

5 February 2021

CROSS-SUBMISSION BY AON AND WTW TO THE FMG AND KIERAN SWEETMAN SUBMISSION ON THE COMMERCE COMMISSION'S STATEMENT OF ISSUES (26 JANUARY 2021)

Key: Confidential material in this response has been removed. Its location in the document is denoted by [].

Confidentiality

- 1 Confidentiality is sought in respect of the highlighted information. Release of this information would be likely to unreasonably prejudice Aon and/or WTW's commercial position. The Parties request that they are notified if the Commerce Commission (**Commission**) receives any request under the Official Information Act 1982 for the release of any part of the confidential information. They also request that the Commission seek and consider their views as to whether the confidential information remains confidential and commercially sensitive before it responds to such requests.

CROSS-SUBMISSION

- 2 The Parties appreciate the opportunity to respond to Mr Sweetman¹ and FMG's submissions in response to the Commission's Statement of Issues (**SOI**) (together, the **SOI Submissions**).²
- 3 The Parties are attentive to the views of their customers and the wider industry. The Parties consider that their submission in response to the SOI (the **SOI Response**) explains why the Transaction does not create competition concerns. For completeness, below the Parties respond to the limited concerns raised in the SOI Submissions.
- 4 The Transaction is intended to benefit all clients (including New Zealand clients) through the combination of the Parties' complementary assets, to better address evolving client needs in an increasingly competitive landscape, and accelerate the creation of new solutions that more efficiently match capital with risk in areas where currently there is either no or suboptimal cover. On these bases, the Parties consider that the Transaction will enable the Combined Entity to compete more effectively with distributors such as FMG, service customers [] as required in commercial non-life insurance distribution, and improve their offer to cedents [] in non-life reinsurance distribution.

(a) Commercial non-life insurance distribution will remain competitive following the Transaction

(i) FMG is a competitor for commercial clients and this will continue following the Transaction

- 5 FMG states that it competes as a "direct distributor" with brokers for commercial clients, offering risk advice and commercial insurance cover across New Zealand (FMG also states that it "has been operating for 115 years and has dominance in the rural [insurance] sector").³ As explained in the SOI Response, as intermediaries,

¹ General Manager, Capital at CentrePort Limited.

² The Parties also note that the Commission received an anonymous response to the SOI on 12 January 2021. The Parties' cross-submission to that anonymous response was incorporated into the Parties' SOI response submitted on 26 January 2021.

³ []

brokers must add value to avoid being disintermediated by insurers such as FMG that can act as “direct distributors”. The Transaction will not result in any change to this position.

(ii) Commercial non-life insurance distribution will remain competitive following the Transaction

- 6 The SOI submissions indicate a concern that access to insurance capacity will be constrained as a result of the Transaction. However, the following observations can be made regarding access to insurance capacity:
- 6.1 The Parties emphasise that the Transaction will not result in any increased concentration in relation to insurers.⁴ The aggregation brought about by the Transaction is at the distribution level where numerous effective competitors will remain post-Transaction.
- 6.2 The Transaction is not intended to restrict any client options, including the option to use a single provider. The Parties note the analysis in the SOI Response which demonstrates that, far from a single provider being a requirement, clients often break up their risks to extract the best value from brokers and insurers.⁵ Even for any clients that prefer a single provider, there will remain a number of alternative brokers that clients can use.
- 6.3 The SOI Response sets out comprehensive reasons and evidence to show that the Transaction would not substantially lessen competition in relation to commercial non-life insurance distribution⁶ – see also below. As such, the Transaction could not restrict local insurers’ ability to access insurance capital offshore.
- 6.4 The evidence provided in the SOI Response shows that corporates can obtain insurance directly even where there is a need to obtain insurance cover from multiple insurers to cover the risk.⁷
- 7 The SOI submissions indicate concern that the Transaction will reduce the number of available brokers from, at best, four to three.⁸ The SOI Response demonstrates that the Parties have at least three other effective competitors and, in fact, that the Transaction will not reduce wider competition from other brokers and direct players in commercial non-life insurance distribution. With particular reference to “large, complex or specialist risks” the SOI Response shows that:
- 7.1 from demand- and supply-side perspectives all risks and clients should be considered to fall within a single market for commercial non-life insurance distribution,⁹

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⁴ See the concern expressed in Section 1 of the FMG submission.

⁵ Paragraphs 94–98.

⁶ See particularly paragraphs 4, 10–26, 54–56 and 61–103.

⁷ Paragraph 99.

⁸ The Parties note that the SOI submissions have not sought to define large clients, and agree that it is neither possible nor appropriate to define a distinct set of clients on this basis (see the SOI Response, Part 1(a)).

⁹ Paragraphs 10–26.

- 7.2 regardless of market definition, the Transaction will not reduce competition, including with respect to large clients or complex mandates:¹⁰
- (a) there will not be only two remaining brokers:
 - (i) Gallagher/Crombie Lockwood will continue to provide an effective constraint on the Combined Entity, including for larger clients and those with more complex mandates, and
 - (ii) the Parties will continue to be constrained by other brokers individually and in the aggregate, including AUB Group (including BrokerWeb Risk Services and NZbrokers) and the Steadfast Network, including for larger clients and those with more complex mandates, and

7.3 in any event:¹¹

- (a) Marsh will continue to exert a significant constraint on the Combined Entity, including in relation to larger clients and those with more complex mandates,
- (b) the threat of entry and expansion will continue to constrain the Parties,
- (c) the Combined Entity will continue to be constrained by the threat of direct placement (including by established insurers such as FMG), and
- (d) more generally, clients have buyer power (notably, larger clients and those with more complex insurance requirements are particularly sophisticated) and with low switching costs, have available to them tools to discipline brokers, including the threat of disintermediation, use of captives and risk retention. Brokers must consistently prove their value to clients, and the Transaction will not change this feature of the market.

(iii) Broker transparency towards clients will not be affected by the Transaction

8 Mr Sweetman states that he has “found historically that the insurance brokers have not been totally transparent with their placing of insurance to reassure the insured that they have obtained best value”.¹² While the Parties cannot comment on Mr Sweetman’s experience with other brokers, each of the Parties endeavours to be transparent towards their clients with their insurance placements and this approach will not change as a result of the Transaction.

9 Mr Sweetman’s concern regarding brokerage fees supports the point made in the SOI Response that commercial non-life insurance clients are price-sensitive. Brokers do compete on price amongst other competitive parameters. Nonetheless, the SOI Response provided evidence to show that, given clients’ bargaining power (particularly larger and more sophisticated customers), clients are able to determine the structure of any payments to brokers. For example, in Aon’s experience,

¹⁰ See the SOI Response, Part 4(a).

¹¹ Ibid.

¹² Paragraph 5.

commercial clients have a clear understanding of how much they pay their broker, including by requesting fixed fee arrangements.¹³

- 10 Notwithstanding the above, any concerns unrelated to the Transaction or the Parties regarding disclosures to clients as to the terms and scope of their coverage are irrelevant to the Commission's analysis.

(iv) Conclusion regarding commercial non-life insurance distribution

- 11 The SOI submissions note that competition between brokers (indeed, between all distributors) is important to ensure services are centred on the best outcome for local clients, including providing access to greater insurance capacity and affordable premiums. The Parties agree that adequate choice and competition safeguard the quality of the service that New Zealand clients receive. For the reasons given in the SOI Response, the Parties consider the Transaction will have no adverse effect on the choice and competition that exists in New Zealand. There will be no complacency by brokers because competition between distributors will continue to be vigorous.
- 12 Furthermore, as outlined in paragraph 4 above, the Parties consider that the Transaction will improve service offerings for clients, particularly in areas where currently there is either no or suboptimal cover. In the SOI Response, the Parties show that brokers will continue to compete for clients by demonstrating that they add value, including by securing the best risk management strategy that meets the client's needs and budget.¹⁴

(b) Non-life reinsurance distribution will remain competitive following the Transaction

- 13 The Parties agree with FMG that expertise and relationships are required to be an effective reinsurance broker and note that often these capabilities depend on individual brokers rather than resting with broking firms. Given the capabilities required to distribute reinsurance, FMG is concerned that there is a limited pool of brokers that can provide comprehensive service to New Zealand based cedents.¹⁵ Specifically, FMG claims that competition in the New Zealand market will be reduced to only two reinsurance brokers. However, as set out in the SOI Response:¹⁶

13.1 reinsurance distribution is a global market, and there are numerous effective competitors that could, and in many cases already do, exert a competitive constraint in New Zealand. Global reinsurance distribution competitors include Marsh/Guy Carpenter, Lockton Global Re, Gallagher, Howden, BMS Tysers McGill & Partners, TigerRisk Partners, UIB Group, Ed Broking Group, Beach & Associates, EC3, BDO, Assurex, BB&T, and many other broking firms, along with reinsurers that commonly place reinsurance directly such as Munich Re, Swiss Re and Gen Re, and

13.2 all competitors in reinsurance distribution in New Zealand are constrained by the sophistication of cedents such as FMG, their options for risk management and accessing capital, the real and substantiated threat of entry and

¹³ Paragraphs 63–67.

¹⁴ Ibid.

¹⁵ Mr Sweetman may be alluding to a similar concern in paragraph 1 of his submission i.e. his reference to "(re)insurers".

¹⁶ See the SOI Response, Part 1(b) and Part 4(b).

expansion and the ease with which cedents can transfer placements away to their competitors.

(c) The Transaction will not put clients' data and intellectual property at risk

14 The SOI Response demonstrated that there need be no concern that the Transaction would put FMG's – or any other client's – data and intellectual property at risk. Client data is provided to distributors, such as the Parties, on specific terms, with careful parameters in which the Parties can use the data. Clients retain ownership of their data.¹⁷

(d) Conclusion

15 In the SOI Response, the Parties provided clear evidence to confirm that the Transaction would not substantially lessen competition in any market. Instead, the Transaction will enable the Combined Entity to compete more effectively with distributors such as FMG, service customers [] as required in commercial non-life insurance distribution, and improve their offer to cedents [] in non-life reinsurance distribution. The Transaction is intended to enhance outcomes for all parties including FMG and Mr Sweetman.

¹⁷ See the SOI Response, Part 6. In particular, at paragraphs 132.1, 139 and 143.