



Statement of Issues

18 February 2021

Aon plc – proposed merger with Willis Towers Watson plc

Purpose

1. Aon plc (**Aon**) proposes to merge with Willis Towers Watson plc (**WTW**) (**the parties**) (the **proposed merger**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed merger,
 - identifies areas of further inquiry, and
 - invites interested parties to submit comments and information to assist the ACCC's assessment of the issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. In considering the proposed merger, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there are three 'issues of concern'.

Issues of concern

6. The ACCC is concerned that the proposed merger will substantially lessen competition in the supply of:
 - commercial insurance risk broking and advisory services in Australia, especially to large sized commercial insurance customers and those with more complex and/or high-value insurance premiums (together **large**) customers;
 - reinsurance broking and advisory services in Australia, in particular for treaty reinsurance;
 - employee benefits broking and consultancy services, including global coordination of such services.
7. The ACCC's investigation to date indicates that Aon and WTW are two of the three major brokers capable of providing commercial risk broking to large customers, reinsurance broking and employee benefits services in Australia (the other being Marsh¹). Moreover, the ACCC's preliminary view is that Aon, WTW and Marsh are significant competitive constraints upon each other and that this constraint would be significantly diminished if the proposed merger proceeds. The ACCC has preliminary concerns that the unilateral and coordinated effects arising from the proposed merger could lead to sustainable price increases and/or a decrease in service and/or quality.

Making a submission

8. The ACCC invites submissions from interested parties.
9. Interested parties should provide submissions by 5pm on 12 March 2021. Responses may be emailed to mergers@acc.gov.au with the title: Submission re: Aon/WTW - attention Tim Byrne/Nicholas Wellfare. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Tim Byrne on 03 9658 6440 or Nicholas Wellfare on 02 9230 3813.
10. The ACCC anticipates making a final decision on 27 May 2021, however, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

11. The ACCC will not publish submissions regarding the proposed merger. The ACCC will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the CCA. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you

¹ Similar to Aon and WTW, Marsh is a leading global insurance broker and risk advisor, operating in more than 130 countries. In Australia, Marsh operates a commercial risk business, reinsurance business (Guy Carpenter), and a health and welfare benefits business (Mercer Marsh Benefits).

may have an opportunity to be heard. Therefore, please identify any confidential information that is provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC ‘Statements of Issues’

12. A Statement of Issues is not a final decision about a proposed merger. A Statement of Issues outlines the ACCC’s preliminary views and identifies further lines of inquiry.
13. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

The parties

14. Aon and WTW are both global professional services firms that provide, globally and in Australia, commercial insurance, reinsurance and employee benefits broking and advisory services.
15. Aon employs approximately 50,000 employees and conducts operations in more than 120 countries. In Australia, Aon has 40 branches, including in all capital cities and numerous regional locations.
16. WTW has more than 45,000 employees and services clients in over 140 countries. It has five branches in Australia, located in Adelaide, Brisbane, Melbourne, Perth and Sydney.

Industry background

Commercial insurance risk broking and advisory services

17. Businesses, governments, not-for-profit organisations and other corporate entities will typically seek commercial insurance to insure a range of different risks depending on their activities, assets and operations. These risks may be covered by property and casualty (or liability) insurance or specific insurance risk classes such as financial and professional (**FinPro**) including directors & officers (**D&O**) insurance, cyber, aviation, marine, and private equity, mergers and acquisitions (**PEMA**). In general, commercial insurance is considered to be business critical and represents a significant operating expense for customers.
18. Insurance brokers act as intermediaries between the customer that is purchasing cover for its risk and the insurance company (or companies) that underwrite that risk. Insurance brokers require an Australian financial services

licence to operate in Australia and may 'place' the insurance with insurers in Australia and/or overseas.²

19. Insurance brokers provide specialised advice on insurance options, arrange (broker) insurance, and provide ongoing claims management. Brokers are appointed by a customer, possibly following a tender process. Brokers are typically appointed around the time of insurance program renewal (typically every 3-4 years) for the period of the insurance coverage. Market inquiries suggest that the incumbent broker is often re-appointed. Brokers are remunerated through fees paid by customers and/or commission paid by insurers (which are ultimately reflected in the costs to customers).
20. The nature and scope of brokerage and advisory services is often tailored to the specific needs of the customer, particularly to larger customers and those seeking to cover complex and/or high-value risk. For these customers, brokers may provide comprehensive risk management advice to understand and anticipate risk demands, develop new insurance products to meet customer needs, manage the program of insurance needs and negotiate bespoke insurance coverage, often with a consortia, rather than a single insurer, and provide crisis management advice and support. Insurance brokers use extensive manpower, data, analytics and modelling capabilities to supply these services.

Reinsurance broking and advisory services

21. Reinsurance broking involves providing broking and related advisory services to an insurer (called a 'cedent') to facilitate the transfer of some or all of its insured risk to a reinsurer or several reinsurers. The ability to reinsure risk is critical to insurers and their ability to continue to write new business (be it personal, commercial, life, etc. insurance).
22. Reinsurance agreements generally take one of two basic forms facultative agreements or treaty agreements:
 - **facultative reinsurance:** covers single risks or a defined package of risks (e.g. for an engineering plant) insured by the primary insurer.
 - **treaty reinsurance:** covers all the primary insurer's current and future policies within a certain risk class or classes. Insurers rely on access to treaty reinsurance to have the capacity to write (or insure) new business (as it will be covered under their reinsurance programme).
23. Reinsurance brokers provide specialised risk advisory services, place insurance with individual reinsurers or consortia of reinsurers, negotiate terms of reinsurance coverage with reinsurers, and manage claims on behalf of insurers. The nature and scope of the reinsurance brokerage and advisory services is highly tailored to the individual customer.
24. Facultative reinsurance brokers may also assist a commercial insurance broker with the placement of single risks or a defined package of risks for a commercial insurance customer, particularly if there may be limited insurer

² Brokers typically use the services of wholesale commercial insurance brokers based in the global insurance centres (e.g. London, Singapore) to place insurance with overseas insurers. Wholesale commercial insurance brokers may be in-house or external.

capacity to underwrite the risk, for example, if the risks are large, complex or high-value.

25. Reinsurance brokers are remunerated through commissions paid by the reinsurer and/or fees paid by insurers.

Employee benefits broking and consultancy services

26. Employee benefits broking and consultancy services relate to the design, implementation and ongoing administration of monetary (for example, remuneration and superannuation) and non-monetary (for example, health insurance) employee benefits programs for companies to assist them to attract and retain employees.
27. Providers of employee benefits broking and consulting services provide, among other associated services:
- specialised advice on all aspects of employee benefits, including superannuation and retirement benefits;³
 - provide benchmarking, actuarial services, analytics and audit services; and
 - arrange group life, income, health and other employee-related insurance (only licensed insurance brokers are able to place insurance), including negotiation of policy wording and claims management services.
28. The nature and scope of the services that brokers offer is often tailored to the specific needs of the customer.
29. Employee benefits broking and consulting services may be provided only in Australia or in Australia and other countries to multinational customers that require global coordination of these services. Global coordination of employee benefits broking and consulting services is important for companies with operations in multiple countries to ensure consistent benefits for employees across all locations.
30. Providers of employee benefits broking and consulting services are remunerated through fees paid by clients (particularly for the consulting services) and/or commissions received from insurers.

Issue of concern: Supply of commercial insurance risk broking and advisory services

Relevant market

Possible segmentation by customer size, complexity and/or insurance premium

31. Based on the investigation to date, the ACCC's preliminary view is that large sized customers and those with more complex and/or high-value insurance premiums (together **large customers**) have fewer available commercial

³ Superannuation and retirement benefits services includes for example, retirement plan and strategy design; benchmarking retirement benefit plans; review of retirement plan strategy and performance; and advice to employers on employees' retirement readiness..

- insurance broking options. These types of customers often have an extensive portfolio of risks (across different risk classes), high value assets, a multinational presence, and/or need to place risk into offshore insurance markets.
32. These types of customers have generally indicated to the ACCC that they require a broker with global scope as well as a strong Australian presence. This includes:
- broad expertise, including data and analytical capabilities across the spectrum of risks or potential risks
 - the license to place insurance in all the countries where the customer has operations, and
 - the ability to access international insurance markets and pools or consortium of insurers and place large and/or complex risk. This includes the ability to negotiate policy wording with the insurer/consortium, and handle potential future claims negotiations with the insurer/consortium.
33. The ACCC understands that these customers deeply value their ongoing relationship with their broker, and view strong service capabilities and the ability of the broker to complete the procurement of insurance (including access to overseas insurer capacity) as more important than price when selecting a broker. These customers regard the depth and breadth of the broker's institutional relationships with insurers as critical, both to the successful placement of insurance and handling of claims in a prompt and efficient manner. Submissions to the ACCC indicate that, to service the needs of large customers, these relationships are strongest for Aon, Marsh and WTW.
34. Responses to the ACCC's inquiries also indicated that the majority of brokers typically segment their customers based on size. Different brokers have different criteria to categorise customers by size depending on the size, expertise and business strategy of the broker. Aon and WTW identify their corporate and/or multinational customers, based on a size, complexity or risk value metric. They both also have business units dedicated to servicing multinational customers.
35. The ACCC is still considering whether and, if so, how to define large commercial insurance customers (i.e. large sized customers and those with more complex and/or high-value insurance premiums), noting that the industry does not precisely define the term. While there are no "bright lines" to segment the market, based on inquiries to date, the ACCC's preliminary view is that these large customers are likely to have:
- insurance premium in excess of at least \$500,000, and/or
 - annual revenue in excess of \$150 million, and/or
 - an ASX150 listing.

The ACCC invites comments from market participants on this issue.

Possible segmentation by risk category or industry speciality

36. The ACCC understands that there are certain insurance risk categories or industry specialities that require additional broker specialisation. Specialist risk categories or industry specialities could include aviation, cyber, FinPro (including D&O), construction, energy/power and PEMA. Customers have submitted that most speciality risk categories are not substitutable. For example, a customer requiring cyber insurance cannot acquire aviation insurance as a substitute.
37. The ACCC's investigation has indicated that a broker is often required to have specialist in-house expertise, data and analytics capabilities to provide specialty risk or industry insurance broking and advisory services and may internally organise such expertise into specialist units to service customers of all sizes. The ACCC also understands that for a broker to compete effectively, the ability to access overseas insurance markets is important and for certain risk categories or industry specialities, essential, as it is not possible to place the risk domestically.
38. The ACCC's preliminary view is that the effects identified in respect of large customers are most keenly felt by customers seeking broking and advisory services in PEMA, FinPro, aviation, cyber, marine, construction and education risk categories/industry specialities, in that these customers have fewer available broking options. The ACCC is considering whether there are further risk categories or industry specialities which may have similar competitive dynamics.
39. In light of the above, the ACCC is also considering whether it may also be necessary to identify certain risk classes or industry specialities to properly consider the competitive effects of the proposed merger.

The ACCC invites comments from market participants on its preliminary views about our approach to the relevant market/s for commercial insurance broking and advisory services. In particular market participants may wish to comment on the following:

- whether the market should be segmented by large customers (i.e. large sized customers and those with more complex and/or high-value insurance premiums), including the extent to which the insurance and insurance broking requirements of large customers is different to that of other customers.
- whether the market should be segmented by risk category and/or industry speciality.
- how 'large' customers of commercial risk insurance broking and advisory services should be identified or defined.
- the extent to which brokers require specific knowledge, data and analytics, and experience to compete effectively in supplying broking and advisory services to large customers or specific risk categories or industry specialities.

Competitors and market concentration

40. The ACCC's preliminary view is that Aon, WTW and Marsh are the only brokers able to meet the requirements of large commercial insurance customers.
41. The ACCC's investigation indicates that smaller international brokers such as Arthur J. Gallagher (**Gallagher**) and Lockton, and the domestic broker networks of AUB and Steadfast⁴, while competitive in respect of small and medium sized enterprises (**SME**), are not able to meet the insurance broking and advisory requirements of large customers, and do not compete closely with Aon, WTW and Marsh for large customers.
42. In particular:
- Data and analytics: Aon, WTW and Marsh have extensive proprietary databases accumulated over a long period of time and sophisticated analytics and modelling capabilities. Significant expenditure and time is required to build and maintain this capability. Other brokers do not have comparable data and analytical capabilities to the leading three brokers.
 - Global scope: Aon, WTW and Marsh are the only brokers that have significant global reach, each operating in more than 120 countries. The smaller international brokers do not operate in as many jurisdictions as the three large brokers. Large customers indicated that the broker alliance model⁵ was not substitutable for the one-stop-shop offering of Aon, WTW and Marsh.
 - Holistic offering: Aon, WTW and Marsh have significantly greater scope to provide services across all risk categories.
 - Wholesale insurance broking capabilities: The ACCC's investigation indicates that having in-house, compared to third party, wholesale insurance broking capabilities makes it significantly easier for local Australian brokers to place risk with overseas insurers. The ACCC understands that Aon, Marsh and WTW have the most extensive in-house wholesale broking teams, capable of servicing their extensive global networks.
43. The ACCC also understands that there is a practice by certain major brokers to align insurers or insurance capacity to them, including by way of broker analytics platforms, access to broker proprietary databases and consultancy-style arrangements. The ACCC's investigation also indicates that the volume of commercial risk insurance brokered by Aon, Marsh and WTW gives them increased leverage with insurers.
44. The ACCC understands that these practices may result in preferential access to insurance capacity. This has the potential to limit the insurance coverage

⁴ AUB and Steadfast are both networks of independent commercial risk brokers in Australia and both strongly focused on SME and personal customers. For example, only 3% of Steadfast customers (commercial and personal) have a premium spend of more than \$250,000). Both AUB and Steadfast also have some reinsurance broking capabilities.

⁵ Some smaller brokers may be members of a broker alliance to facilitate the placement of insurance in countries the broker is not otherwise licensed to operate.

- and pricing that smaller brokers are able to obtain for their customers. The ACCC also understands that the increased leverage with insurers may be also used to pressure insurers not to participate in renewal of that insurance when the broker mandate has moved to a competing broker.
45. The ACCC understands that Aon, WTW and Marsh are the only three brokers operating in Australia that have a material facultative⁶ broking presence in Australia. The ACCC's investigation indicates that brokers with the ability to place facultative insurance in-house have cost advantages over brokers that do not have such in-house capabilities.
 46. The ACCC also understands that in-house capacity can allow these brokers to access more insurance capacity and place more risk. Further, insurance brokers that do not have facultative reinsurance capabilities would, if facultative reinsurance was required to place the customer's risk, need to use a competing broker (for example, Aon or WTW). It has been suggested to the ACCC that this may provide the competing broker with access to the primary broker's commercially sensitive information. If this is the case, it may distort the dynamics of competition.
 47. The parties have submitted that large customers use multiple insurance brokers and not necessarily one broker across all required insurance lines. The ACCC understands this is relatively uncommon; not least because it can give rise to inefficiencies and operational challenges and may result in worse outcomes for the customer. Further, Aon, WTW and Marsh are the strongest brokers across the range of risk categories due to their resources and experience. Consequently, even if a single line or risk category of insurance is brokered by a smaller broker, this is unlikely to make smaller brokers a material constraint on the three large brokers.
 48. On this basis, the ACCC's preliminary view in the context of the ACCC's continued review of the proposed merger is that only Aon, WTW and Marsh are capable of meeting the insurance broking and advisory requirements of large customers, and that they exercise significant competitive constraint upon each other. Smaller brokers are not capable of servicing large customers to the same extent as Aon, WTW and Marsh and do not represent a material competitive constraint on the three large brokers.

Barriers to entry and expansion

49. As discussed above, to compete effectively for large customers, brokers require sophisticated data, analytics and modelling capabilities, global reach and a strong Australian presence, and the ability to provide services across all risk categories.
50. The parties have submitted that insurance data and analytics and modelling capabilities are widely available from a variety of third party providers. However, the ACCC's investigation has indicated that such third party data is not as comprehensive or valuable as the data held by the three major brokers and it would likely take a significant amount of time and expenditure for new

⁶ Facultative reinsurance covers single risks or a defined package of risks (e.g. for an engineering plant) insured by the primary insurer.

entrants or smaller brokers to develop these capabilities to the extent necessary to compete effectively with the three large brokers.

51. Further, as noted above, market feedback indicates that the reputation of the three large brokers is a significant barrier to entry or expansion in insurance broking. Insurance represents a significant cost and can itself be a potential risk to businesses and in particular large customers. The three large brokers are viewed as more experienced and reliable by large customers, and this makes it less likely that a large customer would elect to move their business to a new entrant or smaller broker, even if a smaller broker could develop the requisite capabilities.
52. The parties submit that brokers can easily enter or expand commercial insurance broking operations by hiring experienced brokers who come with expertise and strong client relationships. The parties submit that numerous broking firms in Australia have been strategically poaching experienced brokers in order to expand. However, other market participants have submitted that simply hiring brokers, even a team of brokers, is not sufficient to make a smaller broker a competitive constraint on the three major brokers in supplying services to large customers.
53. Further, the ACCC understands that customer relationships, particularly for large customers, are institutionalised within the broker firm. In addition, the ACCC understands brokers are prohibited by the terms of their employment contracts to poach clients for a period following their move. The ACCC's investigation also indicates that smaller brokers also remain at a disadvantage relative to the three major brokers in relation to data, analytics and modelling capabilities, global reach (including wholesale insurance broking capabilities) and reputation.
54. The ACCC's preliminary view in the context of our continued review of the proposed merger is that these barriers to entry and expansion mean that timely entry/expansion on a scale sufficient to constrain the merged entity is unlikely.

Alternatives to brokers, and customer bargaining power

55. The ACCC has considered whether there are alternatives to using a broker (direct placement, use of captives) that will constrain the merged entity post-merger.
56. The ACCC's investigation indicates that direct placement is not a viable option, particularly for large customers because:
 - customers rely on brokers for a wide range of services, including providing strategic advice (including knowledge of trends and capacity in insurance markets), placing insurance, negotiating with insurers, and managing claims. Customers did not consider it feasible to undertake this range of services in house and, considered that if they tried, this would result in them being worse off than if they had used a broker;
 - many insurers do not have the capabilities to deal with customers directly nor permit customers to place insurance with them directly;
 - large, complex or high-value risk is often placed with a consortium of insurers (which may also include reinsurers); customers consistently and

strongly told us it would not be possible to build a consortium, negotiate policy wording, or handle claims management without a broker.

57. Submissions from market participants to the ACCC consistently indicated that, in light of all the services provided by brokers, bypassing brokers and dealing directly with insurers is cost-prohibitive and not a realistic option. This is particularly true for large customers given the scale and/or complexity of their risk requirements. Market participants told us that if they were to try to place insurance directly with an insurer, it would only be possible for specific, very small lines of insurance (i.e. only at the margins), and that this does not materially offset the need to engage a broker.
58. Further, the ACCC understands that for many large customers, the use of a broker is seen to provide reassurance that the risks of the company are adequately covered, and senior management requires independent, specialist advice from a broker in order to sign off on insurance premium spend.
59. The ACCC's investigation indicates that the use of captives⁷ is uncommon in Australia. Market participants considered captives to be costly, typically only used for large uninsurable risks, and not a realistic option for most customers. Further, the ACCC understands that if customers do use captives, it is only for some of their risk, and would not materially offset the need for traditional insurance placed through brokers. In addition, an insurance broker is typically required to advise on the use, establishment and management of the captive.
60. Consequently, the ACCC's preliminary view in the context of the ACCC's continued review of the proposed merger is that large customers lack alternatives to the three major brokers and the bargaining power of large customers is low, given their inability to bypass brokers and (as discussed above) smaller brokers are not capable of servicing large customers to the same extent as Aon, WTW and Marsh.

Coordinated effects

61. As set out in the ACCC's Merger Guidelines the ACCC considers that a proposed merger may make coordinated conduct more likely, or sustainable if, for example, it reduces the number of firms among which to coordinate or strengthens the position of a firm which is likely to promote or support coordination:

“...mergers can lessen competition through coordinated effects. Mergers have coordinated effects when they assist firms in the market in implicitly or explicitly coordinating their pricing, output or related commercial decisions. A merger may do so simply by reducing the number of firms among which to coordinate, by removing or weakening competitive constraints or by altering certain market conditions that make coordination more likely. Coordinated effects may occur in addition to unilateral effects so that the merged firm is able to achieve even higher prices than it would on its own. In some cases, coordinated effects, either

⁷ Captives, or a captive insurer, is an insurance company that is wholly owned and controlled by its insureds. Its primary purpose is to insure the risks of its owners, and its insureds benefits from the captive's underwriting profits.

*alone or in conjunction with unilateral effects, may amount to a substantial lessening of competition.*⁸

62. The ACCC's preliminary view is that, in Australia, Aon and WTW are two of only three brokers that can meet the insurance broking and advisory requirements of large customers.
63. Further, the high barriers to entry and expansion means that any coordinated conduct is unlikely to be prevented by new entry or the threat of it.
64. The ACCC is also of the preliminary view that the proposed merger could increase the similarities between Marsh and the merged entity in terms of size, structure and geographic footprint. This could align the incentives of the merged entity and Marsh and make it easier to engage in and sustain coordinated conduct.
65. In addition, the ACCC understands that competition between brokers often occurs through tender processes and that brokers have knowledge and visibility of competitors' pricing and strategies.⁹ In addition to the high market concentration, these factors increase transparency and could make the market vulnerable to coordination.
66. Therefore, at this stage, the ACCC considers in the context of the ACCC's continued review of the proposed merger that the proposed merger may make coordinated conduct more likely, or more sustainable, and as a result may be likely to substantially lessen competition in the supply of commercial risk broking and advisory services to large customers.

Preliminary views on constraints on the merged entity

67. The ACC's preliminary view is that Aon, WTW and Marsh are the only brokers likely to be capable of meeting the insurance broking and advisory requirements of large customers, and face minimal other competitive constraints.
68. The ACCC is concerned that the proposed merger will therefore remove a significant competitive constraint from the market by combining two of these suppliers, and may reduce choice for large customers seeking commercial risk broking and advisory services. This may result in increased prices (i.e. brokerage fees, and/or insurance costs) and/or a reduction in quality or service.
69. The ACCC's investigation has indicated that tender or contract renewal processes are likely to be less competitive after the proposed merger because of the lack of viable alternatives. In addition to brokerage cost increases, customers have raised concerns that service and quality of the offering will decline, including day-to-day servicing (including claims and crisis management). These concerns are potentially significant: the ACCC's investigation has indicated that brokers are likely to compete more on quality of service than on brokerage price.

⁸ ACCC Merger Guidelines, November 2017, paragraph 6.1.

⁹ In addition to specific concerns raised by market participants relating to the exchange of commercially sensitive information where a third party facultative reinsurance broker is required to assist with the placement of the commercial risk.

70. Further, due to the practice of the major brokers' to align with insurers, and the leverage the merged entity and Marsh would have with insurers post-merger, market participants have expressed concerns that the proposed merger will result in preferential access to insurance capacity for the two remaining major brokers. This would make it more difficult for smaller brokers to compete as it will diminish the insurance that smaller brokers are able to obtain for their customers. Consequently, it will be more difficult for non-Aon or Marsh customers to access insurance capacity and/or they may receive worse terms for access (i.e. reduced coverage and/or higher prices).

The ACCC invites comments from market participants on its concerns in relation to the supply of commercial insurance broking and advisory services. In particular market participants may wish to comment on the following:

- the extent to which Aon and WTW compete in the supply of insurance broking and advisory services, including to large customers and by risk class or industry speciality.
- the extent to which other brokers compete with and constrain Aon and WTW in the supply of insurance broking and advisory services to large customers, and why.
- the extent of barriers to entry and expansion for the supply of broking and advisory services to large customers, in particular the extent to which data, analytical and modelling capabilities, and having a global presence, create barriers to entry and expansion.
- the ability of customers to place insurance directly with insurers or use captives to bypass brokers.
- whether the proposed merger would increase the likelihood of coordinated conduct in the supply of commercial risk broking and advisory services, in particular to large customers.

Issue of concern: supply of reinsurance broking and advisory services

Relevant market

71. The ACCC considers there is likely a distinct market for the supply of reinsurance broking and advisory services. The ACCC understands that insurers require reinsurance brokers to provide specialised risk advisory services and for the placement of risk¹⁰ with a reinsurer(s). The ACCC's investigation indicates that insurers do not possess the expertise or resources to bypass reinsurance brokers because:

¹⁰ Market participants' submissions are consistent that alternative capital (e.g. catastrophe bonds sold to hedge funds, pension funds and other market participants) is not viewed as a substitute for reinsurance in Australia. Further, the ACCC understands that if alternative capital were to be used, it could only be a complement to, but not substitute for, reinsurance, and that a reinsurance broker would still be required to devise the risk management strategy and facilitate access to the alternative capital.

- brokers utilise extensive data, modelling and analytics capabilities to facilitate the placement of reinsurance and provide associated advisory services, which an insurer cannot replicate in-house;
- broker expertise is required to negotiate reinsurance programs, particularly if risk is being placed with a consortium of reinsurers;
- brokers provide associated ongoing services, including claims management and risk modelling.

Possible segmentation between treaty and facultative reinsurance broking and advisory services

72. Some market participants submit that brokers require different levels of expertise and data, analytics and modelling capabilities to place treaty compared to facultative reinsurance and provide associated advisory services. The ACCC understands that it is less complex to place and advise on facultative reinsurance than treaty reinsurance, and that treaty reinsurance typically involves larger spend and deeper relationship between the insurer and broker.
73. The ACCC understands that there is limited substitutability between treaty and facultative reinsurance given the scope of risk transfer (single *versus* all current and future policies within a risk class). On the other hand, the ACCC also understands from submissions that insurers require and reinsurance brokers typically provide risk management advice across all or almost all of the insurers book of business to advise on the appropriate risk management (i.e. treaty or facultative) reinsurance program.
74. The ACCC's preliminary view is that the relevant market for analysing the competitive effects of the proposed merger is the supply of reinsurance broking and advisory services in Australia, but the ACCC will consider whether specific issues arise in segments of this market

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market/s for reinsurance broking and advisory services. In particular market participants may wish to comment on the following:

- the extent to which reinsurance brokers require different knowledge, data and analytics capabilities and experience to provide broking and advisory services for treaty and facultative reinsurance.

Market concentration

75. Market participants have consistently submitted that Aon, WTW and Guy Carpenter/Marsh (Guy Carpenter is the business division of Marsh which provides reinsurance broking and advisory services) are the only reinsurance brokers with the expertise, data, analytical, and modelling capabilities and global reach¹¹ to meet the requirements of insurers in Australia. Other reinsurance brokers (either in Australia or overseas) were not viewed as adequate alternatives.

¹¹ There are no Australian reinsurers. Australia-based reinsurance brokers must place risk for insurance customers with global reinsurers such as Munich Re and Swiss Re.

76. The ACCC's investigation also indicates that, similar to large commercial insurance broking and advisory services customers, insurers value the quality and service offering, more highly than price. The ACCC understands that reinsurance brokers have a 'trusted advisor' position for an insurer, such that insurers are averse to using the same reinsurance broker as their major competitor.
77. ACCC market inquiries also indicated that the relationships between reinsurance brokers and their insurer customers are entrenched and long-term, in particular for treaty reinsurance. Insurers value their relationship with the reinsurance broker, the institutional in-depth business knowledge acquired over time by the incumbent broker, local expertise coupled with the ability to access international reinsurance markets as well as the expertise and analytical capabilities of the broker.
78. The ACCC's investigation also indicates that the volume of reinsurance brokered by Aon, Guy Carpenter/Marsh and WTW gives them increased leverage with reinsurers to access capacity. This has the potential to reduce the reinsurance (both coverage and price) any potential competitor would be able to obtain for their customers.
79. In light of the above, it appears likely that the proposed merger would remove a significant competitive constraint from the market, and would result in Guy Carpenter/Marsh being the only material competitive constraint on a combined Aon-WTW. Further, it appears that the scope for increasing prices and/or reducing quality or service is particularly high, as insurers appear likely to sustain an increase in price (in particular) but possibly also a decrease in service or quality, rather than switch.

Barriers to entry and expansion

80. The information before the ACCC indicates that there are relatively high barriers to new entry and to expansion by existing competitors for the supply of reinsurance broking and advisory services, in particular for treaty reinsurance.
81. As discussed above, to compete effectively, reinsurance brokers require sophisticated data, analytics and modelling capabilities, strong expertise, the ability to effectively access reinsurance capacity and the ability to provide associated services on an ongoing basis.
82. The information before the ACCC suggests that customer retention rates are very high, in particular for treaty reinsurance, and that insurers place higher value on service or quality aspects of a reinsurance brokers' offering, rather than price.
83. The ACCC also understands that, given the importance of reinsurance to the insurer, insurers are reticent to switch to an alternative broker who does not have the established reputation of Aon, WTW or Guy Carpenter/Marsh. This makes it less likely that an insurer will elect to move their business (particularly treaty) to a new entrant or smaller reinsurance broker (especially if only in response to an increase in price).
84. These barriers to entry and expansion mean that timely entry/expansion on a scale sufficient to constrain a combined Aon-WTW is unlikely, in particular for treaty reinsurance.

Coordinated effects

85. At this stage, the ACCC considers that the proposed merger may also make coordinated conduct more likely, or more sustainable, in the supply of reinsurance broking and advisory services.
86. The ACCC is of the preliminary view that the proposed merger could increase the similarities between Guy Carpenter/Marsh and the merged entity, closely aligning their incentives and making it easier to engage in and sustain coordinated conduct. This is particularly the case for treaty reinsurance, where customer loyalty is high and customers are unlikely to switch in relation to price increases alone. This concern is greater given the high barriers to entry and expansion which mean that the threat of new entry is unlikely to prevent any coordinated conduct. Further, the ACCC understands there is a high degree of transparency in the market through tender processes that increase visibility of competitor's strategies and pricing.
87. Therefore, at this stage, the ACCC considers that the proposed merger may make coordinated conduct more likely, or more sustainable, and as a result may be likely to substantially lessen competition in the supply of reinsurance broking and advisory services.

Preliminary views on constraints on the merged entity

88. At this stage, the ACCC's investigation indicates that Aon, WTW and Guy Carpenter/Marsh impose competitive constraints on each other, but face minimal other competitive constraint. The proposed merger would remove a significant competitive constraint from the market by combining two of these suppliers. The removal of a competitive constraint could result in increased prices and/or a reduction in quality or service, including the ability to access sufficient reinsurance capacity and/or customers may receive worse terms for access (i.e. coverage and price).

The ACCC invites comments from market participants on its concerns in relation to reinsurance broking and advisory services. In particular market participants may wish to comment on the following:

- the extent to which Aon and WTW compete in the supply of reinsurance broking and advisory services.
- the extent to which smaller brokers compete with and constrain Aon and WTW in the supply of reinsurance broking and advisory services for (i) treaty reinsurance and (ii) facultative insurance, and why.
- the extent of barriers to entry and expansion for the supply of broking and advisory services for (i) treaty reinsurance and (ii) facultative reinsurance.
- the ability of insurers to place insurance directly with reinsurers (and bypass brokers).
- whether the proposed merger would increase the likelihood of coordinated conduct in the supply of reinsurance broking and advisory services.

Issue of concern: supply of employee benefits broking and consultancy services

Relevant market

89. The ACCC's inquiries to date suggest that many customers buy employee benefits products and services as a bundle. There are complementarities in demand and supply for the services associated with employee benefits broking and consulting services, including global coordination of such services to multinational companies. For example, the different aspects of an employee benefit package often take into account other aspects (e.g. an employee's salary may be adjusted to take account of other remuneration, such as superannuation).
90. The ACCC's inquiries indicate that most firms that provide these services provide all or a large proportion of these services and advertise them as a holistic offering, to benefit from these complementarities.
91. Also, there are likely to be complementarities in supply, or economies of scope, across the range of employee benefits services. These economies of scope are likely to arise from, among other things, the importance of data and analytics underpinning the employee benefits services, as well as the relationships and reputation of the brokers supplying these services.
92. For these reasons, the ACCC's preliminary view is that the appropriate relevant market for analysing the competitive effects of the proposed merger and the sphere of rivalry between the merger parties is employee benefits broking and consulting services (rather than distinguishing between different aspects of this service, as was suggested by the parties¹²).

Market concentration

93. Feedback from market participants indicates that Aon, WTW and Marsh (though its Mercer Marsh Benefits division) are the three major providers of employee benefits broking and consultancy services in Australia. A few smaller brokers, notably Gallagher and Lockton, also provide employee benefits broking and consulting services.
94. However, the ACCC's investigation to date indicates that Aon, WTW and Marsh have a significantly greater ability to provide these services, in particular if global or multinational coordination of services is required. The ACCC understands that companies value brokers with local expertise in each jurisdiction in which they operate. Aon, WTW and Marsh operate in more jurisdictions than other brokers, and are better able to coordinate employee benefits across countries and ensure the appropriate level of local expertise.
95. The ACCC's investigation also indicates that customers also value the data, analytics and modelling capabilities of the brokers, for example to accurately benchmark employee benefits programs against their competitors and across industries. Feedback provided to the ACCC indicates that Aon, WTW and

¹² The parties suggested that the relevant markets should be defined as consulting services for (i) retirement benefits, (ii) health and welfare and (iii) human capital.

Marsh have significantly greater data, analytics and modelling capabilities than other brokers in relation to employee benefits services.

Barriers to entry and expansion

96. As outlined above, the ACCC's investigation indicates that to compete effectively, employee benefits brokers require comprehensive data, analytics and modelling capabilities, as well as manpower, expertise, relationships with insurers and the ability to provide these services on an ongoing (often daily) basis (including for example, employee return to work support).
97. The ACCC's inquiries to date have also indicated that employee benefits broking and consulting services are typically provided and purchased as a bundle of services. As such, to be effective competitors, providers must offer the range of employee benefits broking and consulting services.
98. In addition, the ACCC understands that establishing a strong local presence in Australia and other countries, in addition to global coordination capabilities, is necessary to offer employee benefits broking and consulting services to cross-border customers.
99. At this stage, the ACCC considers that these factors constitute significant barriers to entry and expansion into the supply of employee benefits services.

Alternatives to brokers

100. The ACCC's investigation indicates that bypassing a broker is not a realistic alternative for employee benefits programs because brokers have experience designing and implementing programs, and expertise, data and analytical capabilities that cannot easily be replicated. For example, to be aware of the competitiveness of their employee benefits offering, companies need to utilise the consulting and benchmarking services offered by employee benefits broking and consulting providers and cannot easily (or legally) obtain this information by other means.
101. Further, the ACCC understands that brokers are particularly important for companies that operate in multiple jurisdictions. Market participants have submitted that as brokers are well placed, and in certain cases viewed as essential, to assist with the design, coordination and management employee benefits programs across multiple jurisdictions
102. The parties have submitted that large consultancy firms such as Ernst & Young, KPMG, PwC and Deloitte some certain employee benefits consulting services. However, the ACCC understands that these types of consultancy firms do not have the ability to broker insurance, and so cannot offer the full range of employee benefits services in the way the parties and other brokers do.

Coordinated effects

103. The ACCC's preliminary view is that the proposed merger may make coordinated conduct more likely, or more sustainable, which may be likely to substantially lessen competition in the supply of employee benefits broking and consultancy services. The merger would increase similarities between the two remaining strongest competitors, and align their incentives, increasing

concerns around the potential for coordination. High barriers to entry also mean that the threat of new entry is unlikely to prevent any coordinated conduct.

Preliminary views on constraints on the merged entity

104. At this stage, the ACCC is concerned that the proposed merger is likely to result in the combination of two of the three major providers of employee benefits broking and consulting services in Australia, removing a significant competitive constraint from the market, especially for companies that require global coordination of these services. The removal of a competitive constraint could result in increased prices and/or a reduction in quality or service.

The ACCC invites comments from market participants on its concerns in relation to the supply of employee benefits broking and consulting services. In particular market participants may wish to comment on the following:

- the extent to which employee benefits services are provided and purchased as a bundle of services, the importance of bundling services, and the services that are included.
- the extent to which Aon and WTW compete in the supply of employee benefits services, including in relation to the global coordination of these services.
- the extent to which other brokers compete with and constrain Aon and WTW in the supply of employee benefits services, including in relation to the global coordination of these services.
- for companies that operate in multiple countries, the importance of a broker being able to provide global coordination of employee benefits services.
- whether the proposed merger would increase the likelihood of coordinated conduct in the supply of employee benefits broking and consultancy services.

ACCC's future steps

105. As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to mergers@acc.gov.au by no later than 12 March 2021.
106. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.
107. The ACCC intends to publicly announce its final view by 27 May 2021. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.