26 January 2021

AON AND WTW JOINT RESPONSE TO COMMERCE COMMISSION STATEMENT OF ISSUES

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 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.

EXECUTIVE SUMMARY

2 The Parties appreciate the opportunity to respond to the potential concerns presented in the Commerce Commission's (**Commission**) Statement of Issues (**SOI**). At the outset, and before summarising the additional evidence they provide in this response to the SOI, the Parties note that the evidence they present is consistent with much of the feedback and many of the conclusions that are detailed in the SOI. In particular:

Market feedback

2.1 The SOI makes clear that a material number of commercial non-life insurance distribution clients are not concerned by the Transaction.[1] The views of clients should not be overridden. It is understandable that clients are not concerned given the strong presence of Gallagher/Crombie Lockwood, Marsh, NZbrokers and multiple other broker competitors, the low market shares of the Parties, the competitive constraint from talent movement, the extent of countervailing buyer power (switching costs are low and clients have a range of procurement practices available to them and make use of risk retention solutions) and the option of direct placement offers. However, whatever the exact reason, these clients' views should not be ignored.

2.2 Similarly, it is not a mere coincidence that non-life reinsurance distribution customers (cedents), like commercial non-life insurance distribution clients, do not have concerns about the Transaction. The SOI states that there is a "lack of concern" about the reduction in alternatives brought about by the Transaction for reinsurance distribution.[2] This lack of concern is expected and can be explained by the evidence presented by the Parties, namely: the constraint from the threat of disintermediation from reinsurers such as Munich Re and Swiss Re; the sophistication of cedents such as IAG and QBE; the

[1] SOI, paragraph 48.2.

[2] SOI, paragraph 68.

continued competition from the world's largest broker Marsh/Guy Carpenter;[3] the further competition from brokers such as BMS, Lockton Re, Howden Re, Steadfast Re and many other global competitors; and the multiple alternative risk management options for cedents including capital markets, captive entities, and risk retention. It seems unwarranted that the Commission may have concerns while the very cedents who will be impacted by the Transaction do not.

2.3 Consistent with both commercial non-life insurance distribution and non-life reinsurance distribution customers, the SOI is clear that "in general, market participants have not expressed major concerns about the potential impact of the Proposed Acquisition on competition in the distribution of group health and welfare benefits".[4] In accordance with other market participants, the Parties expect fierce competition in group health and welfare benefits distribution and associated services to continue post-Transaction. This view reflects the Parties' low market shares, the range of existing and potential broker competitors as well as the constraint from insurers, and the fact that [ ].

Commercial non-life insurance distribution

2.4 The Parties note that the Commission has not identified a specific industry or risk type that would be particularly impacted by the Transaction in commercial non-life insurance distribution.[5] The Parties agree that this would be an appropriate conclusion to draw. Having found no specific competition concerns at this granular level, it seems incongruous to suggest that there may be a competition concern in commercial non-life insurance distribution overall.

2.5 In addition, the Parties consider that the same feedback that the Commission has heard in relation to commercial non-life insurance distribution for SMEs applies to all customers, specifically that SMEs are likely to have many options available to them.[6] Both larger customers and those with more complex mandates – a group sufficiently amorphous that the Commission has been unable to define it (which is unsurprising because neither the Parties nor the industry at large recognise such a definition) – would also have many options available to them including Marsh, Gallagher/Crombie Lockwood, the Steadfast Network and NZbrokers.

Non-life reinsurance distribution

2.6 Turning to non-life reinsurance distribution, the Commission identifies evidence that multinational insurance companies are able to transact with reinsurers directly for non-life reinsurance distribution.[7] This is correct and there is no reason to depart from this conclusion for other cedents. The very business of every cedent is insurance. As a result, every cedent is sophisticated, experienced and an expert customer which is already active in insurance and with the ability to place reinsurance directly if it chooses. The fact that a broker competes to be the most convenient option in specific

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3 [ ].

4 SOI, paragraph 75.

5 SOI, paragraph 29.

6 SOI, paragraph 26.

7 SOI, paragraph 34.

scenarios, should not exclude directly placed reinsurance from the same market as brokered reinsurance. To suggest that reinsurers would prefer not to transact directly is inconsistent with reinsurers' public statements and reinsurer business models, and does not reflect the competitive reality that the Parties face every day.

2.7 The SOI finds that competition in non-life reinsurance distribution may occur on a global basis.[8] This finding is consistent with the Parties' competitive interactions and the approach of other competition authorities. Given competition is global, it is not correct to limit "overseas competition" to Aon, WTW and Marsh/Guy Carpenter. Whilst Aon is the only reinsurance broker with a physical presence in New Zealand, every other global competitor competes from overseas. Overseas competition in non-life reinsurance distribution is empirically proven to be viable in New Zealand, and there is no reason to limit this competition to Aon, WTW and Marsh/Guy Carpenter.

Group health and welfare benefits distribution and associated services

2.8 The SOI notes that the extent of the Commission's competition concerns is likely to be significantly impacted if there is a separate market for the supply of broking services for group life and disability services.[9] To provide comfort to the Commission, the Parties provide extensive evidence to affirm there is not a separate market for group life and disability services. Instead, group health benefits are part of the same market as "group health and welfare benefits" distribution and associated services. Most significantly, employers consider all group benefits together as a single product when making their purchasing decisions (and the conclusion that there is a single group benefits product market is also supported by other demand side, as well as supply side, characteristics). It would clearly be unsustainable to find a competition concern on a market defined more narrowly than the needs of customers.

Data-related barriers to entry

2.9 The Commission notes that it has "not seen evidence to date to suggest that the Proposed Acquisition would be likely to significantly increase data-related barriers to entry".[10] Again, the Parties agree with the Commission in this regard but nevertheless provide further evidence to ensure the Commission can be satisfied on this point, including details of: the range of data sources available, the advertised analytic capabilities of the Parties' competitors, the analytic tools provided by third parties such as RMS, AIR and EQE, and the well-held view in the industry that it is the experience and expertise of individuals that is more important than data and analytic capabilities.

Coordination

2.10 Finally, the Parties provide further evidence to help satisfy the Commission that the Transaction does not increase the potential for coordination. In particular, the Parties refer the Commission to the comprehensive conclusion, reached by the United Kingdom Financial Conduct Authority (**UK FCA**) in February 2019 that (re)insurance broking is not prone to coordinated effects and explain why the UK FCA's findings similarly apply in New Zealand. The

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[8] SOI, paragraph 39.

[9] SOI, paragraph 77.

[10] SOI, paragraph 82.

Parties provide further evidence to show that the Transaction could not increase the potential for coordination.

3 The Parties do not consider that any of the propositions raised in the SOI give rise to any realistic concerns of a substantial lessening of competition in any relevant market as a result of the Transaction. The Parties respectfully submit that the Commission should not reach a conclusion that is inconsistent with both the Parties' evidence and the views of the customers. Below, the Parties summarise the additional evidence and arguments they present in this response.

No potential competition law concerns with respect to commercial non-life insurance distribution

4 There is no plausible evidential foundation from which to draw the inference that the Transaction will substantially lessen competition in the market for commercial non-life insurance distribution – in particular:

4.1 **The relevant market should not be segmented based on customer size and/or mandate complexity:** The Commission's difficulty in articulating how to define such a segment is illustrative of the fact that the needs of large and/or complex clients are not fundamentally different from those of other clients and those needs can all be met by a similar range of suppliers that include at least Marsh, Gallagher/Crombie Lockwood, NZbrokers and the Steadfast Network;

4.2 **The relevant market should not be segmented for specialist industries and/or risk types:** The Parties agree with the Commission's preliminary view that segmenting the market based on customer industry or risk type would not assist in identifying any potential issues. This is demonstrated by the fact that almost all brokers offer services across key industries and risk lines;

4.3 **Gallagher/Crombie Lockwood will continue to provide an effective competitive constraint on the Combined Entity:** Regardless of market definition, Gallagher/Crombie Lockwood can and does compete with Marsh, Aon and WTW and can similarly service "large" clients and/or their "complex" needs however they are defined;

4.4 **The Parties will continue to be constrained by other brokers individually and in the aggregate:** There are many other brokers able to compete effectively with the Parties, and service "large" clients and/or their "complex" needs however they are defined, including the Steadfast Network and NZbrokers. If a broker is able to meet the requirements of a client's RFP, it will act as an effective constraint on the Combined Entity;

4.5 **Marsh will continue to constrain the Parties:** Marsh is a global leader for commercial non-life insurance broking and will undoubtedly continue to constrain the Parties post-Transaction. This is confirmed by the Commission's feedback from market participants, all of whom view Marsh as capable of meeting their needs;

4.6 **There is a strong constraint from brokers based offshore:** Brokers do not need a New Zealand presence to compete effectively in the market[11] and

[11] In relation to "wholesale clients", as defined in the Financial Services Legislation Amendment Act 2019, clause 4 of Schedule 5.

there are understood to be several competitors that are expanding their presence and networks in New Zealand from offshore including Lockton and Howden;

4.7 **The Parties will remain constrained by other factors:** Clients can, and do, exercise countervailing power due to the nature of the tender process and the ability to switch brokers with relative ease. Switching costs are low, which further constrains brokers, as does the existence of alternatives to insurance brokerage, such as disintermediation, use of captives and risk retention. The exercise of countervailing power need not be an "all or nothing" proposition to be effective in constraining brokers – a credible threat to shift even one risk line can discipline brokers and also positions a successful new broker to further develop and expand its relationship with the customer, thereby increasing rivalry for all lines in future tenders.

No potential competition law concerns with respect to non-life reinsurance distribution

5 There is no plausible evidential foundation from which to draw the inference that the Transaction will substantially lessen competition in the market for non-life reinsurance distribution – in particular:

5.1 **Describing the Transaction as a "three to two" does not reflect the global nature of these markets:** The SOI does not give appropriate weight to the reality that reinsurance is a global market and that New Zealand cedents can, and do, obtain the services of reinsurance brokers that are not physically present in New Zealand. The global reinsurance broking market will remain competitive with the presence of 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 others;

5.2 **The relevant market should include direct placement of non-life reinsurance:** Like all intermediaries, reinsurance brokers always have to strive for relevance or they will face disintermediation. Cedents can avoid brokerage fees by contracting directly with reinsurers, which are keen to oblige and invest heavily in their direct business. The threat of disintermediation as a competitive constraint must be factored into the Commission's analysis irrespective of how the market is defined;

5.3 **The Parties are further constrained by threat of new entry and expansion:** Even if the Commission conservatively adopted a narrow frame of reference, the Commission's analysis must take into account that there are no regulatory barriers to prevent reinsurance brokers based overseas from placing risks with reinsurers for New Zealand cedents. There are a number of global brokers who are potential, if not actual, competitors for New Zealand cedents because they may participate in tenders or compete for appointment by cedents. The Parties believe that the major global brokers that fall within this category include Lockton Global Re, Gallagher, Howden, BMS Tysers, McGill & Partners, TigerRisk Partners, UIB Group, Ed Broking Group, Beach & Associates, EC3, BDO, Assurex, BB&T, among others;

5.4 **The Parties will remain constrained by other factors:** Cedents are able to discipline reinsurance brokers by credibly threatening to (1) switch to another broker; (2) buy directly from a reinsurer; (3) use alternative capital to diversify their risk profile; or (4) retain the risk. In relation to (3) and (4) the Parties note that reinsurance is voluntary and is simply one option available to cedents to manage their risk. Importantly, a cedent's decision is not binary and cedents can effectively discipline brokers simply by threatening to allocate some portion of their risk to other channels.

No potential competition law concerns with respect to group health and welfare benefits distribution and associated services

6 There is no plausible evidential foundation from which to draw the inference that the Transaction will substantially lessen competition in the market for group health and welfare benefits insurance distribution and associated services – in particular:

6.1 **The relevant market should not be segmented by classes of benefits:** Neither demand nor supply side dynamics justify the segmentation of this market by classes of benefits. Clients consider group health and welfare benefits as part of an overall package to offer employees. Similarly, regardless of the presence of specialist providers, providers of group health and welfare benefits can and do provide the full range of health and welfare benefits, which encompasses life insurance, health insurance and coverage for other disabilities, sickness and trauma;

6.2 **The Parties will remain constrained by existing competition:** Irrespective of market definition, the Parties will continue to be constrained by strong existing competition from other brokers (including at least Marsh and Gallagher/Crombie Lockwood) as well as financial advisers and local advisory firms (including Share, Lifetime and Newpark Group) which perform a similar role to brokers. In addition, numerous health and welfare insurers are willing to engage directly with clients bypassing brokers entirely (including Southern Cross, AIA New Zealand Limited, Fidelity Life Assurance Company Limited, Asteron Life Limited, Cigna Life Insurance New Zealand Limited, AMP Life Limited, nib nz Limited, Union Medical Benefits Society Limited (UniMed) and Accuro Health Insurance);

6.3 **The Parties will remain constrained by potential competition:** All broking markets are dynamic and, faced with no material barriers to entry and growing demand for health and welfare insurance in the wake of the COVID-19 pandemic, the threat of potential new entrants continues to be a competitive constraint.

No potential competition law concerns with respect to data

7 There is no plausible evidential foundation from which to draw the inference that the Transaction will substantially lessen competition in any relevant market as a result of the Parties collection and use of data – in particular:

7.1 **Data is available to all market participants:** There is no evidence from which to suggest that the Transaction would be likely to significantly increase data-related barriers to entry.[12] The Parties do not have a monopoly on relevant data. The main data sources are (1) client data – which a client can freely give to a new broker to provide a quote; (2) third-party data – which the Parties do not control; and (3) public data – which is widely accessible;

7.2 **Data analytical capabilities are not unique to the Parties:** The Parties are also not unique in their ability to analyse the widely available data. Even a new entrant with no current data analytical capability can readily obtain it

[12] SOI, paragraph 82.

through purchasing a third-party analytical tool or by poaching talent from a rival broker, which is a common and regular occurrence in this industry.

No potential competition law concerns due to coordinated effects

8 There is no plausible evidential foundation from which to draw the inference that the Transaction will substantially lessen competition in any relevant market as a result of coordinated effects – in particular:

8.1 **The relevant markets are not vulnerable to coordination:** It is incorrect to characterise the relevant markets as concentrated, given the presence of numerous other constraints, the strength of which would undermine any hypothetical ability to coordinate. Further, due to the nature of the tender process, market participants have little visibility of the pricing and strategies of competitors, and compete predominantly on the basis of their service offerings, which is materially more difficult to benchmark than pricing. This is confirmed by feedback received by the Commission that clients are motivated to switch brokers in response to a drop in the quality of service being provided.

8.2 **The Transaction will not make coordination more likely:** The Transaction will not have any material bearing on the fundamental characteristics of how these markets operate that make coordination difficult to sustain.

9 The remainder of this response follows the structure of the SOI.

PART 1: THE RELEVANT MARKETS

(a) Commercial non-life insurance distribution

(i) The relevant market should not be segmented based on customer size and/or mandate complexity

10 The Parties disagree with the Commission's preliminary view that "relevant markets may be further segmented based on customer size and/or complexity" and in particular that there is a separate market for "large and/or complex commercial insurance customers".[13] In any event, however the Commission defines the market, all clients will continue to have multiple different brokers who are capable of fulfilling their requirements.

11 The Commission does not attempt to articulate what constitutes a "large and/or complex commercial insurance customer". This may be reflective of the evidence that shows there is no clear, or meaningful, distinction between "large and/or complex commercial insurance customers" and other customers. Further, any definition of a "large customer" in a global context would be vastly different from what might constitute a "large customer" in a New Zealand context (most New Zealand companies would not be considered "large customers" in the EU or United States). For example, if the term "large customer" was interpreted as clients who are on the Fortune Global 500 2020 list,[14] there are no New Zealand clients on this list.

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[13] SOI, paragraph 23.

[14] A metric that has previously been used by the European Commission in its jurisprudence for other markets.

12 Neither demand nor supply side considerations support such a market definition. Irrespective of market definition, in the Parties' view, no competition concerns arise in relation to "large customers" or those with "complex insurance requirements" as further explained in Part 4(a) below.

(1) Demand side considerations

13 The Commission indicates that large corporate clients and those with more complex insurance requirements have suggested they require a broker with global scope as well as a strong New Zealand presence.[15] According to the SOI, this is because of the need to access offshore insurance markets and international expertise.

14 The Parties consider the needs of relatively large clients are not sufficiently distinct from those of other clients to justify defining a separate market and, regardless of client size, the same competitors can and do compete to fulfil those needs.

15 On the demand side, the client requirements cited in the SOI are not distinct, or universal, to large clients or "complex" mandates (i.e. there are no distinct groupings of clients). The same client may choose from a range of more or less complex solutions at a given time, depending on their priorities for that risk. Commercial non-life insurance broking is not a homogenous product; it is always a bespoke service.

16 The Parties are not able to identify a distinct set of clients "seeking to cover a particularly wide portfolio of risks, seeking to insure high-value assets or infrastructure, seeking to place risk with multiple insurers and/or into offshore insurance markets, or having a non-traditional insurance arrangement".[16] Clients of all sizes procure commercial risk broking services according to the profile of the risk in question. As explained by Crombie Lockwood's Chief Broking Officer, Mark Jones, "there's no difference in how a large corporate business, or a SME should approach their insurance needs".[17]

17 Given the small size of the insurance industry in New Zealand, merely having to place a risk offshore (due to the size of the mandate or the nature of the risk) is not a basis on which to distinguish a category of clients. [

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18 To the extent New Zealand clients are part of global organisations, their commercial non-life insurance needs are often predominantly dealt with offshore without the involvement of New Zealand brokers. This is also the case for some purely domestic clients. For example:

18.1 [

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[15] SOI, paragraphs 23-25.

[16] SOI, paragraph 24.

[17] See: https://www.crombielockwood.co.nz/news/senior-leaders-profile-mark-jones/ (accessed 20 January 2021).

18.2 [
]; and

18.3 [
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This suggests, and it is the case, that all clients in New Zealand would have a number of options available to them.

19 Nevertheless, to the extent the Commission's concern incorporates multinational clients seeking to insure risks from New Zealand:

19.1 it is worth noting that such clients may choose: (a) "global" risk coverage across all regions in which it has exposure in a single insurance policy; (b) a mix of local insurance policies in each jurisdiction in which it has exposure which, in the aggregate, provide multi-country risk coverage; or (c) a combination of "global" and local policies depending on the nature of the risks involved and how the client wishes to manage them,

19.2 a single "global" insurance policy ((a) above) is typically issued in the client's home country, meaning it can be placed by a broker with only limited – if any – need for interaction with "owned" or "third party" broking networks located outside the relevant jurisdiction. In contrast, a mix of local insurance policies ((b) and (c) above) necessarily involves more central coordination, as the involvement of some form of local broker or insurer will be required. For the purposes of this submission, such policies are referred to as "multi-country programmes",

19.3 globally, the Parties have only a very limited number of clients which operate multi-country programmes for the placement of their commercial risk needs: Aon estimates that approximately only [ ]% of its clients globally require a multi-country programme;[18] while WTW estimates that only around [ ]% of its clients globally require a multi-country programme.[19] A "large client" with a multi-country programme is typically looking for a combination of local policies across various jurisdictions, which may in some circumstances be supplemented by a single insurance policy issued in its home country,[20]

19.4 globally, most large multinational companies do take a decentralised approach to risk management, by jurisdiction and risk line, and thus procure insurance using a combination of multiple broking firms (in addition to insurance carriers, i.e. the direct channel). For example, [

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18 This estimate is based on the following assumptions. [
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19 This figure is a proxy from the number of clients that broker in more than one country. WTW estimated this figure as follows. [
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20 AIG, *How to Build a Multinational Program*, page 3 (available at: https://www.aig.com/content/dam/aig/america-canada/us/documents/brochure/aig-how-to-build-mn-prog-12-21-12-brochure.pdf).

] are large businesses and globally significant Aon accounts. Each of them has similar risk management needs, but not all of their needs are serviced by Aon. If their size meant needing a broking firm with a global footprint and capabilities across all risk lines—i.e., a one-stop shop—then Aon would service them all globally and across many risk lines. But that is not Aon's experience. While Aon services [

]. Therefore, the risk management requirements of [ ] in most jurisdictions are serviced by other brokers (or directly by insurance carriers),

19.5 this fragmentation is equally applicable in relation to "large companies" that hire Aon across multiple countries. Even those companies that do use Aon across many countries, do not necessarily use Aon for all required risk lines. For example:

(a) whilst [ ], as [ ] also acquires services of other brokers and directly contracts with insurers with respect to other risk lines; and

(b) similarly, whilst [ ],

19.6 in short, "large" global customers pursue different approaches to risk management. Few use a centralised approach—most are decentralised to some degree and even fewer pursue a centralised approach through their New Zealand business.

20 As such, clients cannot be divided into any distinct meaningful groups on the basis of their size, much less be subject to price discrimination on this basis. Client size itself is not a proxy for client requirements which may be spread over geographies.

21 Finally, it should be noted that even the largest client in New Zealand is still small by global standards. As noted above, if the Commission was to refer to the Fortune Global 500 2020 list as a proxy for what would be considered "larger", there are no New Zealand clients on that list.

(2) Supply side considerations

22 From a supply side perspective, there cannot be a distinct market for large corporate clients and those with more complex insurance requirements unless only certain providers are able to service such clients. However, this is not the case, and the Parties note that they primarily organise their broking activities by risk type and business sector rather than by client size. The requirements of servicing larger clients, or those with more complex insurance needs, are not materially different to those encountered in servicing other clients for the following reasons:

22.1 The broking skills required to broker a combination of policies are fundamentally the same as the skills required to broker a single policy. Any broking firms hiring the right talent will be able to service clients in varying sizes.

22.2 The risk classes which clients seek to insure do not depend on client size.

22.3 In relation to specialist or "niche" risk classes, brokers compete effectively using a variety of business models – see further below from paragraph 26.

22.4 Many clients – and not just the largest – may require an element of cross-risk coordination from time to time, and brokers of all sizes are well-adapted to providing this through their global networks. Global networks provide access to facilities/global connections as a benefit of membership.

22.5 The Parties do not consider that the requirements of clients with multi-country programmes are materially different to those encountered in servicing other clients for similar reasons, specifically:

(a) for multi-country programmes, the main difference is the number of jurisdictions that may be involved. Brokers of varying sizes are capable of servicing clients with multinational presence – including those with multi-country programmes – through a combination of a broker's own offices/proprietary network, correspondent networks, third-party broker networks and strategic partnerships; in other words, Gallagher/Crombie Lockwood, as well as (at minimum) the Steadfast Network and NZbrokers, would be capable in this respect,

(b) the risk classes which clients with a multi-country programme seek to insure are no different from those sought by other clients: they are merely written across multiple countries in more than one policy, and

(c) as above, many clients – and not just the largest – may require an element of cross-border and/or cross-risk coordination. The coordination role which is a function of managing a multi-country programme does not require complex or rare skills, significant infrastructure or a multi-national footprint. Brokers can monitor and manage multi-country programmes with relative ease deploying either their own or third-party technical support where necessary. Examples of such third-party support include:

(i) AIG's multinational client portal aggregates multi-country programme information for both brokers and their multinational clients.[21]

(ii) Globex offers its partner brokers use of its Global 360 platform to compile and manage the various components of a multi-country programme.[22]

(iii) Zurich's International Program system provides a comprehensive programme overview for brokers and their clients.[23]

23 Moreover, the evidence shows that there are several competitors that can, and do, service large clients and/or complex mandates besides the Parties and Marsh. For example:

23.1 Gallagher/Crombie Lockwood is capable of meeting all clients' needs, including larger clients and those with complex requirements, in the same

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21 See: https://www.aig.com/multinational-playbook/anchored-by-world-class-service/my-aig-multinational-portal.

22 See: https://globexintl.com/brokers/globex-360/.

23 See: https://www.zurichna.com/-/media/project/zwp/zna/docs/kh/intl/zurich-international-insurance-fs.pdf?la=en&hash=0E63C082B3A9D70CADC690C1CD738B06.

manner as the Parties and Marsh (as explained in more detail in Part 4(a)(i) below). Gallagher/Crombie Lockwood describes itself as having "an established platform backed by both the scale and credibility that the Gallagher group brings with it; this means we have the ability to provide our clients with comprehensive support and advice".[24] Gallagher/Crombie Lockwood serves, or has served, clients such as [ ]. [ ]. [ ].

23.2 Steadfast Network brokers advertise their ability to service larger clients and complex mandates, with their website noting the "superior market access, exclusive products and services backed by the strength and scale of Steadfast Group".[25] [ ]. Rothbury, part of the Steadfast Group, already has capability to service larger and more complex mandates, [ ].

23.3 NZbrokers provide broking for international clients and have global insurance placement programmes,[26] and [ ]. For example, Wallace McLean, a member of NZbrokers and the UNIBA Partners global network,[27] offers a wide range of risk management and insurance broking services and solutions to all types of industries focusing mainly on corporate business in New Zealand and overseas.[28] [ ].

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24 See: https://www.crombielockwood.co.nz/news/senior-leaders-profile-mark-jones (accessed 19 January 2021).

25 See: https://www.steadfastnz.nz/about-us (accessed 12 January 2021).

26 See: https://www.nzbrokers.co.nz/site/our-services/for-members (accessed 12 January 2021).

27 See: https://www.wallacemclean.co.nz/about/global-partners/ (accessed 23 January 2021).

28 See: https://www.wallacemclean.co.nz/about/about-us/ (accessed 20 January 2021).

23.4 Donaldson Brown are members of AUB Group/Insurance Advisernet and advertises that with "over AUD $4.5b in client premiums across New Zealand and Australia we have the leverage to get the best deals done and claims paid fast".[29] [ ].

24 Furthermore, brokers of varying sizes, including smaller brokers, employ highly experienced individuals with the expertise and client relationship skills necessary to service large, and any other, clients. Commercial non-life insurance distribution is a "people" business where talent is a key competition driver, and the reputation of any particular firm is no more than the accumulated experience of its team members, hence talent movement between firms is a critical feature of the industry. When individual brokers move between firms, as they regularly do,[30] they bring with them their expertise and experience, as well as the client resources and relationships, meaning that no firm can be said to lack the capability to service those clients. For example, [ ]. This is evidence that capability to do large or complex work can be obtained relatively easily.

25 Brokers such as McGill have successfully entered commercial non-life insurance broking at a global level by focusing on winning major worldwide clients to establish their businesses.[31] McGill's clients already include [ ], [ ], [ ], [ ].

(ii) The relevant market should not be segmented for specialist industries and/or risk types

26 The Parties agree that segmenting the market based on client industry or risk type is unlikely to assist in isolating the competition issues that may result from the Transaction,[32] and note that market feedback is consistent with this point.[33] The key reasons are:

26.1 most brokers offer services across all key industries and risk lines, including at least NZbrokers in addition to Marsh and Gallagher/Crombie Lockwood; and

26.2 where brokers are not experienced in a risk line, they can easily acquire talent to meet demand, without any prohibitive barriers. This primarily involves the poaching of individual brokers from other firms – see above at paragraph 24 in relation to [ ].

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29 See: https://donaldsonbrown.co.nz/about-us/ (accessed 21 January 2021).

30 Refer to paragraphs [ ] and [ ] of the clearance application.

31 See paragraph 151 of the clearance application.

32 SOI, paragraph 29.

33 SOI, paragraphs 28–30.

(b) Non-life reinsurance distribution

(i) Relevant market includes direct placement of non-life reinsurance

(1) The relevant market for non-life reinsurance distribution includes direct placements

27 In the SOI, the Commission indicates that it continues "to investigate whether it would be appropriate to narrow the relevant market to include brokered sales of reinsurance only".[34] The market for non-life reinsurance distribution should rightfully include direct placement of reinsurance:

27.1 There are no relevant features of the New Zealand regulatory or competitive environment that differentiate it from those jurisdictions in which reinsurance is most commonly placed directly (such as the EEA).

27.2 Cedents have a number of alternative risk management options and do not require a broker in order to take them up. Decision-makers on both sides of brokered reinsurance transactions are highly sophisticated. Cedents routinely optimise their capital cost structure when deciding whether to cede or retain risk. For cedents seeking to transfer their risk, the brokered reinsurance channel is not the only option. Cedents can avoid brokerage fees by contracting directly with reinsurers, which are keen to oblige and invest heavily in growing their direct business. Direct reinsurance placement represents an important competitive constraint on reinsurance brokers.

27.3 In that context, reinsurance brokers, such as the Parties, always have to strive for relevance or they will face disintermediation. Competing as a reinsurance broker requires presenting leading talent to a client, offering tailored solutions, and most significantly justifying one's fee or commission based on demonstrable added value compared to a direct reinsurance placement.

28 Further, the relevant question is not whether cedents can place their entire reinsurance programme directly with reinsurers. Instead, the Commission should focus on whether cedents can directly place reinsurance at the margin in order to constrain the Parties' pricing and quality. A cedent does not have to transfer all of its reinsurance needs via direct placements to discipline a broker; even moving a portion of risk from the brokered to the direct channel will constrain the broker.

29 To be included in the relevant market, the key question of supply side substitutability is whether reinsurers have the ability to offer reinsurance directly in response to a small but significant non-transitory increase in price or reduction in service quality. In this regard, Aon notes that the comments the Commission has received from cedents are made in the context of vigorous and effective competition from brokers.[35] If the services provided by brokers are degraded, cedents and reinsurance suppliers have the ability, and would be incentivised, to bypass brokers.

[34] SOI, paragraph 35.

[35] SOI, paragraph 32.

30 Examples of cedents engaging with reinsurers directly on reinsurance placements are included below:[36]

30.1 [ ],

30.2 [ ],

30.3 [ ], and

30.4 as indicated in the clearance application [ ].[37]

31 There is every prospect of direct business expanding. Reinsurers compete fiercely for direct reinsurance placements and therefore discipline the Parties. Reinsurers advertise their direct capabilities and focus on the direct, rather than the brokered, channel. For example:

31.1 Aon understands that on a global basis [ ].

31.2 **Munich Re**: "As a reinsurer, <u>Munich Re writes business in direct collaboration with primary insurers</u>, but also via brokers and increasingly within the framework of exclusive strategic partnerships. Munich Re offers clients handling industrial and major-project business a wide range of specialised products and customised insurance solutions and services".[38] Munich Re formerly had an office in New Zealand and, in Aon's view, [ ].

31.3 **Swiss Re**: "What sets us apart is our financial strength, unrivalled knowledge and expertise, quality underwriting and, most importantly, our partnership approach with clients. <u>They regard us as more than a simple capacity provider. We collaborate with our clients to understand their needs</u>, and subsequently develop solutions that capitalise on the quality of our expertise".[39] Swiss Re adds that "<u>Dealing direct and working through brokers</u>, our global client base consists of insurance companies, mid-to-large-sized corporations and public sector clients. From standard products to tailor-made

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[36] Insurers' total ceded premiums, including their cessions through the direct channel, are not transparent. While brokers (as part of a request for proposal (RFP) or before contract renewals) model treaty reinsurance placements based on clients expected volume placements, such placements typically occur months after the strategy is designed, so brokers are not aware (or are not fully aware) of the total amount of risk ceded by clients, or of the amount ceded directly.

[37] See paragraph 205 of the clearance application.

[38] See: https://www.munichre.com/en/company/about-munich-re/organisation.html#-1485676066 (accessed 17 January 2021).

[39] See: https://www.swissre.com/our-business/reinsurance.html (accessed 15 January 2021).

coverage across all lines of business, we deploy our capital strength, expertise and innovation power to enable the risk-taking upon which enterprise and progress in society depend".[40] [

].

31.4 **Gen Re:** owned by Berkshire Hathaway, as a matter of policy Gen Re prefers not to use the brokerage channel at all.[41] Gen Re states on its website that "as a direct reinsurer, we are in the risk assumption business, just like our clients. Our shared perspective helps us understand and evaluate even the toughest risks". Gen Re highlights its reinsurance expertise, stating that cedents can rely on Gen Re's "advice, services and proprietary tools to guide [their] risk management decisions".[42] In non-life reinsurance, Gen Re advertises its offer for direct reinsurance across a wide variety of risks.[43] Gen Re has an office in New Zealand and [
].[44]

(2) Reinsurers would have every incentive to transact with cedents directly

32 In many cases, reinsurers seek to maximise their profits by disintermediating brokers and engaging directly with cedents. Even when cedents choose to cede their risk predominantly through the Parties, they have relationships with other broking and reinsurance firms to which they can readily switch significant portions of their business. This ability to switch easily acts as a strong competitive constraint on the Parties, and would prevent them from increasing prices or decreasing the quality of their services post-Transaction. As such, brokers such as the Parties are only used to the extent that they provide a service that adds demonstrable value to the reinsurance transaction.

33 There is little evidence to justify the concern that global reinsurers would prefer not to transact directly with cedents and in many cases would refuse to do so.[45] As above at paragraph 31, there are public statements by reinsurers emphasising the primary importance of direct placements to their business models.[46] If a reinsurer emphasises its relationships or preference to work with particular brokers, this may reflect the added value that brokers have been forced to provide to remain part of the value chain. If brokers did not add value, then the reinsurer would make placements directly, in particular where the removal of an intermediary might enable a reinsurer to earn more revenue than transacting through a broker. All reinsurers

[40] See: https://www.swissre.com/about-us/facts-and-figures.html (accessed 15 January 2021).

[41] Berkshire Hathaway Inc., 2016 Form 10-k, pages 3-4.

[42] See: https://www.genre.com/ (accessed 15 January 2021).

[43] See: https://www.genre.com/reinsurance-solutions/property-casualty/property-engineering-marine/?c=n (accessed 15 January 2021).

[44] See: https://www.genre.com/contactus/222246261.html (accessed 15 January 2021); and is represented in more than 40 offices worldwide: https://www.genre.com/aboutus/meet-genre (accessed 15 January 2021).

[45] SOI, paragraph 32.1.

[46] Further examples include SCOR: "The direct reinsurance market remains an important distribution channel for reinsurance business written by the Group. Direct placement of reinsurance enables SCOR to access clients who prefer to place their reinsurance partly or in totality directly with reinsurers based upon the reinsurer's in-depth understanding of the ceding company's needs" (see: https://www.scor.com/en/financial-information at page 21); and Hannover Re: "[a]s reinsurers, we write our business in direct collaboration with primary insurers, but also via brokers and within the framework of strategic partnership" (see: http://annual-report.hannover-re.com/reports/hannoverre/annual/2019/gb/English/9070/download-centre.html# at page 32).

are capable of providing reinsurance distribution services directly and this can improve their profitability. For example, to demonstrate the financial stability of Swiss Re and Munich Re, AM Best's Credit Reports for each reinsurer notes that it has "a relatively low dependency on brokers and can work directly with cedants".[47]

(3) Transacting directly with reinsurers is readily possible, including for treaty programmes

34 In relation to the concern that broker expertise is required to negotiate treaty reinsurance programmes,[48] generally major reinsurers can publicly advertise their resources, expertise and customised solutions for assisting clients to make direct treaty placements (see paragraph 31 above). Reinsurers are not dependent on brokers for distribution and already have the distribution capabilities to increase their proportion of direct business.

35 For example, IAG engaged directly with reinsurers in two separate transactions to provide quota share treaty reinsurance with four reinsurers (in two transactions both of which are amongst the largest reinsurance transactions in the Australian market):

35.1 with Berkshire Hathaway for a 10-year 20% quota share treaty reinsurance agreement across IAG's consolidated insurance business;[49] and

35.2 with Munich Re, Swiss Re and Hannover Re (i.e. a consortium of reinsurers) for a 5-year 12.5% quota share treaty reinsurance agreement across IAG's consolidated insurance business.[50]

36 Reinsurers are sophisticated market participants that have equivalent or better technological capabilities compared to reinsurance brokers.[51] Indeed, the fact that reinsurers compete with brokers on their capabilities and expertise is evidenced by reinsurers hiring from (and poaching) the same pool of talent as reinsurance brokers. To provide the Commission with only the most recent and relevant evidence, the Parties refer to the following examples of moves between reinsurers and brokers from the last two months in Table 1 below.

Table 1: Recent moves between reinsurers and brokers (November – December 2020)

Individual brokers	Previous employer	Previous position	New employer	New position	Date of press report reporting the move
Elizabeth Adams	Guy Carpenter	Senior Reinsurance Broker	CCR Re	Head of Underwriting Treaties for France	14 December 2020[52]

47 Best's Credit Report of 11 July 2019 (regarding Munich Re), at 7; Best's Credit Report of 20 December 2019 (regarding Swiss Re), at 7.

48 SOI, paragraph 32.2.

49 See: https://www.iag.com.au/iag-forms-strategic-relationship-berkshire-hathaway.

50 See: https://www.iag.com.au/iag-improves-capital-efficiency-and-reduces-earnings-volatility-quota-share-agreements.

51 See paragraph 31 above and 39.3 below.

52 See: https://www.theinsurer.com/news/ccr-re-hires-guy-carps-adams-to-head-up-french-treaty-underwriting/13031.article; and https://blog.ccr-re.com/en/elizabeth-adams-joins-ccr-re-as-head-of-underwriting-treaties-france.

Individual brokers	Previous employer	Previous position	New employer	New position	Date of press report reporting the move
Ogadi Onwuaduegbo	Marsh	Head of Risk, Actuarial and Life, CIMA region	Continental Reinsurance	Regional director, West Africa	10 December 2020[53]
Dimitris Papachristou	Aon[54]	Actuary	Qatar Re	CEO, Gibraltar	3 December 2020[55]
Tom Macfarlane	Marsh[56]	Managing Director	Berkshire Hathaway	Head of Downstream Energy Property Business, Europe	1 December 2020[57]
David Bangs	WTW	Executive Director	AXIS Re	Head of Japan	1 December 2020[58]
Matthias Meyenhofer	Aon[59]	CEO, Bermuda	Swiss Re	Head of Large P&C Transactions Continental Europe	6 November 2020[60]

37 As the above examples demonstrate, talent moves not just among reinsurance brokers, but also among brokers and reinsurers globally.

38 There is no particular reason why dealing with multiple reinsurers would make a direct reinsurance placement materially more difficult for cedents.[61] Based on Aon's view of the market some cedents have also invested in their in-house teams to bolster their ability to go direct – for example, [ ] as noted above at paragraph 30.4. Cedents are, by their nature, sophisticated businesses with a high level of understanding of risk and commercial markets associated with them. Cedents can replace expertise they previously outsourced; cedents would be in a position to respond to any small but significant non-transitory increase in price or reduction in service quality by doing so.

(4) An equivalent offering can be obtained directly as by using a broker

39 The Parties note the Commission's concern that cedents rely on brokers for other services in addition to placement of risk, and that this suggests that the reinsurance broking product market could be wider than simple risk placement, and therefore

53 See: https://www.reinsurancene.ws/continental-re-adds-ogadi-onwuaduegbo-as-regional-director/.

54 Dimitris Papachristou most recent position was Chief Actuary (Research) at the Prudential Regulation Authority for the Bank of England.

55 See: https://www.reinsurancene.ws/papachristou-takes-gibraltar-ceo-role-at-qatar-re/.

56 Tom Macfarlane's most recent position was Energy Property leader at AIG. He has over 40 years of insurance experience including in both underwriting and broking roles.

57 See: https://www.reinsurancene.ws/tom-macfarlane-to-lead-berkshires-bhsi-europe-expansion/.

58 See: https://www.reinsurancene.ws/axis-re-hires-david-bangs-as-head-of-japan/.

59 Prior to this, he served as Managing Director, Head of Global Partners at Guy Carpenter, and earlier in his career spent time at both Chubb and AXIS Capital.

60 See: https://www.reinsurancene.ws/swiss-re-adds-matthias-meyenhofer-to-reinsurance-emea/.

61 SOI, paragraph 32.

not comparable with the market for direct placement of reinsurance.[62] However, this concern is not material for the following reasons:

39.1 First, it is not necessary to switch an entire reinsurance programme to the direct channel for brokers to be competitively constrained by reinsurers. Instead, marginal substitution to direct placements is sufficient to exert competitive pressure over reinsurance brokers and prevent broker services being degraded. If brokers degraded their offer, enough cedents can switch enough of their programme to reinsurance such that it would not be profitable for brokers to degrade their services. In the global market, even if there was a service that brokers could provide and reinsurers could not (and the Parties do not consider there to be any such service), brokers would not worsen their offering because they would risk losing business to reinsurers, thereby rendering any degradation unprofitable.

39.2 Second, it is important to distinguish the added value that brokers must currently provide to win business, from the expertise that is "required" from brokers for a reinsurance placement. That is, one of the parameters on which brokers compete with reinsurers is their risk expertise (see the examples listed at paragraph 31 above).

39.3 Reinsurers are sophisticated market participants that have equivalent technological capabilities to reinsurance brokers. Indeed, reinsurers constantly develop their own solutions to better quantify risk for clients and have access to the same third party solutions as brokers (see Part 6(b) below). IT tools, models and insurance data are widely available to brokers and reinsurers alike through third parties. For instance, Swiss Re promotes its expertise in developing new insurance technologies:[63]

> …at Swiss Re, we have a vision for advancing the insurance industry through technology […] We're already using digital technologies to deliver international programmes. As we've seen, time-consuming workarounds can make it cumbersome to administer programmes on an international scale and across jurisdictions […] We want to make this process simpler and more agile. And we need to better understand the risks we are insuring. As investment returns diminish globally, improving underwriting profitability across the industry will be ever more important […] Swiss Re's new solution – the International Programme Administration platform (IPA) – combines technology with risk insights in an attempt to address customer needs and reduce inefficiencies.

39.4 If, at any time, cedents were to consider that the price or quality of broker services fell below their expectations, brokers would be disintermediated and any risk expertise that the cedent did not hold, and did not wish to purchase or develop, could be obtained from the reinsurer. The example of IAG placing treaty reinsurance directly (see paragraph 35) demonstrates that cedents can and do find value by placing their reinsurance directly with reinsurers.

(5) All cedents have the ability to transact directly with reinsurers

40 The nature of the Commission's evidence that the ability to transact directly may be limited to very large-multinational insurance companies is not clear.[64] While some

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[62] SOI, paragraph 33.

[63] See: https://www.reinsurancene.ws/swiss-res-kleiterp-urges-re-insurers-to-share-tech-insights/.

[64] SOI, paragraph 34.

cedents are smaller than others, all are, by their nature, sophisticated businesses with a high level of understanding of risk and the commercial markets associated with them (i.e. their business itself involves assessing and transferring risk). In that context, there is no basis to treat a cedent differently if it is relatively smaller or more locally focused: all cedents are themselves insurers.[65]

41 Moreover, as noted above at paragraph 39.1, a cedent does not have to transfer all of its reinsurance needs via a direct placement in order to discipline a broker; even moving a portion of the risk from the brokered to the direct channel will constrain the broker.

42 For the reasons provided above in this Part 1(b), and in the clearance application, the market should rightfully also include direct placements of reinsurance. However, irrespective of the ultimate market definition adopted, the Commission must give weight to the competitive constraint that the potential for direct placements has on reinsurance brokers.

(c) Group health and welfare benefits distribution and associated services

(i) Separate markets do not exist for some classes of benefits

43 The SOI claims that there may be separate markets for group health benefits and group life and disability benefits.[66] The Parties submit a proper consideration of the available evidence from both a (1) demand side and (2) supply side perspective does not support such a finding.

(1) Demand side considerations

44 On the demand side, employers consider group health and welfare benefits as a single product set. The factors on which they base their choice of benefits for their employees include *inter alia* budget requirements, the needs of employees, and, where it is a global company, any group benefit schemes used overseas. The preference for certain benefits, or combination of benefits, varies by client and clients can change their schemes over time. Clients do not select group health insurance separately from other group benefits – the possible benefits are each considered in developing an overall scheme, depending on the employers' mandate.

45 For example, in Aon's experience, many employers use budget as a starting point. Employers will then investigate what benefits they could offer employees within that budget. This means that, even if they ultimately choose to offer only health insurance at one particular point in time, employers are likely to have considered a range of benefit offerings, and methods of obtaining those benefits. In other cases, employers will have a view that their employees would value a particular type of benefit most highly, e.g. life insurance, and will start by investigating that benefit, and then add other benefits if budget and other considerations allow for them.

46 [

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47 Therefore, clients will consider group benefits together regardless of whether there is a specialist insurer offering one type of benefit.

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65 While some cedents may choose to use a broker, there are no constraints on their ability to hire staff to engage directly with reinsurers, and could even, if they chose to do so, hire staff with experience at a broking firm.

66 SOI, paragraph 37.

48 While some employers may ultimately choose a group health insurance scheme without any additional benefits, [ ]

48.1 [ ]

48.2 [ ]

48.3 [ ].

49 [ ].

(2) Supply side considerations

50 Distributors tend to offer group health and welfare benefits distribution and associated services as a package, with all relevant services often bought together. This remains the case even though there may be some differences in the components of group health and welfare benefits services certain distributors provide (including the existence of a strong specialist player in one area).

51 Group health and welfare benefits providers can and do provide the full range of health and welfare benefits, which encompasses life insurance, health insurance, income protection insurance and cover for other disabilities, sickness and trauma. In fact, most competitors can and do offer consulting and broking services for the above mentioned range of benefits. That is not to say that the industry does not have specialists: the existence of competitors which focus on certain benefits may exist but such an offering is based on the commercial rationale of those competitors, and is not based on any material difference in the benefits offered. Moreover, that is not to say that a specialist which focuses on one type of group health and welfare benefits cannot expand its business to provide consulting and brokerage for other types of group health and welfare benefits. In essence, the nature of the services does not change substantially across different types of clients or benefits, and all existing competitors are able to supply all group health and welfare benefits services to clients in New Zealand.[67]

52 More importantly, the Parties themselves do not distinguish their group health and other group benefit services – the same services are offered to all clients.[68] To the best of the Parties' knowledge, their competitors do not distinguish group health and other group benefits services.

53 Accordingly, the Parties submit that a single market for group health and welfare benefits distribution and associated services is appropriate.

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67 See the clearance application at [119]–[120].

68 For example, see: https://www.aon.co.nz/Business-Insurance/Corporate-Business/Employee-Benefits (accessed 15 January 2021).

PART 2: GEOGRAPHIC SCOPE

54 The Commission preliminarily considers that the relevant markets are all likely to be national in scope.[69] Regardless of the ultimate geographic scope of the market, the Commission's analysis must give appropriate consideration to the actual competitive dynamics of the market and take into account all competitive constraints irrespective of whether they are imposed by local or overseas competitors.

55 The Parties consider that it is important to acknowledge that services are provided to New Zealand clients by offshore brokers, and that this is relevant to commercial non-life insurance distribution and non-life reinsurance distribution.

56 For commercial non-life insurance distribution:

56.1 [

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56.2 [

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57 In non-life reinsurance distribution, cedents seek out competitive terms regardless of where the reinsurer or broker is based. Cedents have the option of using any of the many brokers (or reinsurers) that operate globally.[70]

57.1 It cannot be overlooked that Aon is the only reinsurance broker which has decided to physically base reinsurance brokers in New Zealand.

57.2 All other reinsurance brokers operate from offshore insofar as they do not have a physical presence in order to serve New Zealand cedents. Based on WTW's understanding, the reasons why brokers can choose not to be present in New Zealand are: (1) reinsurance capacity within New Zealand which often requires contacting reinsurers offshore; and (2) licensing requirements which allow New Zealand cedents to be serviced from overseas. Offshore reinsurance brokers nonetheless compete for business from New Zealand cedents. For example:

(a) Marsh/Guy Carpenter is the largest reinsurer globally and is active in New Zealand without a physical presence.

(b) Lockton is similarly targeting New Zealand cedents without a physical presence in New Zealand as confirmed by recent statements from Richard Broad, CEO of Lockton International APAC Reinsurance: "The reinsurance landscape is rapidly evolving and provides Lockton with an

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69 SOI, paragraph 39.

70 Refer to paragraphs 190 to 200 of the clearance application.

excellent opportunity to establish a solid footprint in the Australian and New Zealand reinsurance markets”.[71]

(c) [

].[72]

57.3 Notwithstanding the fact that the Commerce Act 1986 defines a market as “a market in New Zealand”,[73] the Commission must still give proper weight to the commercial reality that reinsurance distribution markets are global by nature. Aon is the only broker with a physical presence in New Zealand but is nonetheless materially constrained by offshore brokers which regularly win business in New Zealand.

PART 3: WITH AND WITHOUT SCENARIOS

58 The Parties understand that the Commission is still considering the relevant counterfactual to assess the competitive effects of the Transaction.[74] The SOI provides no evidence to suggest why any counterfactual other than the status quo advanced by the Parties would satisfy the requisite threshold of being a “real and substantial possibility”.[75]

59 [

] the status quo is the only plausible counterfactual – in particular, absent the Transaction:

59.1 [

].

59.2 [

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60 The evidence that has been provided to the Commission does not support the adoption of any counterfactual other than the status quo.

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71 See: https://www.insurancebusinessmag.com/nz/news/breaking-news/lockton-taps-new-head-for-reinsurance-in-au-and-nz-229767.aspx.

72 [

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73 Commerce Act 1986, s 3(1A).

74 SOI, paragraph 43.

75 *Woolworths Ltd v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [122] and *Commerce Commission v Woolworths Ltd* [2008] NZCA 276 at [63].

PART 4: HORIZONTAL UNILATERAL EFFECTS

(a) Commercial non-life insurance distribution

61 The Commission indicates in the SOI that "there is likely to be a class of large and/or complex customers who are restricted to three broking firms: Aon, Marsh and WTW".[76]

62 Leaving aside the fact that the Commission has not articulated the scope of such a customer class (due to the lack of any clear or meaningful distinction between types of client), commercial non-life insurance distribution will remain highly competitive for the following reasons:

62.1 first, Gallagher/Crombie Lockwood will continue to provide an effective competitive constraint on the Combined Entity, including for larger/complex mandate clients. Given its size and global reach, there is no reason to treat Gallagher/Crombie Lockwood as any different from Marsh or the Parties in terms of its competitive characteristics;

62.2 second, Marsh will continue to exert a significant constraint on the Combined Entity, including in relation to larger/complex mandate clients;

62.3 third, the Parties will continue to be competitively constrained by other brokers individually and in the aggregate, including the Steadfast Network and AUB Group (including BrokerWeb Risk Services and NZbrokers), including with respect to larger/complex mandate clients;

62.4 fourth, the threat of entry and expansion will continue to constrain the Parties; and

62.5 fifth, clients have buyer power and, notably, larger clients and those with more complex insurance requirements are particularly sophisticated.

63 As the Commission notes, the quality of a broker's services and overall insurance costs are the most important features of competition among brokers. Accordingly, clients are not insensitive to a degradation in broker service standards and would exercise their ability to switch in the face of any such service degradation.

64 Because the cost of insurance constitutes a far greater proportion of the overall price than the cost of brokerage in a brokered insurance transaction, the cost of the insurance itself is even more important than the brokerage fee – a 2% increase of the price of the insurance would result in a higher overall insurance costs increase than a 2% increase of the brokerage fee. Hence securing the lowest insurance price possible is of critical importance for brokers to win or retain customers. This is acknowledged by the Commission when it suggests that clients are sensitive to overall insurance costs. [ ]. Therefore, and because clients are highly sensitive to overall insurance costs, if brokers failed to deliver services that result in cost-effective insurance, clients can and would switch.[77]

65 Brokers' prices and service standards are also reflected in the overall cost of insurance to which, as above, clients are clearly sensitive to. Brokers are

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[76] SOI, paragraph 46.

[77] SOI, paragraph 49.

responsible for securing the best possible insurance price for their clients. For example, in very simplistic terms, if two brokers are competing for the same client and Broker A manages to secure a 10% discount on the price of the insurance but charges 2% more on its brokerage fee than Broker B, then Broker A would have the most competitive offering despite its brokerage fee being higher than Broker B. Broker A would likely be chosen by the client because Broker A's higher quality service is reflected in the price that the client pays for its insurance coverage.

66 The Parties note also the feedback received by the Commission that "customers do not always have a clear understanding of how much they pay their broker".[78] Aon considers that this is likely an outworking of clients' priorities, as discussed above, rather than any lack of transparency of broker costs for clients. Broker remunerations by clients are clearly set out in and governed by their brokerage contracts with clients. Brokers usually enter into a standalone commission agreement with insurers, which provides, amongst others, the commission rate and addresses other matters related to the payment of the commission. This is a well-established industry practice and is also recognised by sector-specific regulations in New Zealand.[79] Furthermore, in Aon's experience, commercial clients (particularly those with more expansive commercial insurance needs) have a clear understanding of how much they pay their broker, including requesting a fixed fee arrangement.

67 Further, commercial clients are sophisticated customers that will have a dedicated procurement function, either as a separate operation or as part of the operations or finance teams of the business. To suggest that commercial clients are not price sensitive (which would not be a merger-specific concern) is unrealistic.

(i) Gallagher/Crombie Lockwood will continue to provide an effective competitive constraint on the Combined Entity

68 Crombie Lockwood, as part of Gallagher (the fourth largest global insurance broking, risk management and consulting firm with a market capitalisation of USD22.5B[80]) meets the broking needs of all, including large and/or complex mandate clients in the same way as Aon, Marsh and WTW.[81]

69 Gallagher/Crombie Lockwood and Marsh are both major global firms with a substantial global footprint and expertise. They both have a deep involvement in New Zealand and are vigorous and effective competitors in New Zealand commercial non-life insurance distribution tenders.

70 For example:

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78 SOI, paragraph 49.2.

79 The Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020 require Financial Advice Providers, which include insurance brokers, to disclose any fees, expenses or other amounts payable to them or others connected with giving advice. "Fees, expenses or other amounts payable" does not include any commission or other incentive payments, which must also be disclosed to the client. Note that these disclosure obligations relate to retail clients, as defined in the Financial Services Legislation Amendment Act 2019, clause 3 of Schedule 5.

80 See: https://www.macrotrends.net/stocks/charts/AJG/arthur-j-gallagher/market-cap (accessed 22 January 2021).

81 SOI, paragraphs 52-53.

70.1 [ ].[82]

70.2 [ ][83] [ ].[84]

71 The Parties note in particular that there is no reason to treat Gallagher/Crombie Lockwood as any different from themselves and Marsh in terms of its competitive characteristics. The evidence that Gallagher/Crombie Lockwood provide an effective constraint is unequivocal:

71.1 Gallagher acquired Crombie Lockwood in 2014.[85] Gallagher is a global insurance broker and risk adviser and a Fortune 500 company with operations across the globe, 22,000 insurance professionals[86] and broking offices in 49 countries.[87] Through its network of correspondent brokers and consultants, Gallagher delivers client-service capabilities in over 150 countries.[88] Gallagher's website states that it is "designed to consult global enterprises, across borders and across coverages".[89] Gallagher's website highlights its capability to serve any type of client: "whether you are a manufacturer with a global reach or a media giant with productions happening 24/7 or a car brand with operations that span continents and regions, we have the team, expertise and ability to provide customized risk management and global insurance programs that meet your needs now and in the future".[90]

71.2 Gallagher maintains the Gallagher Global Network, comprised of owned offices and partner brokers across 144 countries. Top tier partner brokers include Siaci, Meijers, Verspieren, Artai and Renomia in key jurisdictions. The Parties perceive Gallagher/Crombie Lockwood's access to offshore networks to be comparable to their own, and as can be seen in Figure 1 below, Gallagher's global reach is in fact comparable with that of the Parties:

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82 [ ].

83 [ ].

84 [ ].

85 See: https://www.crombielockwood.co.nz/about/our-company/our-history/.

86 See: https://www.crombielockwood.co.nz/about/our-company/gallagher/ (accessed 20 January 2021).

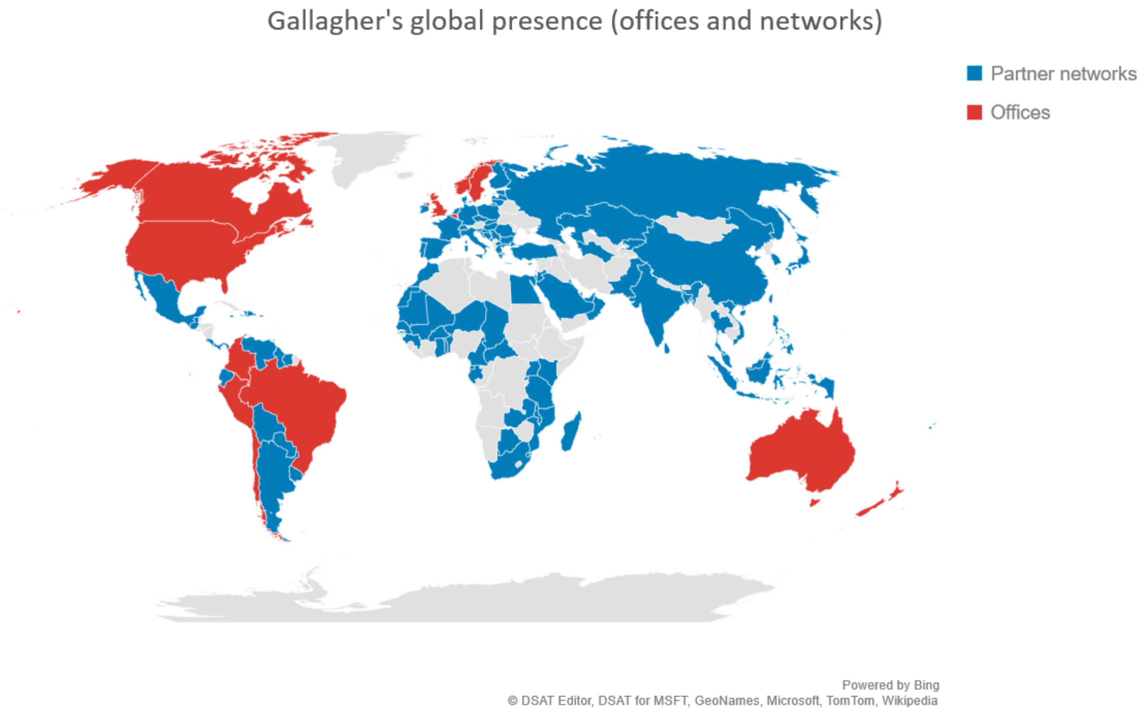
87 See: https://investor.ajg.com/company-profile (accessed 20 January 2021).

88 See: https://investor.ajg.com/company-profile.

89 See: https://www.ajg.com/us/insurance/global-risk-management/.

90 See: https://www.ajg.com/us/insurance/global-risk-management/.

Figure 1: Gallagher (Total network over 150 countries)



71.3 Gallagher was recognised by the European Commission as being a "long-established and globally recognised commercial non-life specialty insurance broker… [with] a proven track record in serving large customers with complex risks".[91]

71.4 Aon understand that Gallagher's global clients include [ ][92] [ ].

71.5 Aon has identified the following clients that it considers are likely to be serviced by Gallagher/Crombie Lockwood in New Zealand: [ ].[93]

71.6 [ ]

(a) [

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[91] Case No. COMP/M.9196, *Marsh & McLennan Companies/Jardine Lloyd Thompson Group,* Commission decision of 22 March 2019, at [19] and [26].

[92] [ ]

[93] [ ]

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(b) [

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(c) [

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71.7 WTW [

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(a) [

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(b) [

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71.8 All the evidence supports the conclusion that Gallagher/Crombie Lockwood has sufficient access to insurers and offshore insurance markets to serve all nature and complexity of insurance needs of New Zealand insureds (clients).

72 In respect of global reach, the Parties note that neither they nor any other broker has a direct presence in every country through a proprietary network. It follows that all brokers – including the Parties – must rely on partner networks and/or third party networks for their global reach.

73 In New Zealand, Gallagher/Crombie Lockwood has a significant local footprint with 27 offices[94] – meaning it clearly possesses local expertise, with top brokers servicing all commercial clients in New Zealand. To the contrary, WTW only has five offices in New Zealand, while Marsh has ten local offices.[95] Beyond New Zealand, Gallagher/Crombie Lockwood advertises its "international backing"[96] and that its brokers have "access to Gallagher expertise and their connections to global insurance markets".[97]

74 Gallagher/Crombie Lockwood is expanding in New Zealand, Australia and other parts of the world, and is continuing to bolster its presence in New Zealand as well as its already extensive global network.[98] For example, in 2018, Gallagher acquired

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94 See: https://www.crombielockwood.co.nz/about/our-company/ (accessed 12 January 2021).

95 See: https://www.marsh.com/nz/contact-us/office-locator.html (accessed 12 January 2021).

96 See: https://www.crombielockwood.co.nz/about/our-company/ (accessed 14 January 2021).

97 See: https://www.crombielockwood.co.nz/about/our-company/gallagher/ (accessed 14 January 2021).

98 See the completed deals listed at https://investor.ajg.com/press-releases (accessed 24 January 2021).

Boston Marks Insurance NZ in New Zealand, BMG Aviation in Australia and Boston Marks Insurance Brokers in the United Kingdom. In connection with the Boston Marks acquisition, Gallagher stated that "Boston Marks' highly specialised offerings significantly expand Gallagher's international brokerage capabilities in the aviation sector, particularly in the Australian and New Zealand markets".[99]

75 [ ]. It indicates that Marsh and Gallagher/Crombie Lockwood [ ]:

75.1 [ ]

(a) [ ]

(b) [ ]

(c) [ ]

75.2 [ ]

(a) [ ]

(b) [ ]

(c) [ ].

75.3 [ ][100]

[ ].

[ ]

99 See: https://www.crombielockwood.co.nz/news/bmg-aviation/.

100 [ ]

[ ]	**[ ]**	**[ ]**
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75.4 [

][101] [

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[ ]	[ ][102]	[ ][103]
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76 Notwithstanding that market shares can materially fluctuate in markets where business is tendered, the market share analysis unquestionably demonstrates that Gallagher/Crombie Lockwood is (and will continue to be) a material competitive constraint on the Parties. Based on a national market for commercial non-life insurance broking, Gallagher/Crombie Lockwood's 2019 share of supply by GWP

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101 [ ].

102 [ ].

103 [ ].

[ ], was [ ] that of Marsh (at [ ], and [ ] that of WTW's share (at [ ]).[104]

77 [ ]. As a further example, Gallagher/Crombie Lockwood's New Zealand revenue for the financial year ending 2019 (at NZD234.2million) was ten times that of WTW's (at NZD23.5 million).[105]

78 When placed in the context of this empirical evidence, it is unsurprising that Aon considers Gallagher/Crombie Lockwood to be a [ ].

(ii) The Parties will continue to be constrained by other brokers individually and in the aggregate

79 Contrary to feedback the Commission has received that "a large commercial insurance customer" is "concerned if only Aon and Marsh were left as viable contenders [in an RFP process]",[106] the Parties submit that there are a number of brokers who could meet the needs of all clients in New Zealand. This includes:[107]

79.1 large global brokers, including the Parties, Gallagher/Crombie Lockwood and Marsh;

79.2 members of the Australasian cluster groups AUB Group/Insurance Advisernet (of which NZbrokers, BrokerWeb Risk Services, and Runacres are subsidiaries, while Donaldson Brown is a member[108]) and the Steadfast Network (of which PSC Connect is a part and Rothbury a member), including local brokers. [ ]; and

79.3 independent New Zealand owned brokers such as PIC, which is a member of the Global Broker Network and the Asia Australia Alliance.[109]

80 In the Parties' experience, clients typically invite 3–4 brokers to tender for business. Therefore, following the Transaction, vigorous competition would remain in any

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104 [ ].

105 Aon has retrieved this information from the financial reports published on the Companies Register. See:

- Willis New Zealand Limited at: https://app.companiesoffice.govt.nz/companies/app/service/services/documents/DDFF0587E4CA8E2867C161A53E5300CC; and
- Crombie Lockwood at: https://app.companiesoffice.govt.nz/companies/app/service/services/documents/3C9189CB51A0400A24CACEB4F0CBB160.

106 SOI, paragraph 48.2.

107 As discussed in the clearance application at paragraphs 130 to 141.

108 See: https://donaldsonbrown.co.nz/about-us/ (accessed 21 January 2021).

109 "This [Global Broker Network] representation gives us access to 110 independent insurance brokers in 230 cities covering 140 countries". "The AAA brings together a network of likeminded Insurance Broking firms in the Asia Australasia region to create a resource that benefits our clients throughout the area. Should one of our clients start operating in the region or purchase a business in the region, we're able to arrange insurance for them through one of our partners. It's important to know that members of AAA are all independent and 100% owned in their respective country". See: https://www.pic.co.nz/about-us/ (accessed 22 January 2021).

scenario. Because selection is based on the quality of advice and service as much as cost, there is no inherent advantage in scale that will result in an invitation to a tender.

81 The fact that different brokers may be present in different tenders does not lessen the constraint that they place collectively on the Parties. As long as a tender participant is capable of serving the client that issued the RFP, it will compete with and therefore constrain the Parties. Thus, the constraint provided by other brokers can be understood by aggregating the presence of all competitors in the market.

82 As noted by Mel Gorham, chief executive of the Insurance Brokers Association of New Zealand: "the industry is incredibly dynamic" and "smaller operators will continue to thrive, most are part of larger networks, which offer support, size, and scale, to compete. The likes of NZbrokers, Steadfast, AUB Group/Insurance Advisernet, and PSC Connect provide backing to smaller businesses so they can compete with better-resourced larger brokers".[110]

83 Further, there is evidence of other brokers, beyond the Parties, Marsh and Gallagher/Crombie Lockwood, providing brokerage services to "larger" clients:

83.1 [ ].

83.2 [ ]

(a) [ ]

(b) [ ].

83.3 [ ].

83.4 [ ]

(a) [ ]

(b) [ ]

(c) [ ]

[110] CoverNote "Small Brokers Bullish About the Future" (December 2020) at 32.

(d) [ ]

(e) [ ]

(f) [ ].

84 Whether viewed individually or in the aggregate, these brokers exert a competitive constraint on the Parties and this is clearly demonstrated by their proven ability to win and service all clients in the market on a regular basis.

(iii) The active presence of Marsh would continue to constrain the Parties

85 Marsh is a global leader in commercial broking and will continue to constrain the Combined Entity following the Transaction. The Commission's client feedback regarding Marsh confirms this point: "all customers we have spoken with view Marsh as capable of meeting their needs".[111] This is also evidenced by the fact that Marsh is estimated to account for [ ]% of commercial risk distribution on a broker-only basis.

86 [ ]. The strong competitive constraint it plays is evidenced by [ ].

87 The competitive dynamics of the industry do not afford Marsh any realistic commercial alternative but to continue competing aggressively with the Combined Entity (and other competitors). Notwithstanding the strong constraint from other competitors, competition would remain vigorous when considering the constraint from Marsh alone:

87.1 First, as with any professional services providers, the client-facing individuals within broking firms are incentivised to compete for and win business. Based on Aon's experience, individual broker remuneration and bonus structure, as well as career prospects and reputation, may be linked to commercial success with clients and the commercial success of an organisation is likely to be reflected into individual brokers' remuneration.

87.2 Second, and in any event, Marsh remains incentivised to compete because of the following dynamics, which are discussed in more detail in the sections that follow:

(a) the market includes a broad range of competitors: not just the Combined Entity and Marsh. Any indication that Marsh was competing less aggressively post-Transaction would present an opportunity to the

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[111] SOI, paragraph 48.1.

Combined Entity as well as other brokers – including Gallagher/Crombie Lockwood and others, and direct business;

(b) the market is characterised by significant talent movement and/or expansion. As explained in Part 4(a)(iv) below, there are many examples of talent movement between firms, including "smaller" brokers, which are indicative of the constant threat posed to existing players like Marsh by new entry and/or expansion. Moreover, the Transaction will present an opportunity to firms that are looking to poach talent from the Parties and other brokers; and

(c) the presence of strong buyer power ensures that, upon any indication that Marsh was competing less aggressively post-Transaction, it would be punished. Clients have a variety of tactics at their disposal when it comes to negotiating with brokers, including, for example, switching brokers for all or a portion of their business with relative ease and limited expense; playing brokers off against each other; reducing purchases from a broker; placing risk via direct distribution; and seeking other brokers to participate in a tender. Such tactics mean that Marsh would have no commercial alternative but to continue competing aggressively post-Transaction.

(iv) There is a strong constraint from brokers based offshore

88 The Commission is concerned that the threat of new entry would not constrain the Combined Entity because an entrant would require scale, expertise, global reach, and New Zealand presence to compete effectively for large clients and/or complex mandates.[112] The Commission indicates that clients do not appear to consider acquiring broking services offshore as a feasible option.[113] This is not a valid response in the Parties' view since any competitor based offshore, especially in Australia, with the relevant scale, expertise and global reach does not need to "enter" New Zealand physically in order to compete for business.[114] It is simple for any New Zealand company seeking to procure commercial broking services to contact Australia-based brokers for such services (indeed, clients can and do go further afield, but the Parties have seen that Australia is a New Zealand client's easiest offshore option). See the examples provided above at paragraph 56.

89 Examples of such offshore brokers, particularly those with an existing Australian presence, include:

89.1 **Lockton**. Lockton has expanded aggressively in Australia ([ ]). Lockton states on its website that it "is the world's largest independent insurance brokerage", serving over 60,000 clients.[115] Lockton offers clients local partners that "can also draw on deep global resources to deliver the very best results".[116]

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112 SOI, paragraph 56.

113 SOI, paragraph 62.

114 In relation to "wholesale clients", as defined in the Financial Services Legislation Amendment Act 2019, clause 4 of Schedule 5.

115 See: https://global.lockton.com/ (accessed 17 January 2021).

116 See: https://global.lockton.com/our-story(accessed 17 January 2021.

Lockton maintains the Lockton Global network, comprised of owned offices and partner brokers across 150 countries, including ICIB in New Zealand.[117]

89.2 **Howden**. Howden is a broker with over 5,000 employees across more than 200 offices. In recent months, Howden has been pursuing a particularly aggressive global expansion strategy, "building a fast-expanding network of offices, expertise, products and services that, critically, now enable it to deliver the full offering that risk and insurance managers with complex multinational organisations need and want".[118] Howden maintains the Howden One network, comprised of owned offices and partner brokers across 150 countries.[119]

Howden has a local Australian team, with access to strong global capabilities. Howden announced on 14 January 2021 that it will expand in Australia through a strategic broking partnership with Steadfast.[120] Given the similarities between the New Zealand and Australian markets and ease of doing business in light of the proximity and familiarity of these markets, any broker expanding its Australian operations will consequently be able to better service the New Zealand market. It is reported that, under the strategic partnership: "Howden will support Steadfast's London Market broking requirements, while it is launching a new Australian broking operation that will join the Steadfast network".[121] This strategic partnership follows the news in December 2020 that Howden hired a large team of former Marsh senior brokers, including: chairman of Marsh Pacific (Andre Louw), Deputy Head of Finpro (Nick Chubb), the former Deputy Managing Director of Marsh's G&C business and Marsh's employee benefits leadership team: Matthew Bacon, George Ahern and Chris Sinclair.[122]

90 Further, talent movement between competing brokers in New Zealand, Australia and globally is a proven tactic to fuel entry and expansion. Clients expect brokers to have intimate knowledge of their business and risks, plus knowledge of the broader industry and their insurance carriers. Accordingly, winning and retaining business are tied closely to individual broker professionals. When they move, which they do frequently, business often moves with them. For example, as recognised above at paragraph 89.2, in December 2020 it was reported that Howden expanded to Australia through strategic hires from Marsh Australia.[123]

91 In New Zealand, in recent years numerous broker firms have been strategically acquiring individual talent in order to aid their expansion:

91.1 BrokerWeb Risk Services [

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[117] See: https://www.lockton.com/offices/icib/ and https://icib.co.nz/Home.

[118] See: https://www.insurancenews.com.au/breaking-news/howden-steadfast-enter-broking-partnership.

[119] As above.

[120] As above.

[121] As above.

[122] See: https://www.theinsurer.com/news/howden-swoops-for-marsh-australia-as-12-execs-resign-in-bold-pre-xmas-move/13208.article.

[123] See: https://www.theinsurer.com/news/howden-swoops-for-marsh-australia-as-12-execs-resign-in-bold-pre-xmas-move/13208.article.

91.2 Aon has noted

].[124]

91.3 [ ]

(a) [ ]

(b) [ ]

[ ].

92 Accordingly, even if overseas brokers believe that they require materially more local expertise, they could readily poach existing talent rather than invest in establishing a new workforce.

93 Given the pathway to entry outlined above, the Parties consider there to be no basis for concerns that "entry" could not occur within a sufficient timeframe to prevent a substantial lessening of competition. In effect, the Parties are already constrained by brokers based offshore.[125]

(v) Other competitive constraints are sufficient

(1) Exercise of countervailing power

94 As explained in further detail below, clients (1) are sophisticated and use the bidding process to exert competitive pressure on brokers; (2) have the ability to switch to alternative suppliers and can credibly threaten to do so given low switching costs; and (3) have the ability to impose co-broking arrangements by risk line and jurisdiction which provides significant bargaining power to large customers.

94.1 First, clients control when to launch a bidding process and can do so at a time and in a manner designed to exert maximum competitive pressure on brokers.

(a) Clients commonly put their business out to competitive tenders every one to three years and play brokers off against each other in the bidding process to obtain the most favourable terms for their insurance needs. The period between the tenders gives ample time to weigh different brokers against each other to determine which broker they will place their business with next (so there is a credible threat to clients switching within a reasonable period of time). Such regular tenders presents a credible threat on brokers to compete fiercely, maintain and improve service levels, and offer a better deal to win the next opportunity.

(b) The bidding process typically involves a closed auction in which all bidders simultaneously submit bids, so that no bidder knows the identity of other bidders, the price at which they bid, nor or any terms and conditions offered. This structure is designed to increase the

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124 [ ].

125 Contrary to the suggestion in the Anonymous Submission on the SOI (12 January 2021) which states that because of "the size of New Zealand it is unlikely that the market would expand beyond the current major broking houses". The Parties will have to maintain a quality offering, on attractive terms, in order to remain competitive post-Transaction.

competitiveness of the process. The bidding process includes different stages followed by detailed negotiations which gives the opportunity to play brokers off against each other and negotiate the best possible deal.

(c) Clients negotiate with brokers on a range of metrics relating to the mandate and play brokers off against each other in these negotiations. Examples include:

(i) Non-pricing metrics such as service offering, expertise and ability of key individuals, client relationships and a strategy tailored to a client's needs play an important role in a client's decision to choose a broker. This is also confirmed by the fact that premium and broker fees are often negotiated after clients have concluded the tender process and chosen a broker.

(ii) Remuneration is also a factor that clients consider when deciding on a broker. Clients can request the proposed brokerage fee to compare against other fee proposals and use this information to play brokers against one another.

(iii) Premiums are another metric which clients consider for choosing a broker. Clients can ask the brokers to estimate a market price for placing the client's risk (a so-called "desk quote") or even ask the broker to go to the market and obtain actual price quotes for placing their risks.

94.2 Second, the ability to require co-broking arrangements by risk line and jurisdiction provides significant bargaining power to large customers. The threat of losing even some "marginal" business in an RFP (for example, failing to win one risk line) ensures that a broker competes as hard as possible across the full RFP. Unless a broker's bid is competitive in all areas, it will not win in all areas. If a broker loses a risk line to a rival, then that rival has an opportunity to build a relationship with the client, learn about the client's business, prove its value and, thus, will be better placed at the time of the next RFP to win additional business.

94.3 Clients with multi-country programmes enjoy an even greater amount of bargaining power. Shifting responsibilities between brokers within a multi-country programme is a tool that can be used to discipline brokers on an ongoing basis. Further, co-broking often involves customers allocating different risk lines to a mix of large and smaller brokers.

94.4 Third, there are numerous examples of clients switching brokers. Switching costs are low[126] and clients can change brokers at regular intervals, given the frequency of contract renewals. As discussed above, contract renewals typically occur every one to three years. When switching brokers, clients rarely incur any expenses as there are minimal transition costs. In exceptional circumstances where such costs exists (i.e. in relation to the transfer of a client's existing claims portfolio), the new broker will often bear these limited costs, not the client.

[126] Refer to paragraph 164.1 of the clearance application.

94.5 In addition, it should be noted that the Parties are constrained by the threat of even longstanding clients being lost in the future – there is nothing to prevent longstanding clients from moving or changing brokers. [ ].

94.6 If a client chooses to use a sole broker for all risk lines, switching may take longer, but is nevertheless feasible and occurs on a regular basis.

95 Buyer power is, of course, particularly significant with larger clients and those with more complex needs. Notwithstanding that there is not a distinct group of large clients or clients with complex requirements, larger clients are likely *better* situated to exercise buyer power given their greater resources; and, similarly, those clients with more complex insurance requirements can be expected to have a more sophisticated risk management function that can exercise meaningful discipline over brokers.

96 Indeed, larger clients and/or those with more complex risk profiles tend to be most capable of seeking alternatives (including at the margins) if the quality of service or pricing that existing brokers are offering is unsatisfactory to them, including:

96.1 from brokers that do not have a direct presence in New Zealand (as described above), and

96.2 from insurers directly. Larger clients and/or those with complex needs are most likely to be able to retain in-house expertise for dealing with insurers directly (which have every financial incentive to make this easy for clients). This is discussed in the following section.

97 The Parties consider that the same feedback that the SOI acknowledges in relation to commercial non-life insurance distribution for SMEs[127] applies to all clients, given the lack of any clear or meaningful distinction between types of clients.

98 As such, regardless of any market definition, there is no potential for any competition issues to arise in relation to any hypothetical client segment.

(2) Clients can reduce reliance on, or bypass brokers entirely, with a wide range of other risk mitigation solutions, such as disintermediation and use of captives

99 Direct distribution (disintermediation) in commercial non-life insurance distribution is at least a constraint at the margins that currently constrains brokers and would therefore constrain the Combined Entity. Direct placement constrains brokers because brokers must demonstrate that they provide additional value compared with direct placement. Some companies have a risk manager in-house, or are able to obtain one, and such a person has expertise (for example, an understanding of relevant policy wordings and coverage) and experience (providing contracts) in procuring insurance. For example, [ ]. Further, larger companies can and do

[127] SOI, paragraph 26.

hire individuals with specific broking expertise, e.g. hiring a broker from a broking firm.

100 The Commission's statement that "captives do not appear to significantly reduce reliance on brokers" is not accurate:[128]

100.1 Brokers are not needed for the design and management of captives. Brokers are not typically involved in captive insurance structures: where the risk is being underwritten exclusively by the captive entity, there is no role for brokers to play. Broking activity is only occasionally required where a captive entity is participating as part of a broader market placement. In that instance, either the parent company or the captive board may appoint a broker to handle the portion of risk that is being placed in the market. However, this is entirely independent of any wider captive management services being provided by a broking firm, and the captive manager has no influence over the broker appointment.

100.2 While the same firm can act as both the broker and the captive manager, this is by no means a requirement and there is no operational overlap between the two services: captive managers and brokers serve the client under separate mandates and each receives instruction and information from the client via independent channels. This means that if a client elects to retain more risk instead of transferring it externally through a broker, the broker will lose some marginal business. The same broking firm will not necessarily gain anything to offset this loss on the captive management side. This is because the same broking firm may not also serve as the captive manager. Even if it does, the captive manager's remuneration typically involves fixed fees and is not linked to fluctuations in the volume of premiums underwritten by the captive.[129]

101 The same is confirmed by Marsh in its 2019 10-K filing: "Certain insureds and groups of insureds have established programs of self-insurance (including captive insurance companies) as a supplement or alternative traditional third-party insurance, thereby reducing in some cases their need for insurance placements".[130]

102 [ ]:

102.1 [ ].

[128] SOI, paragraph 63.

[129] Moreover, the evidence suggests that the use of captives is increasing as companies of all sizes, including "large clients", respond to the impact of COVID-19. As recognised by a recent article in the Wall Street Journal, "the pandemic has highlighted the attractiveness of being able to tailor insurance using a captive, rather than relying on cover from the open market through mainstream insurers". This was also recognised in Marsh's 2020 Captive Landscape Report, which found that in the first half of 2020, "[d]ue to the pandemic and the tightening insurance market, more [organizations] are looking to captive insurance companies for financial flexibility and protection" (see: https://www.marsh.com/us/insights/research/captive-landscape-report-2020.html).

[130] Marsh Financial Year 2019 10-K Filing, available at: https://sec.report/Document/0000062709-20-000010/.

102.2 [ ].

102.3 [ ] [ ]. [ ].

102.4 [ ].[131] [ ].[132]

102.5 [ ].[133] [ ].[134]

102.6 [ ].

102.7 [ ].[135]

102.8 [ ].[136]

102.9 [ ].

102.10 [ ].

102.11 [ ].[137]

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131 [ ].

132 [ ].

133 [ ].

134 [ ].

135 [ ].

136 [ ].

137 [ ].

(vi) Conclusion on competition in commercial non-life insurance distribution

103 To conclude, the Parties will continue to face competitive constraint from Marsh, Gallagher/Crombie Lockwood, the Steadfast Network, NZbrokers/AUB Group and other brokers. The threat of disintermediation also constrains the Parties and will remain unchanged post-Transaction. The removal of WTW as an independent competitor will not result in a substantial lessening of competition given the constraints that will continue to exist which, individually and in aggregate, are substantial. The Parties will have to maintain a quality offering, on attractive terms, in order to remain competitive post-Transaction.

(b) Non-life reinsurance distribution

104 The Parties agree with the feedback that the Commission has received from cedents that the Transaction will not raise concerns in the non-life reinsurance distribution market in New Zealand.[138] Respectfully, the Parties consider that the evidence provided by cedents should not be ignored: the Commission should not sustain competition concerns that are not supported by its own market testing. As explained in more detail below:

104.1 the Parties will continue to be constrained by existing competitors (including other brokers as well as reinsurers);

104.2 the threat of entry and expansion will continue to constrain the Parties; and

104.3 other competitive constraints are sufficient to prevent a substantial lessening in competition.

(i) The concern that the Transaction will result in a reduction from three to two competitors is unfounded

105 The characterisation that the Transaction will result in a “three to two” merger in the supply of non-life reinsurance distribution services is not founded, for the reasons that follow. Aon wishes to reiterate at the outset that the New Zealand insurance industry is dominated by international cedents (e.g. IAG, Suncorp, QBE, AIG and Chubb). While these cedents may purchase some reinsurance locally, such as local buy-down covers or facultative reinsurance (either directly or through brokers), the vast majority of reinsurance purchasing is consolidated with offshore groups. Groups then seek to procure reinsurance via brokers or directly, or take alternative options such as the use of alternative capital or captives. It is common for international firms with New Zealand subsidiaries to make reinsurance decisions, including reinsurance distribution, offshore at a group level rather than in New Zealand. At the same time, the number of cedents making all their reinsurance decisions from New Zealand has shrunk, in particular following the Christchurch earthquakes.

106 First, direct reinsurance placements are in the same market as brokered reinsurance placements, as explained in detail above in Part 1(b).

107 Second, the market for non-life reinsurance distribution services is a global market that is not limited to Marsh/Guy Carpenter, Aon and WTW. The market for non-life reinsurance is global and competitors include 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 others. The New Zealand

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[138] SOI, paragraphs 67.2 and 67.3.

market shares submitted by the Parties likely understate the constraint exercised by Marsh/Guy Carpenter and also other broking competitors.[139] That is:

107.1 As the Commission indicates, Marsh/Guy Carpenter is a material competitive constraint on the Parties. [ ].[140] While the Parties cannot specify where Marsh/Guy Carpenter places reinsurance for New Zealand-domiciled cedents, this only reflects the most recent tender processes. As noted in the clearance application, [ ], and representatives of Marsh/Guy Carpenter are active in reinsurance circles e.g. speaking at conferences. As the Parties do not have an exhaustive knowledge of cedents' risks, cedents can place reinsurance premium with Marsh/Guy Carpenter without the Parties being aware. There is no characteristic of the New Zealand reinsurance distribution market that lessens or restricts the ability to cede premium through the global leader, Marsh/Guy Carpenter. This appears to be supported by the Commission's market feedback.[141]

107.2 Aon disagrees that Marsh/Guy Carpenter are the only brokers with the expertise and global reach to meet the needs of New Zealand cedents looking to transfer risk by treaty reinsurance onto the global market. As all cedents require treaty risk placement, Aon does not consider it plausible that the vast majority of global brokers, such as those listed above, would not be able to broker treaty contracts. Similarly, and contrary to the suggestion made by the Commission, the Parties note that all the brokers identified herein offer claims management and advisory services.

107.3 As the Commission is aware, Aon is the only reinsurance broker with a physical presence in New Zealand and yet it competes with other brokers, all of whom are offshore. Given the ease with which competitors can and do participate in tenders, brokers with a presence in the Asia-Pacific region – particularly in Australia – are actual rather than potential competitors. As above at paragraph 57.2, WTW agrees that reinsurance brokers do not need to be physically present in New Zealand to provide services to New Zealand cedents.

107.4 Examples of global competitors include:

(a) **BMS** is a dynamic global broker that provides specialist insurance, reinsurance (through BMS Re) and capital markets advisory services. They manage over US$2.6 billion of premium, have 450 employees and 20 offices worldwide. BMS have a presence in Australia (as the Commission is aware, WTW and Marsh/Guy Carpenter both offer reinsurance distribution services to New Zealand-based cedents from Australia), with their reinsurance expertise in BMS Re out of Singapore.

(b) **Lockton Re** has established operations in Australia, including hiring an ex-Aon employee (Stephen Punch) as its executive manager for

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[139] [ ].

[140] [ ].

[141] SOI, paragraph 66.

reinsurance Australia and New Zealand. In connection with the hiring of Stephen Punch, Richard Broad, CEO of Lockton International APAC Reinsurance stated that: "The reinsurance landscape is rapidly evolving and provides Lockton with an excellent opportunity to establish a solid footprint in the Australian and New Zealand reinsurance markets".[142] Lockton Re also has a significant operation in Singapore which serves Australian cedents. Lockton Re has access to sophisticated data and analytic capability through its global network operations and can (where required) supplement capabilities locally through third party consulting analytics and actuarial firms such as Finity Consulting.

(c) **Howden** provides insurance broking, reinsurance broking, risk management and claims consulting services, globally. It globally places $6 billion of premium each year, and has significant scale and experience. Howden's reinsurance arm is the former Hyperion Group. Howden recently employed Steve Warwick (the former Aon CEO in Australia and Asia) to oversee its Asia Pac Treaty Reinsurance offering. As the former Aon CEO in Australia and Asia, Warwick is well known in insurance in Australia. Until recently, Howden competed from outside Australia but, as noted above, in January 2021 Howden signed a strategic partnership with Steadfast, providing it with a significant local presence in Australia.

(d) **Steadfast** and its reinsurance arm Steadfast Re began as an offshoot of the global entity, Beach & Associates, and as a result has connections with, and has used Beach Re, for access to global markets as required. Steadfast Re has access to sophisticated data and analytic capabilities through its international links and can, where required, supplement its capabilities locally through third party consulting analytics and actuarial firms such as Finity Consulting. Further, Steadfast has recently signed a strategic partnership agreement with the Howden Group, providing access to its global network and capabilities including reinsurance offering.

108 The SOI indicates a lack of cedent concern about the Transaction – this is an important fact that should not be ignored in the Commission's assessment. Cedents are sophisticated clients, confident in their ability to receive a competitive offer and service from distributors.[143] The fact that some cedents may not often switch distributor does not mean that they cannot switch, or would not switch in the face of a small price increase or a decrease in the quality of service offered.[144] It is perfectly possible to switch reinsurance broker – competing reinsurance brokers have the skills and ability to quickly get up to speed with a potential client's business, which is aided by the cedent sharing its data with the potential new broker. In particular:

108.1 Longstanding clients test the market. While they may value the relationship with their broker,[145] they are not stuck. For example, [

[142] See: https://www.insurancebusinessmag.com/nz/news/breaking-news/lockton-taps-new-head-for-reinsurance-in-au-and-nz-229767.aspx.

[143] SOI, paragraph 67.

[144] SOI, paragraph 68.

[145] SOI, paragraph 68.

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108.2 Longstanding clients can and do change broker, despite any closeness of relationship with their existing broker.

108.3 Individual broker movement is a significant feature of the market and may lead to departing individual brokers taking clients with them. WTW's Asia-Pacific Reinsurance Chairman (and former CEO), Mike Harden, and approximately five other senior-level employees defected to Marsh/Guy Carpenter on 26 June 2020 including Caitlin Fisher, executive director at Willis Re, and Tony Wang, head of financial analytics.[146] An affidavit signed by the director and chair of Willis Re Australia revealed that Fisher was the key contact for some of the business' biggest clients including IAG, New South Wales professional indemnity specialist Lawcover, personal lines carrier MAS and Tower in New Zealand. Fisher also had deep knowledge of WTW's client CommInsure, the insurance arm of the Commonwealth Bank.[147]

109 Accordingly, even where a particular relationship appears strong, in Aon's view cedents are clearly not in any way hindered from switching when they consider that their broker no longer provides value.

(ii) There is constraint from new entry and expansion

110 Non-life reinsurance distribution services are provided on a global basis. As such, there are numerous capable brokers, direct providers and other intermediaries across all reinsurance segments. These other distributors can provide services to New Zealand cedents directly or via upstream entities managing risk for their New Zealand subsidiaries.

111 As discussed in paragraph 107.3 above, a physical presence in New Zealand is not required to offer services. There are no regulatory barriers to prevent a reinsurance broker based overseas from placing risks with reinsurers for New Zealand cedents. As discussed in the clearance application,[148] there are a number of global brokers who are actual or potential competitors because they may participate in tenders or compete for appointment by cedents, especially when invited by cedents (which have strong global connections and understanding of the global reinsurance market). Aon believes that the major global brokers that fall within this category include 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 others.

112 Reinsurance data and analytics tools are readily available from third parties such as RMS,[149] AIR[150] or EQE[151] regardless of where the competitor is based. The fact that

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[146] See: https://insuranceinsider.com/articles/134261/apac-chairman-harden-quits-willis-re-for-guy-carp.

[147] See: https://insuranceinsider.com/articles/135678/willis-re-takes-court-action-to-protect-asia-pac-accounts.

[148] See paragraphs 190 to 200 of the clearance application. Further, WTW plans to divest the Miller business which is active in the supply of reinsurance distribution services in Australia and New Zealand. Once divested, it will be a further independent competitor.

[149] See: https://www.rms.com/.

[150] See: https://www.air-worldwide.com/.

[151] See: http://eqeconsulting.com/home.

a number of high quality modelling tools are commercially available makes entry easy for potential market entrants as they do not have to spend the time or money to develop their own analytical tools. Moreover, because the sophistication of a model or software is less important than the know-how, expertise and experience of the individuals who interpret and apply them, the fact that such talent is highly mobile, also demonstrates that barriers to entry are low.

113 To the extent that individual expert brokers can drive growth, barriers to upskilling or obtaining talent are not material, and individual broker movement is a significant feature – see above at paragraph 108.3. Individual talent departures and the importance of personal relationships mean that brokers have to compete hard with rivals that hire respected individual brokers. Specifically, the Parties note that:

113.1 Marsh/Guy Carpenter has publicly stated that it anticipates it will be able to poach the Parties' staff as a result of the Transaction (this comment was made in the context of both reinsurance distribution and commercial non-life insurance distribution).[152]

113.2 McGill, Gallagher Re and Tiger Risk have all recently hired staff from the Parties to further expand their treaty reinsurance offerings in Australia. This talent movement will constrain the Parties' behaviour in the marketplace globally, in Australasia and in New Zealand.

114 Moreover, cedents are in no way solely dependent on the Parties and Marsh/Guy Carpenter to reinsure their risks. Even when they choose to cede their risk predominantly through the Parties, cedents have relationships with other brokers and reinsurers to which they can readily switch portions (or all) of their business. Such ability to switch acts as a strong competitive constraint on the Parties, preventing them from increasing prices or decreasing the quality of their services post-Transaction.

(iii) Other competitive constraints are sufficient[153]

115 Non-life reinsurance distribution services (both brokered and direct) will continue to be further constrained by other options for managing risk as alternatives to traditional reinsurance. The statement that "captives and alternative capital appear to be, at best, ways for cedents to diversify their reinsurance arrangements, and would not remove the need to obtain traditional reinsurance as well"[154] is unsupported. The meaning of "consolidation of liabilities" is not clear to the Parties.

116 Cedents constrain reinsurance brokers through other means of managing risk, and may decide not to buy reinsurance at all, or for only part of their risk management requirements. When a cedent seeks to manage a risk, it looks at various options including:

116.1 retaining the risk;

116.2 mitigating the risk (e.g. through portfolio optimisation); or

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[152] See: https://insuranceinsider.com/articles/134261/apac-chairman-harden-quits-willis-re-for-guy-carp.

[153] SOI, paragraph 71.

[154] SOI, paragraph 72.

116.3 transferring the risk through reinsurance, alternative capital or insurance-linked securities.

117 Cedents may decide to manage their risk using a combination of all of the above.

118 Therefore, an individual broker's reinsurance proposal has to generate more value to the cedent than (1) other brokers' proposals, (2) reinsurers' direct proposals, (3) solutions available through other forms of capital, and (4) retaining risk.

119 Cedents vary significantly in the extent to which they buy reinsurance as opposed to using other options to manage their risk. For example, if they choose to retain a risk, they may raise capital to meet on balance-sheet risks. Access to capital such as debt or equity allows cedents to reduce their reliance on reinsurance and insurance linked securities. In New Zealand, [

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120 As the Commission recognises, alternative capital is a way for cedents to diversify their risk portfolio. To be a competitive constraint on the Combined Entity, it is not necessary that the alternatives would "remove the need to obtain traditional reinsurance".[155] Alternative capital will be a competitive constraint on the behaviour of the Combined Entity.[156] It is not necessary for cedents to threaten to switch all of their demand to alternative capital to constrain the actions of brokers. Even shifting some demand has the impact of ensuring that brokers must continue to add value as an intermediary.

121 The growing presence of alternative distribution options for cedents beyond traditional reinsurance broking is reflected by the competitive behaviour of other brokers. For example, Lockton Re recently partnered with insurtech company Tremor Technologies to deliver modern reinsurance trading capabilities to its clients, via the integration of Tremor's pricing optimisation technology into Lockton Re's SAGE platform, which is an auction platform for transferring property catastrophe risk.[157] Tremor recently announced that it placed USD 1 billion in limit in 2020.[158]

122 Cedents will increasingly be able to discipline the Combined Entity through these alternative means. Should the Combined Entity be perceived to have degraded the value of its service or increased its price, alternative risk management strategies are a viable option for cedents. Reinsurance is merely one way for cedents to match capital with risk.

(iv) Conclusion on competition in non-life reinsurance distribution

123 To conclude, the view that the Transaction would reduce the number of competitors from three to two is inconsistent with the empirical evidence that in this global market there are numerous other reinsurance brokers which can, and do, compete for New Zealand cedents notwithstanding the lack of a physical presence in New Zealand. In addition to the constraint imposed by direct business, the Parties

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155 SOI, paragraph 72.

156 Alternative capital can be used for traditional reinsurance or it can provide specific risk transfer products. The use of alternative capital particularly for the latter widens the distribution options to investment banks e.g. Goldman Sachs, which further constrains brokers.

157 See: https://www.reinsurancene.ws/lockton-re-integrates-tremors-pricing-optimisation-tech/ (accessed 15 January 2021).

158 See: https://insuranceinsider.com/articles/137427/auction-platform-tremor-clears-1bn-in-limit-in-2020 (accessed 16 January 2021).

would continue to be constrained by the prospect of entry (which does not need to be physical) and other methods of managing risk. Respectfully, the Parties consider that the evidence provided by cedents in the Commission's own market testing should not be ignored: the Commission should not sustain competition concerns that are not supported by the very customers that would be impacted by the Transaction.

(c) Group health and welfare benefits distribution and associated services

(i) The Transaction will not result in a concentrated market

124 As above, the Parties submit that the market should not be segmented by group health and other group benefits. Regardless of market definition, the Combined Entity will continue to be constrained by (1) existing competitors and (2) potential competitors.

125 Moreover, the Parties note the significance of the fact that market participants have not expressed major concerns about the impact of the Transaction,[159] and respectfully request the Commission takes account of such evidence.

(1) The Parties will continue to be constrained by existing competition

126 Aon does not consider [ ].

127 In any event, as submitted in the clearance application, post-Transaction the Combined Entity will be constrained by a number of competitors, including other brokers and financial advisory firms, as well as insurers:[160]

127.1 While it is true that Southern Cross has had particular success in winning direct business, it is a real and current constraint across all group health and welfare benefits. When Southern Cross pitches its group health product and services to clients effectively, it wins business from other providers who offer other group health and welfare benefits, including brokers. Clients do not choose group health insurance separately from other group benefits – the possible benefits are each considered in developing an overall scheme, depending on the employer's mandates. The relevant demand side considerations are set out above at paragraphs 44 to 45.

127.2 Insurers other than Southern Cross engage directly with clients. For example:

(a) AIA New Zealand Limited,[161] Fidelity Life Assurance Company Limited[162] and Asteron Life Limited[163] offer certain types of group benefits directly. Aon understands that [ ].[164]

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[159] SOI, paragraph 75.

[160] Refer to paragraphs 244 to 252 of the clearance application.

[161] See: https://www.aia.co.nz/en/life-and-disability.html (accessed 12 January 2021).

[162] See: https://www.fidelitylife.co.nz/business/group-insurance-for-employees/.

[163] See: https://www.asteronlife.co.nz/insurance/employee-insurance.html.

[164] [ ].

(b) Cigna Life Insurance New Zealand Limited[165] offers life insurance products.

(c) AMP Life Limited offers life, income protection and trauma insurance products.[166]

(d) nib nz Limited,[167] Union Medical Benefits Society Limited (UniMed)[168] and Accuro Health Insurance[169] provide health insurance products.

127.3 There is no barrier to insurers expanding their direct presence if they wished to do so, and the Parties expect that to occur should they raise the price of their services above competitive levels, and/or reduce the quality of their offering.

127.4 Constraints come from other brokers and financial advisory firms of all sizes (including Share, Lifetime and Newpark Group), none of which require a substantial presence or even a local footprint to provide health and welfare benefits distribution and associated services in New Zealand, even to large clients. For example:

(a) Aon understands that [ ][170] [

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(b) St John New Zealand uses (or has used) First Capital Financial Services,[171] a financial advisory firm with offices in Christchurch and Auckland.

(1) The Parties will continue to be constrained by potential competition

128 There are no particular factors that make entry and/or expansion difficult for group health and welfare benefits brokers as they take on no risk themselves, and scale in a particular region is not important.[172]

129 Demand for group health and welfare benefits is growing. Demand is determined by clients' desires to arrange their health and welfare benefits as a form of non-

165 See: https://www.cigna.co.nz/.

166 See: https://www.amp.co.nz/business/employee-benefits/products/insurance-for-employees.

167 See: https://www.nib.co.nz/.

168 See: https://unimed.co.nz/about-unimed/.

169 See: https://www.accuro.co.nz/.

170 [ ].

171 See: https://www.firstcapital.co.nz/what-our-clients-say (accessed 15 January 2021).

172 Refer to paragraphs 250 to 252 of the clearance application.

monetary compensation provided to employees to attract, retain and keep staff engaged and motivated – a trend that appears to be increasing.[173] In particular:

129.1 In Aon's view, [ ].

129.2 In WTW's experience, [ ].

130 While Aon currently considers [ ], there is no reason why another competitor could not compete more effectively in New Zealand on its service offerings to clients.[174] The key requirement is expertise, which can be developed or bought, as illustrated by the [ ] example above. Individual talent movement is a critical feature of the industry and especially important in the context of commercial broking, where human capital (brokers) are the key assets. In Aon's experience, individual brokers and advisers frequently switch firms. For example:

130.1 [ ].[175]

130.2 [ ].

PART 5: IMPORTANCE OF DATA

131 The SOI states that the Commission "has not seen evidence to suggest that the Proposed Acquisition would be likely to significantly increase data-related barriers to entry".[176]

132 The Parties agree that the combination of their datasets and/or data analytics expertise will not raise barriers to competitors seeking to enter or expand in relevant markets. The key reasons are:

132.1 there are three main sources of relevant data which are equally available to all brokers and other distributors from a range of sources:

(a) client data which the client provides on specific terms and continues to own, meaning the data will easily be transferred to a new distributor as the client moves;

(b) commercially available third-party data, to which all distributors have equal access to as the data is provided on a non-exclusive basis; and

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[173] New Zealand health and welfare benefits are reasonably immature compared to overseas markets, for a variety of reasons including that New Zealand employees are covered by ACC and public healthcare. By contrast, in other countries staff benefits can be even more important to employees and prospective employees than salary.

[174] Refer to paragraph 250 of the clearance application.

[175] [ ].

[176] SOI, paragraph 82.

(c) publicly available (open source) data which is available to all distributors equally;

132.2 many distributors have their own analytic capabilities and have the capacity to develop their own capabilities – "analytics" refers generally to the tools that distributors use to help their clients analyse risk;

132.3 all distributors have access to and are able to utilise a range of analytical tools offered by third parties – many of the analytics tools used by distributors are neither proprietary nor unique; and

132.4 the real value of data and data analysis lies not in the data or tools used, but in the insights that can be drawn from the data using the experience and expertise of analysts, brokers and consultants.

***(a)* Commercial non-life insurance distribution**

(i) Data is available to all brokers

133 Brokers rely on data from clients. When a broker provides commercial non-life insurance services to its clients, its clients provide it with data regarding revenue, placement data to support underwriting, and information on claims handling and history. If the client was to switch broker, this same data would then be provided to the client's new broker.

134 The databases of client level data are not unique to the Parties. Similar databases are held by other brokers. The data that each Party holds is also held by others and the data belongs to the client so will move with clients as and when they switch.[177] [ ]. Generally, data on the most recent placements are those which provide the most helpful insights. Therefore, smaller brokers are able to generate useful data as they gain clients and historic client relationships do not create an insurmountable barrier to competition.

135 Data purchased from third parties is equally available to all market participants.[178] There are a number of third party providers who can provide refined data from various sources. Examples of third party providers available in New Zealand include:

135.1 Axco, which gathers global insurance market information from industry supervisors, insurance associations, insurers, reinsurers, brokers and other local industry contacts;[179] and

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177 [ ]

178 [ ].

179 See: https://www.axcoinfo.com/.

135.2 Corelogic, which provides a range of insurance-related information including building cost estimates, risk mapping and sum insured estimation tools for homes.[180]

136 The only other form of data which brokers may collect beyond that which is provided to them on a non-exclusive basis by its clients or third parties, is open source data which is publicly available. For example, data from New Zealand Post in respect of postal codes (used by insurers to confirm risk location). All brokers have equal access to open source data.

(ii) Data analytical capabilities are not unique to the Parties and can be accessed by all brokers globally

137 Other brokers, wholesalers and insurers have access to the same tools or have developed tools of their own. For example, Gallagher provides comprehensive data and analytics offerings to both clients and insurers. An example of one of their analytical tools is Gallagher Drive which "combines market conditions, claims history, industry benchmark information and […] catastrophe risk insights to help […] optimize […] risk management programs".[181]

138 In addition, the rise of third-party tools globally is giving all competitors access to the same insights as all insurance brokers have access to them. Expanding firms and new entrants have the same opportunity to invest in such analytical tools or in developing their own and are often better able to adopt and integrate new analytical tools into their existing IT architecture than larger firms as they have fewer legacy systems.

(b) Non-life reinsurance distribution

(i) Data is available to all brokers

139 Brokers and reinsurers rely on data from cedents. In order to provide reinsurance solutions services, brokers and reinsurers rely primarily on data from clients (cedents), which all brokers and reinsurers serving those cedents can access. Both brokers and reinsurers collect data regarding policies and premiums, claims, exposure data and revenue. Brokers and reinsurers also collect market intelligence data, regulatory data, data on companies' financials and rating agency data. This data is either provided by cedents, is publicly available or can be purchased by any broker or reinsurer from third parties.

140 As with data relevant to commercial non-life insurance the databases held by the Parties are not unique and similar databases are held by other brokers, and smaller brokers are able to generate useful data as the most recent client data is likely to be the most relevant.

141 All market participants have the ability to obtain access to third party databases.[182]
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[180] See: https://www.verisk.com/en-gb/insurance/.

[181] See: https://www.ajg.com/us/gallagher-drive/

[182] Note that [

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142 The rise of open source models also makes it increasingly easier for smaller players to compete with larger firms. UK-based firm Oasis LMF is building an open source catastrophe model with the goal of allowing firms to build bespoke risk models in a given part of the world without having to buy third-party datasets.[183] Competitors do not need scale to build their own model, they would only need an expert to build the model.

(ii) Data analytical capabilities are not unique to the Parties and can be accessed by all brokers and reinsurers globally

143 The data held by reinsurance distributors (both reinsurers and brokers) is used to assess an individual insurer's policy and asset information in order to forecast the risk to a cedent's portfolio, using analytic tools such as risk modelling, benchmarking analyses and total cost of risk analyses. Data analysis is a standard element of the service provided by reinsurance brokers.

144 Such data analytical tools are also used by cedents and reinsurers. For example, Swiss Re provides a data service and analytics, including the sigma report. Reinsurers who provide such services direct to clients market their capabilities in this regard:

144.1 **Swiss Re:** "From standard products to tailor-made coverage across all lines of business, we deploy our capital strength, expertise and innovation power to enable the risk-taking upon which enterprise and progress in society depend".[184]

144.2 **Gen Re:** "As a direct reinsurer, we are in the risk assumption business, just like our clients. Our shared perspective helps us understand and evaluate even the toughest risks". Gen Re emphasises its reinsurance experts, stating cedents can rely on Gen Re's "advice, services and proprietary tools to guide [their] risk management decisions".[185]

145 As with commercial non-life distribution, many of the analytical tools that the Parties use are neither proprietary nor unique. Solutions can be developed in-house or sourced from third parties. Examples of such third parties include:

145.1 **RMS**, which aids in understanding and managing catastrophe risk;[186]

145.2 **AIR**, which models catastrophe risk for insurers, insurance brokers, reinsurers, reinsurance brokers, capital markets, corporate risk managers, governments, and regulatory and rating agencies;[187] and

145.3 **EQE**, which provides advice regarding natural hazards risks and terrorism.[188]

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183 See: https://oasislmf.org/.

184 See: https://www.swissre.com/about-us/facts-and-figures.html (accessed 15 January 2021).

185 See: https://www.genre.com/ (accessed 15 January 2021).

186 See: https://www.rms.com/.

187 See: https://www.air-worldwide.com/.

188 See: http://eqeconsulting.com/home.

(c) Group health and welfare benefits distribution and associated services

(i) Data is available to all brokers

146 Brokers and direct providers primarily use client data to assess the placement of risk on a client-by-client basis. Brokers and direct providers collect actuarial data from their clients (e.g. employee ages, genders, incomes) for sharing with insurers and assessing premiums, and may also collect limited claims data.[189]

147 As with the other markets discussed above:

147.1 the Parties' databases are not unique to them;

147.2 the data belongs to the client and will move with the client as and when the client switches;

147.3 other brokers also have their own databases and smaller brokers are able to quickly generate useful data as they gain clients; and

147.4 any data from third party databases is equally available to all market participants.

(ii) Data analytical capabilities are not unique to the Parties and can be accessed by all brokers

148 [ ].

149 Aon estimates that the costs in the technology to provide group health and welfare benefits services beyond traditional broking services (i.e. ancillary services) to be [ ]. These costs are unlikely to vary materially depending on factors such as client size, industry or benefits sought.

(d) The true value of data and data analytics lies in the expertise and industry knowledge of those who utilise the data and there is continual competition in the industry for such talent

150 In all of the markets discussed above, the true value of the data and data analytics is not based on the raw datasets, the volume of client level data nor the tools utilised, but rather the insights that can be drawn from the data using the experience and expertise of analysts, brokers and consultants. For example, once the risk for a client's portfolio has been forecast using a particular model, an individual will need to review, interpret and even adjust the forecast based on their experience and expertise.

151 There is continual competition in the market for individuals with relevant experience and expertise.

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[189] [ ] [ ]

PART 6: COORDINATED EFFECTS

(a) Market vulnerability to coordination

152 The Commission's preliminary finding that there are some "features of commercial insurance and reinsurance broking markets" which "may make them vulnerable to coordination"[190] is not supported by the evidence.

(i) Existing market concentration

(1) Commercial non-life insurance distribution

153 For the reasons discussed above at Part 1(a), the Parties consider it is not correct to conclude that the Parties and Marsh are the only three large competitors in some of the relevant markets.[191]

154 Furthermore, given the nature of broking competitors, competitors are often invited, or otherwise selectively choose to focus on, specific tenders, in an unpredictable way, where there is little transparency on price or other terms and conditions, which prevents any attempt at coordination.

155 The Parties disagree that, in relation to commercial non-life insurance distribution, the threat of entry would be unlikely to deter coordination.[192] As discussed above, entry and expansion barriers are low for commercial non-life insurance distribution. New entry and expansion remains a real threat preventing coordination.

156 Finally, the presence and/or threat of direct competition in all relevant markets undermines any ability to coordinate – see above at Part 4(a)(v) for commercial non-life insurance distribution and Part 1(b) for non-life reinsurance distribution.

(2) Non-life reinsurance distribution

157 For the reasons given above, this is a global market with numerous effective competitors including 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 others, along with Aon, WTW and Marsh/Guy Carpenter. Further, the threat of disintermediation (as well as further broker entry) would deter any reduction in competitive vigour that would be achieved by coordination.

157.1 Furthermore, the strong countervailing power of cedents and reinsurers is not conducive to coordination:

(a) Any attempt at coordination would not be accepted by cedents, which could switch their business with relative ease and limited expense, or go direct to reinsurers. It is not necessary for the cedent to fully switch its business – all that is needed is switching sufficient volumes to make a potential price rise unprofitable.

(b) Reinsurers also play a pivotal role. Brokers are only intermediaries. Their business proposition depends on multifaceted engagement with reinsurers. Any attempt at coordination with respect to broking services would be challenging given these dynamics.

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[190] SOI, paragraph 87.

[191] SOI, paragraph 88.

[192] SOI, paragraph 89.

(ii) Competition through tenders

158 For each of the markets, the Parties have little visibility of competitors and their strategy when participating in opportunities, including tenders. The information disclosed depends on the client running the opportunity, and whether the client has set up a formal tender process or not. The level of information disclosed varies between opportunities but the Parties typically receive little information aside from being notified whether or not they have won the opportunity.

(1) Competition through tenders in commercial non-life insurance distribution

159 Across clients of all sizes, competition takes place in closed bidding processes in which no firm has visibility over the price, output or other elements of a competitor's offering (except to the extent the client thinks it is in its interest to reveal this information). Therefore, all brokers have incentives to compete hard for business and maintain a high level of service quality or risk losing a part of their remuneration or even future opportunities. The Transaction will not change these incentives.

160 The tender competition that occurs in commercial non-life insurance distribution allows for little transparency (see paragraph 94.1(b) above). Offers tend to be bespoke to the particular client, rather than comparable. The bespoke nature of each client's portfolio of risks, as well as its particular needs, also limit transparency. The services are not homogenous. Market participants compete on multiple parameters beyond price, including the ability to advise on insurance strategy. Coordination over these parameters is unrealistic, if at all possible.

161 The individual nature of each tender would also make it difficult to effectively tacitly allocate clients, since the value of a client, at the time of winning it or over a period of time, is difficult to predict. This means that there is no way of forming a tacit agreement as to conduct on any particular tender.

162 Furthermore, even if firms were incentivised to compete less aggressively (an assertion with which the Parties disagree), it is difficult to comprehend how those incentives could translate down to the level of individual brokers. As noted above, as with any professional services providers, the client-facing individuals within broking firms are incentivised to compete for and win business. Based on Aon's experience, individual broker remuneration and bonus structure, as well as career prospects and reputation, may be linked to commercial success with clients and the commercial success of an organisation is likely to be reflected into individual brokers' remuneration.

163 Further, the threat of competition from the numerous other brokers in addition to the Parties (among them Marsh and Gallagher/Crombie Lockwood), and from direct business and clients who use captives would also mean that any attempt at coordination would be defeated.

(2) Non-life reinsurance distribution

164 [ ], the Parties have [ ]. Globally, the vast majority of business is won and lost on the basis of personal relationships between cedents, individual brokers and reinsurers.

165 [ ].

166 This is borne out by the uncertainty the Parties have experienced in relation to the market share figures.

167 In addition, the dynamic, bilateral, and heterogeneous nature of reinsurance competition which primarily focuses on service quality rather than on price is ill-suited to coordination. The lack of transparency regarding (1) the opportunities available (most of which, globally, are informal approaches by cedents) and (2) the brokers and reinsurers that participate in a given opportunity (including informal approaches and formal tenders) mean that other forms of coordination are also implausible. In particular:

167.1 The UK FCA confirmed the features of reinsurance broking that preclude coordinated effects in a market study published in February 2019.[193] As much reinsurance – including for New Zealand cedents – is placed in London, the same conclusions are therefore applicable in New Zealand.

167.2 The services are not homogenous. Market participants compete on multiple parameters beyond price, including the ability to advise on reinsurance strategy. Coordination over these parameters is unrealistic, if possible at all. For example, [ ].

167.3 Cedents’ requirements and allocation of business constantly change – as a result, the Parties do not have sufficient visibility on how much business other brokers (or direct reinsurers) have with certain cedents.

167.4 Pricing is not standardised, because discounts and rebates are negotiated individually with cedents.

167.5 The vast majority of business globally is won via informal opportunities. The Parties and their competitors have no visibility of the opportunities available to other brokers or reinsurers and there is no mechanism in which the Parties or their competitors are able to form a credible retaliatory threat.

(iii) Industry relationships and market transparency

(1) Commercial non-life insurance distribution

168 The Parties are represented on the board of IBANZ. IBANZ is a representative body for the insurance industry generally, with over 150 member firms.[194] IBANZ provides educational services to its members and promotes the interests of members through lobbying activities.[195]

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[193] See https://www.fca.org.uk/publication/market-studies/ms17-2-2.pdf at paragraphs 5.1 to 5.19. The UK FCA investigated brokers in the London insurance market, including commercial risk brokers and facultative reinsurance brokers. The reasons that the UK FCA relied on to exclude coordination concerns apply to all forms of reinsurance and will not change post-transaction.

[194] See: http://ibanz.co.nz/About-Us/10009/ (accessed 22 January 2021).

[195] See the objects of IBANZ set out in paragraph 4 of the Constitution and Rules of the Insurance Brokers Association of New Zealand Incorporated (16 October 2020) available at: http://ibanz.co.nz/filescust10/CMS/Constitution%20and%20Rules/IBANZ%20Constitution%2016%20Oct%202020.pdf.

169 Aon [ ].

170 For WTW, [ ].

171 As above, the Parties do not have any visibility of competitors' pricing and client strategies, beyond what is publicly available – the same as any other participants in the market. In terms of "research on the activities of their competitors",[196] this is in fact limited and based on sparse information, specifically:

171.1 [ ].[197]

171.2 [ ].[198]

172 The typically bespoke, and changing, nature of client offerings means that the frequent movement of individual brokers among firms does not give rise to material opportunity for coordination.

(2) Non-life reinsurance distribution

173 Aon is the only reinsurance broker with a physical presence in New Zealand. There are no New Zealand industry associations in which Aon participates for reinsurance.

174 Aon [ ]. WTW [ ].

(b) Effect of the Transaction

(i) Increase in market concentration

(1) Commercial non-life insurance distribution

175 For the reasons given above, it is clear that WTW [ ], and thus its removal as an independent competitor would not be likely to materially affect the likelihood of coordination.

176 Marsh is [ ] regardless of the Transaction, challenged by a range of other constraints – see Part 4(a).

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[196] SOI, paragraph 94.

[197] [ ].

[198] [ ].

(2) Non-life reinsurance distribution

177 For the reasons given above, the market for non-life reinsurance distribution is global, with numerous competitors participating. Viewed with this appropriate global framework in mind, the removal of a single competitor would not be likely to materially affect the likelihood of coordination.

(ii) Marsh and the Combined Entity will not be more symmetric

178 The Commission has raised a concern that the Transaction might enhance the conditions for coordination because Marsh and the Combined Entity would become more symmetric.[199] Given the relatively small presence of WTW in New Zealand, [ ].

(iii) No coordination concerns in the group health and welfare benefits distribution and associated services market

179 The Parties agree that there should be no coordination concerns in the market for group health and welfare benefits distribution and associated services.[200] The Parties compete with a wide range of competitors, including other brokers, financial adviser groups and with insurers. The Parties have little visibility of their competitors' offerings, and are not privy to the tenders that other competitors submit.

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[199] SOI, paragraph 100.

[200] SOI, paragraph 103.