COMMERCE COMMISSION
NEW ZEALAND
Te Komihana Tauhokohoko

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Statement of Preliminary Issues

Aon plc / Willis Towers Watson Public Limited Company

30 October 2020

Introduction

1. On 15 October 2020, the Commerce Commission registered an application (the Application) from Aon plc (Aon) to acquire 100% of the shares of Willis Towers Watson Public Limited Company (WTW) (the Proposed Acquisition).[1]

2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.

3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.[2]

4. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by close of business on **13 November 2020**.

The parties

5. Aon and WTW are both global professional services firms that provide consulting and brokerage services related to financial risk mitigation. Aon is listed on the New York Stock Exchange and WTW is listed on the NASDAQ Global Select Market.

6. In New Zealand, the two firms both provide a range of insurance broking services, including for commercial insurance, reinsurance, group health and welfare benefits, and personal and life insurance. In addition, both firms provide investment consulting services to institutional investors. Aon has 58 offices throughout New Zealand. WTW operates out of five office locations in Auckland, Wellington, Christchurch, Tauranga, and Dunedin.

7. The Proposed Acquisition would see WTW become a wholly owned subsidiary of Aon.

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[1] A public version of the Application is available on our website at: http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/.

[2] The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

Our framework

8. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.[3] As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.

9. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).[4] This allows us to assess the degree by which the proposed acquisition might lessen competition.

10. If the lessening of competition resulting from the proposed acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:

    10.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased; [5]

    10.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and

    10.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser's ability to exert substantial influence on negotiations.

Market definition

11. We define markets in the way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.[6]

12. In its application, Aon submitted that the relevant markets for the Commission's consideration of the Proposed Acquisition are the national markets for:[7]

    12.1 commercial non-life insurance distribution;

    12.2 non-life reinsurance distribution; and

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3 Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2019. Available on our website at www.comcom.govt.nz.

4 *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

5 References to price increases in this document should be taken to include a reduction in quality, service or innovation.

6 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

7 The Application at [87]-[122].

12.3 group health and welfare benefits distribution and associated services.

13. Aon submitted that further segmentation of the markets for commercial non-life insurance distribution and non-life reinsurance distribution would not be appropriate, as brokers in these markets operate across a range of different classes of risk and types of client.[8] Aon also submitted that, in practice, competition in these markets takes place on a global (rather than national) level.

14. Our assessment of the relevant markets will include consideration of:

14.1 the appropriate geographic scope;

14.2 the appropriate product dimension, including any potential further segmentation by industry, sector, or class of risk;

14.3 whether there are separate markets for different types of customer;

14.4 whether it is appropriate for brokered sales of insurance products to be included in the same market as non-brokered, direct sales;[9]

14.5 the broking services provided to, on the one hand, insurers and reinsurers and, on the other, insured entities, and how providers of those services are remunerated; and

14.6 whether New Zealand displays unique characteristics[10] which affect the way competition occurs in the relevant markets.

15. We will also consider whether the Proposed Acquisition is likely to result in a substantial lessening of competition in any other market not identified in the Application.

Without the acquisition

16. Aon submitted that, without the Proposed Acquisition, Aon and WTW would remain separate entities and continue with their respective business activities.[11]

17. We will consider the evidence on whether the scenario without the acquisition is likely to be the status quo or something different.

Preliminary issues

18. We will investigate whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market (or markets) by assessing whether

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8 The Application at [104]-[105] and [112].

9 Aon submitted that brokered sales and direct sales belong in the same market for non-life reinsurance distribution and group health and welfare benefits distribution – the Application at [109]-[111] and [120].

10 For example, New Zealand's high earthquake risk and/or the existence and role of the Accident Compensation Corporation.

11 The Application at [124].

horizontal unilateral and/or coordinated effects might result from the Proposed Acquisition.

18.1 *Horizontal unilateral effects*: would the loss of competition between the parties enable the merged entity (or any other market participant) to profitably raise prices by itself?

18.2 *Horizontal coordinated effects*: would the Proposed Acquisition change the conditions in the relevant market/s so that coordination is more likely, more complete or more sustainable?

Unilateral effects: would the merged entity be able to profitably raise prices by itself?

19. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged entity can profitably increase price above the level that would prevail without the merger, or decrease the quality of the products and/or services supplied.

20. Aon submitted that the Proposed Acquisition would not substantially lessen competition due to unilateral effects because, in relation to each of the markets it has proposed:[12]

20.1 numerous other brokers would continue to compete vigorously, constraining the merged entity;

20.2 barriers to entry and expansion are low;

20.3 clients are able to obtain insurance, reinsurance, and group health and welfare benefits directly, without using a broker;

20.4 aside from contracting with insurance companies (through brokers or directly), clients have several other alternative options for meeting their insurance and/or reinsurance needs; and

20.5 the merged entity would face further constraint in the non-life reinsurance distribution market from non-traditional competitors such as insurtech platforms.[13]

21. We will assess whether the evidence supports Aon's claims. In addition, we will consider whether any other aspect of the Proposed Acquisition, such as the combination of the merging parties' datasets, would be likely to make it substantially more difficult for competitors to enter or expand.

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12 The Application at [125]-[256].

13 Insurtechs are technology platforms that provide data-driven analytical tools related to insurance. The Application states that they "can act as elaborate price-comparison mechanisms for cedents looking to place their risks". Aon submitted that insurtechs are introducing technologies that can support reinsurers contracting directly with customers seeking reinsurance, without using an intermediary such as a broker – the Application at [238]-[241] and Appendix 9.

Coordinated effects: would the proposed acquisition make coordination more likely?

22. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that prices increase across the market.

23. Aon submitted that the Proposed Acquisition would not enhance the ability for the merged entity to coordinate its behaviour with competitors because the relevant markets are not vulnerable to coordination, including because:[14]

    23.1 the broking services offered by Aon, WTW and their competitors are not homogenous – rather, they vary based on the needs of individual clients;

    23.2 the parties are represented on the board of IBANZ, but otherwise competitors do not regularly interact;

    23.3 competitors vary in size, background, and global footprint, and have different cost structures;

    23.4 competitors cannot easily monitor each other's prices (or other non-price factors such as expertise and claims processing), as they are neither transparent nor easily quantified;

    23.5 the global insurance broking industry has seen significant innovation in recent years, such as the development of insurtechs, and the Proposed Acquisition will not change this; and

    23.6 there is strong and vigorous competition from a large number of competitors, including via non-brokered direct sales.

24. We will assess whether any relevant market is vulnerable to coordination and whether the Proposed Acquisition would likely change the conditions in any market so that coordination is more likely, more complete, or more sustainable.

Next steps in our investigation

25. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **11 December 2020**. However, this date may change as our investigation progresses.[15] In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.

26. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

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14 The Application at [257]. See also the Commission's Mergers and Acquisitions Guidelines, above n 3, at [3.89].

15 The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.

Making a submission

27. If you wish to make a submission, please send it to us at registrar@comcom.govt.nz with the reference "Aon/WTW" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **13 November 2020**.

28. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website.

29. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example, in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.