as the German RBC and PA Business operates largely on a standalone basis);[11]

- Any domain names, product or services, or other trademarks;
- Aon's company name, mark, or logo in any form or deviations thereof;
- Books and records that are not expressly included in Section B, provided that copies of such documents necessary for the German RBC and PA Business shall be provided to the Purchaser, upon request;
- Third-party, commercially available software unless used exclusively for the German RBC and PA Business; and
- General books of account and books of original entry that comprise Aon's accounting or tax records, unless specific to the German RBC and PA Business; provided that copies of such documents necessary for the ongoing German RBC and PA Business shall be provided to the Purchaser, upon request.

D. If applicable, the Monitoring Trustee shall supervise the Parties' implementation of this Schedule, in accordance with Section E of the Commitments.

43. If there is any asset or personnel which is not covered by Section B of this Schedule but which is both used and necessary for the continued viability and competitiveness of the German RBC and PA Business, then Aon will have the option to offer to the Purchaser one of that asset or an adequate substitute of that asset and the Purchaser will have the option to choose between (i) that asset or, an adequate substitute of that asset, as offered by Aon; or (ii) transition services.

44. In the event any assets are included in the German RBC and PA Business but also are required by Aon to operate its retained assets and businesses, then the TSA will include appropriate reverse transition services pursuant to which the Purchaser will supply the asset/service to Aon for use in its retained businesses.

[11] As explained above, Aon commits to assist the Purchaser in obtaining a license for suitable, commercially available alternatives and transferring all necessary data to the systems of the Purchaser's choice. Beyond these systems, Aon has not identified any material tangible or intangible assets that are not used exclusively or primarily in the German RBC and PA Business that are required for the operation of that business.

Annex 1 – Aon/WTW – German RBC and PA Business client list - 2020

[…]

SCHEDULE 5: The Reinsurance Remedy

A. Description of the Reinsurance Remedy

1. The Reinsurance Remedy consists of the transfer of (i) Willis Re Legal Entities (including its assets and personnel) and (ii) the personnel, customer contracts, and tangible and intangible assets exclusively or primarily related to WTW's Reinsurance Business globally.

2. In particular, the Reinsurance Remedy will include:

   - all Willis Re Legal Entities (together with the related assets and personnel);
   - all licenses held by the Willis Re Legal Entities;
   - a team of approx. […] WTW employees which are exclusively or primarily related to the Reinsurance Business across different levels of seniority ranging from executive leaders to client management and placement teams, who are capable of managing all activities relating to WTW's Reinsurance Business, including all sales and marketing, broking, client relationship management, and technical expertise;
   - transfer of Willis Re Legal Entities' Customer Contracts (or portions thereof);
   - transfer of Renewal Rights for Reinsurance Customer Contracts (or portions thereof);
   - all relevant tangible and intangible assets and know-how used exclusively or primarily in WTW's global Reinsurance Business, including all relevant documentation, and customer records[1]; and
   - offices leased which are exclusively or primarily related to WTW's Reinsurance Business.

3. The Reinsurance Divestment Business comprises standalone treaty and facultative reinsurance brokerage business with distinct Willis Re and Global Fac teams. Both Willis Re and Global Fac operate […]. The Reinsurance Remedy will be structured as a transfer of Willis Re Legal Entities, applicable assets, Personnel, Willis Re Legal Entities' Customer Contracts and Renewal Rights for Reinsurance Customer Contracts to the Purchaser of the Reinsurance Divestment Business. The Parties will work with the Purchaser and the Monitoring Trustee to determine the easiest and most efficient way of implementing the transaction, subject to approval by the Commission.

[1] To the extent that customer records relate to any retained business, they will be appropriately redacted. To the extent that a customer requests that its claims handling be transferred, Aon will transfer all records relating to this claim.

B. Elements of the Reinsurance Divestment Business

4. The Reinsurance Divestment Business shall include the following elements.

Legal entities and licenses

5. The Reinsurance Divestment Business includes all Willis Re Legal Entities:

5.1 Willis Re is a standalone business, within the umbrella of WTW's Investment, Risk and Reinsurance segment.

5.2 Willis Re Legal Entities, which will be divested, are:

- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […]; and
- […].

The full list of Willis Re Legal Entities by country, including legal addresses, is attached at Annex 1.

6. The Willis Re Legal Entities hold […]. The Parties will use their reasonable best efforts to transfer the licenses granted to these entities to the Purchaser. The list of licenses by country is attached at Annex 1. These licenses will be transferred to the Purchaser, insofar as they are held by a Willis Re Legal Entity. In any event, the Reinsurance Divestment Business will be sold to a Purchaser already active in reinsurance brokerage services. As provided in the Purchaser Criteria to the Commitments text,[2] a suitable Purchaser will already have most or all of the necessary licenses and if it does not, the Parties will assist the Purchaser in procuring the

[2] Section D of the Parties' Commitment text.

necessary licenses or registrations to the extent required and provide transitional support where required via the local WTW licensed entities, including via fronting arrangements[3] and/or joint ventures.[4]

Offices

7. The Parties will endeavour that any leased real estate, which is exclusively or primarily used by the Reinsurance Business will be transferred to the Purchaser (subject to making such premises available to the Parties on a transitional services basis post-closing for a mutually acceptable period and terms).[5] At the option of the Purchaser, the Parties will use their reasonable best efforts to transfer the leases related to these offices. Where leased real estate is not primarily used for the Reinsurance Business, WTW will offer such premises available to the Purchaser on a transitional services basis post-closing for a mutually acceptable period and terms. The office lease TSAs will have a minimum period of […], unless the lessee requests a shorter period.

8. An overview of WTW offices dealing with treaty reinsurance, including the country and address of each of the offices, associated legal entity, and the number of FTEs by segment (as well as the percentage dedicated to Willis Re) is attached at Annex 1.

Customer contracts

9. The Reinsurance Divestment Business includes (i) all Willis Re Legal Entities' Customer Contracts and (ii) Renewal Rights for Reinsurance Customer Contracts, as well as all other available customer specific information related to such contracts, including but not limited to, copies of customer records, pre-tendering and tendering documents, customer reports, transactional data, customer reinsurance policies and historical records for a period of time as agreed with the Purchaser.6 For such contracts where run-off activity is still being undertaken (e.g., claims), these are also included in the Reinsurance Divestment Business.7 An overview of Reinsurance Business clients is attached at Annex 5 for Willis Re and at Annex 6 for Global Fac, respectively.

10. The Parties will use their reasonable best efforts to (i) transfer the Willis Re Legal Entities' Customer Contracts to the Purchaser by obtaining consent from the customer

---

3 Under a local fronting arrangement the WTW licensed entity in the respective jurisdiction would continue to perform certain regulated activities on a transitional basis as necessary for the Purchaser to operate the transferred business, until such time as the Purchaser obtains an appropriate license.

4 In some jurisdictions, the Purchaser may be able to enter into a joint venture agreement with the local WTW licensed entity, without the requirement for prior regulatory approval, to benefit from the economic aspects of the broking business to be transferred as a transitional measure, while it obtains its own license.

5 There are no owned offices exclusively or primarily related to the Reinsurance Business. The Ipswich office is the only location where Willis Re staff are present and owned by WTW.. For the avoidance of doubt, the Ipswich office is not included in the Reinsurance Remedy.

6 In cases where a Willis Re Legal Entity is transferred, the customer contract is transferred and where contracts are part of a Willis Re Associated Legal Entity or a Global Fac Associated Legal Entity, renewal rights are transferred.

7 Subject to the TSA, WTW may access contractual information to administer run-off activity ensuring continuity and viability of the Reinsurance Divestment Business to the benefit of the Purchaser.

where required and (ii) transfer Renewal Rights for Reinsurance Customer Contracts to the Purchaser.

11. In the case of bundled contracts that include activities that are retained, the Parties will use best reasonable endeavours to transfer the part of the contract that relates exclusively to the Reinsurance Divestment Business to the Purchaser. Where this is not possible, subject to applicable laws and consents, the Parties will retain the contract and will use best reasonable endeavours to sub-contract the portion related to the Reinsurance Divestment Business to the Purchaser through either an actual contract transfer or a transfer of renewal rights.

12. In order to maintain the structural effect of the Reinsurance Divestment Business and in accordance with customary commitments terms, Aon will commit and will procure that its affiliated undertakings commit:

    - <u>For transfer of contracts:</u> for a period of […] from Closing not to compete with the Purchaser for the scope of the work covered by the customer contracts to be divested for each relevant customer.
    - <u>For transfer of renewal rights:</u> for the longer […] from Closing or the next renewal date (inclusive of such renewal) not to compete with the Purchaser for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

13. For the avoidance of doubt, the Parties will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred contracts or renewal rights where there is an existing co-brokering arrangement in place, to the extent that the proportion of the existing arrangements are respected. For the avoidance of doubt, Aon should not increase its proportion of the co-broking to the detriment of the Purchaser. This is to be effective for the period of […] from Closing.

Personnel

14. Subject to applicable labour laws, the Reinsurance Divestment Business will include the personnel necessary to operate and maintain the viability and competitiveness of the Reinsurance Divestment Business. In particular, the Reinsurance Divestment Business will include, subject to applicable labour laws and consents, the following:

14.1 With respect to Willis Re,

Personnel and Key Personnel

employed by (i) Willis Re Legal Entities and (ii) Willis Re Associated Legal Entities. Willis Re Associated Legal Entities are <u>not</u> part of the Reinsurance Divestment. For the purpose of the divestment, these teams will be transferred to the purchaser subject to the applicable local employment legislation. A full list of Willis Re Associated Legal Entities by country, including legal addresses, is attached at Annex 1. These Willis Re Associated Legal Entities are:

- […];
- […];

- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […]; and
- […].

An overview of Willis Re Personnel and Key Personnel, including region and leadership, is attached at Annex 2.

Willis Re uses the following centralized services, which will not be part of the Reinsurance Remedy:[8]

- **Databases**:
  - […]. Moreover, any suitable Purchaser would already have similar capabilities or easily source these data free of charge. Nevertheless, to the extent necessary to ensure the viability of the Reinsurance Remedy and at the option of the Purchaser, the Parties can offer to provide these services as part of a transitional support services agreement.
  - […],[9] […][10] […]. Indeed, however, any suitable Purchaser will already have its own cloud storage infrastructure.
- **IT systems**: WTW's enterprise-wide intranet and internet systems which form part of WTW's general corporate IT infrastructure. However Willis Re's data in […], containing Willis Re's policy and transaction-level data, will be included in the Reinsurance Remedy.
- **General administrative support**: General administrative support services, e.g., accounting and billing, HR, legal tax/treasury, finance, compliance, risk, IT, real estate, marketing, *inter alia*, are […]. Any suitable Purchaser will already have similar capabilities. Nevertheless, to the extent necessary to ensure the viability of the proposed Reinsurance Divestment Business and at the option of the Purchaser, the Parties can offer to provide these services as part of a transitional support services agreement.

  WTW cannot identify individual shared service employees assisting Willis Re as these employees assist multiple lines of businesses within WTW and allocate their

8 The Parties note that the Willis Re data, including customers, claims and billing, is easily identifiable and severable and will be included in the Reinsurance Divestment Business.

9 WTW's Group IT also […].

10 Willis Re uses […].

time to the benefit of each line of business depending on its specific then-current demand. WTW estimates that only about [a small percentage] of the shared services costs overall are related to supporting Willis Re.

14.2 With respect to Global Fac,

Personnel and Key Personnel

employed by Global Fac Associated Legal Entities. Global Fac Associated Legal Entities are not part of the Reinsurance Divestment. For the purpose of the divestment, these teams will be transferred to the purchaser subject to the applicable local employment legislation. A full list of Global Fac Associated Legal Entities by country, including legal addresses, is attached at Annex 1. These Global Fac Associated Legal Entities are[11]:

- […];
- […];
- […];
- […];
- […] [12];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […];
- […]; and
- […].[13]

---

11 Global Fac services are additionally performed via […].

12 WTW is […].

13 WTW's reinsurance business brokered in […] is offered at the option of the Purchaser. This business includes […].

An overview of Global Fac Personnel and Key Personnel, including by region and leadership, is attached at Annex 3.[14]

Global Fac uses the following centralized services, which will not be part of the Reinsurance Remedy:

- […];[15]
- […];[16]
- […];
- […]; and
- […].

15. The Willis Re and Global Fac Personnel will provide the Purchaser with all necessary know-how and functional expertise in treaty and facultative reinsurance brokerage services to allow the Purchaser to continue as a viable standalone competitor globally and throughout the EU.

16. The Personnel that comprise the Reinsurance Divestment Business work in office facilities that are shared with other retained WTW businesses. As such, these Personnel will either be relocated to the Purchaser's premises or a new commercial office location designated by the Purchaser, as the Purchaser prefers.

17. The Reinsurance Divestment Business does not require any specialised facilities and can be operated from general commercial office space. Appropriate facilities are widely available on highly favourable terms given the COVID-19 pandemic, and can be procured and made ready in a matter of months. Further, the personnel have been operating on a remote basis from home offices since mid-March 2020 and could continue to do so during a transitional period if necessary, without any disruption to operation of the Reinsurance Divestment Business.

18. To preserve the viability and competitiveness of the Reinsurance Divestment Business, The Parties will undertake not to solicit, hire, employ or engage and procure that their affiliated undertakings do not solicit, hire, employ or engage from the Purchaser, the Key Personnel transferred with the Reinsurance Divestment Business for a period of […] from closing of the Reinsurance Remedy. The Parties will also undertake not to solicit, and procure that their affiliated undertakings do not solicit, all other Personnel transferred with the Reinsurance Divestment Business for a period of […] from closing of the Reinsurance Remedy.

14 For virtually all overlapping locations, […], thus facilitating the divestiture process. For the non-overlapping locations, the Purchaser would either have a local office or, if needed, be able to move employees to a neighboring location (e.g., Iberia or LATAM).

15 Global Fac also relies on […].

16 Global Fac also relies on […].

19. As set out in the Purchaser Criteria to the Commitments, the Purchaser will have the ability to integrate the personnel that will transfer as part of the Reinsurance Divestment Business globally, including in cases where no office facilities are transferred.17

Tangible assets

20. Tangible assets are of marginal relevance in the reinsurance broking industry compared to personnel or data and analytics tools. Neither Willis Re nor Global Fac own any material tangible assets and […]. In any event, the Reinsurance Divestment Business includes the following tangible assets: 18

    20.1 All office inventory and office equipment used exclusively or primarily by the Key Personnel and Personnel at the time of the Closing (for the avoidance of doubt, this does not include office inventory and office equipment used by other business lines);

    20.2 Existing sales and promotional material to the extent designed for or used in connection with the Reinsurance Business;

    20.3 All physical records and information from the past two years to the extent related to current, past and prospective clients of the Reinsurance Business, including but not limited to customer lists and files, logs of client support issues and written correspondence with clients;

    20.4 All electronic records and information to the extent related to current, past and prospective customers of the Reinsurance Business from the past two years, including but not limited to customer lists and files, logs of customer support issues and written correspondence with clients;

    20.5 All physical contracts, records and information to the extent related to the Reinsurance Business from the past two years concerning reinsurance companies[19];

    20.6 All electronic contracts, records and information to the extent related to the Reinsurance Business concerning reinsurance companies from the past two years[20];

    20.7 All business plans and forecasts to the extent related to the Reinsurance Business; and

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17 Section D of the Parties' Commitment text.

18 Any relevant documents dated before this two-year period stated under points 20.3-20.6 below will also be made available at the request of the Purchaser, to the extent related to the Reinsurance Divestment Business..

19 This will include, *inter alia*, available copies of certificates of project completion, reference documents, customer recommendation letters, pre-tendering documentation, records of customer order intake, and historical records for transferred customer relationships. To the extent that customer records relate to any of the Parties' retained businesses, they will be appropriately redacted with the agreement of the Monitoring Trustee.

20 See footnote above.

20.8 Credit and other business records to the extent currently held for the Reinsurance Business.

20.9 All research material, data, models, information, analyses and market studies to the extent held by the Reinsurance Divestment Business.

Intangible assets

21. The Reinsurance Divestment Business comprises the following intangible assets:

22. Know-how. Regarding intangible assets, attached as Annex 4 is Willis Re's proprietary ("first-party") software in relation to […] to support its own business.[21] These intangible assets will be transferred to the Purchaser. This software is protected by copyright, and many of the tools have database rights. The IP is owned by […].

23. As previously explained, given the more ad hoc, […].

24. Global Fac also uses some third-party data and analytics tools which can be licensed without impediments and, as such, will not be part of the Reinsurance Divestment Business:

- […];
- […];
- […];
- […];
- […]; and
- […].

25. Brands and Trademarks. For a period of between […] post-Closing, unless another period of time is agreed with the Purchaser, the Parties will grant a right to the Purchaser to use the […] brand name in relation to WTW's position as the previous owner of the Reinsurance Divestment Business, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the Reinsurance Divestment Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.

Other intangible assets

26. The Reinsurance Divestment Business will also include:

26.1 Subject to applicable consents and mandatory provisions of law, the Parties will use their reasonable best efforts to transfer the renewal rights for the policies that are exclusively or primarily related to the Reinsurance Business;

26.2 Databases containing customer data on policy, claims handling, claims history, transaction (including premium/claims), and ledger balances to the extent they

[21] […].

can be transferred, stored in secure databases […] to the extent they contain data that is related to the Reinsurance Business. Should any database contain data on other retained parts of the Reinsurance Business, the Reinsurance Divestment Business data will either be extracted and transferred to the Purchaser, or if that is not possible, the Purchaser will receive a copy of the database, with the original database remaining in the Parties' ownership and expunging Reinsurance Divestment Business data[22]; and

26.3 Any other assets identified by the Purchaser and the Parties in the purchase agreement.

27. The Reinsurance Divestment Business will not include:

27.1 WTW's CRB insurance brokers (i.e., not part of Global Fac) that occasionally structure commercial risk transactions to include an integrated reinsurance element. The clients of these brokers are not insurance carriers but commercial risk clients. [23]

27.2 WTW's Reinsurance Business in Mainland China and Hong Kong which […] and employs approximately […] individuals.[24] Aon intends to […]. Moreover, the Aon/WTW transaction was cleared by SAMR unconditionally.

27.3 Any customer contracts, employees, tangible and intangible assets, know-how, accounts, books, domain names, products or services, or other trademarks, as well as any other assets which are not used exclusively or primarily in relation to the Reinsurance Business;

27.4 Employees (other than the Personnel) responsible for centralised back office functions not embedded in the Reinsurance Divestment Business, such as purchasing, contract and human resources, finance, compliance, IT and other administrative functions. A suitable Purchaser will already have these services embedded within its own organization, and will cooperate with the Purchaser to provide necessary support services through TSAs over a limited transitional period while the Purchaser incorporates the Reinsurance Divestment Business into its own operations;

27.5 Third-party, commercially available software; and,

27.6 Books and records that are not expressly included, provided that such documents are exclusively or primarily related to the Reinsurance Business, which shall be provided to the Purchaser upon request.

28. In the event that materials to be transferred contain information that is both confidential to the Parties' retained businesses and are not exclusively or primarily related to the Reinsurance Business, the information shall be redacted as appropriate.

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22 […].

23 Please refer to the Parties' submission on Enabling Fac from 18 March 2021.

24 The individuals are based in […].

29. If there is any asset or personnel that is not covered by the Reinsurance Divestment Business, but which is used by the Reinsurance Divestment Business and is necessary for the continued viability and competitiveness of that business in the hands of the Purchaser, then the Parties will have the option to offer to the Purchaser one of that asset, or an adequate substitute of that asset and the Purchaser will have the option to choose that asset, an adequate substitute of that asset or provision of that asset pursuant to a transitional service agreement.

30. If there is any asset or personnel which is covered above, but which the Purchaser would prefer not to acquire, the Purchaser may choose to do so only if such exclusion does not affect the continued viability and competitiveness of the Reinsurance Divestment Business.

31. The Parties estimate that transitional services may be required for up to […] after the closing of the Reinsurance Remedy, but the Parties (and the Purchaser) will have every incentive to complete the transition of the Reinsurance Divestment Business and discontinue transitional services as soon as reasonably practicable after Closing.

32. It cannot be entirely ruled out at this time that there may be limited areas where the applicable transition services may be required for longer than […]. However, even in those cases, the Parties commit to work with the Purchaser to complete any required transitional services as soon as reasonably practicable after closing. For this reason, the Parties offer a TSA period of up to […], which can be extended, with respect to any transitional services for which transition is not complete, at the reasonable request of the Purchaser with the approval of the Monitoring Trustee and after consultation with the Commission.

33. The Reinsurance Divestment Business is a global standalone business with very limitedly relies on centralized services which will not be part of the Reinsurance Remedy. Regarding the support functions as listed for Willis Re and Global Fac above, any suitable purchaser would already have similar capabilities. Nevertheless, to the extent necessary to ensure the viability of the Reinsurance Divestment Business and at the option of the Purchaser, the Parties can offer to provide these services as part of a TSA.

Annex 1 – Aon/WTW – Reinsurance – WTW's offices providing Treaty and Facultative services globally

[…]

Annex 2 – Aon/WTW – Reinsurance – Willis Re Personnel List

[…]

Annex 3 – Aon/WTW – Reinsurance – Global Fac Personnel List

[…]

Annex 4 – Aon/WTW – Reinsurance – Tool catalogue

[…]

Annex 5 – Aon/WTW – Reinsurance – Willis Re – Clients 2019 and 2020

[…]

Annex 6 – Aon/WTW – Reinsurance – Global Fac – Clients 2019 and 2020

[…]