

# Anticipated acquisition by Willis Group Holdings of Miller Insurance Services LLP

**ME/6512-15**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 21 May 2015.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

## **SUMMARY**

1. Willis Limited, a subsidiary of Willis Group Holdings plc (**Willis**), has agreed to acquire an 85% controlling interest in Miller Insurance Services LLP (**Miller**) (the **Merger**). Willis and Miller are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of insurance and reinsurance broking services to customers seeking to place insurance and reinsurance in the London Market and, more narrowly within this segment, in the Lloyd's of London (**Lloyd's**) market.<sup>1</sup> The Parties supply these services in relation to a number of specific risk types and overlap in the United Kingdom (**UK**) in relation to the supply of insurance and reinsurance broking services for each of marine, energy, property and casualty, and financial lines risks. The CMA has assessed the impact of the Merger in the narrowest plausible product frames of reference (without coming to a definitive view) where the Parties overlap being each of insurance and reinsurance broking services in the Lloyd's market segmented by the following risk types: marine, energy,

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<sup>1</sup> The Parties also overlap in retrocessional reinsurance but the increment to their combined share of supply is minimal.

property and casualty, and financial lines. The CMA has considered the impact of the Merger on a national basis.

4. Overall, and in relation to each of the segments listed above, the CMA has found that the Parties have relatively low combined shares of supply, the Merger results in a relatively small increment to the Parties' shares, there is limited evidence of close competition between the Parties pre-Merger and a large number of alternative credible competitors will remain post-Merger.
5. For these reasons the CMA considers that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) on a market in the UK as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

7. Willis is active in insurance and reinsurance brokerage and risk advice globally. Willis provides these services to a range of clients including multinational and middle-market companies in a large variety of industries including aerospace, marine, construction and energy, as well as public institutions and individual clients. Willis is listed on the New York Stock Exchange. Willis had global turnover of approximately £2,306 million and UK turnover of £[REDACTED] million in its financial year to 31 December 2014.
8. Miller is a UK-based professional services firm with principal activities in insurance and reinsurance brokerage. Miller distributes insurance and reinsurance in a range of industries including marine, energy and professional services. Miller had global turnover of £112.9 million and UK turnover of £[REDACTED] million in its financial year to 30 April 2014.

### Transaction

9. Willis entered into an agreement on 22 January 2015 to acquire, through its wholly owned subsidiary, Miller 2015 Limited, an 85% controlling interest in Miller. In addition, there will be a transfer of certain businesses between the Parties.<sup>2</sup> The consideration for the acquisition of the interest in Miller is [REDACTED].

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<sup>2</sup> Under the terms of the Merger, [REDACTED].

The Merger is conditional on, among other regulatory approvals, competition clearance by the CMA.

## Jurisdiction

10. The CMA received a satisfactory statutory merger notice on 27 March 2015, and the statutory deadline for a decision by the CMA is 28 May 2015.
11. As a result of the Merger, the enterprises of Willis and Miller will cease to be distinct.
12. The Parties overlap in, among other things, insurance brokerage services for policy holders looking to insure marine risks in the London Market.<sup>3</sup> Willis's internal documents suggest that it accounts for [30–40]% of 'marine premium' in the London Market,<sup>4</sup> which appears (based on the wider content of the internal document and the organisation of Willis's business units) to refer to the share of insurance premiums written in the London Market<sup>5</sup> by insurers for which Willis provided brokerage services but may also include facultative reinsurance premiums.<sup>6</sup> As Miller is also active in these services, there is an increment to Willis's share of supply.
13. The Parties submitted that this was not a reasonable basis upon which to calculate shares of supply and that shares of supply should instead be calculated by reference to the Parties' shares of supply in each of insurance brokerage and reinsurance brokerage services in the UK,<sup>7</sup> because there is a high degree of supply-side substitutability between different broking services for different risk types. The Parties submit that this approach is supported by previous Office of Fair Trading (OFT) and European Commission precedents. In addition, the Parties submit that the shares in the internal documents are 'guesswork' and not underpinned by any robust data or verified in any way. Accordingly, even if the CMA were to consider the Parties' shares of supply on a narrower basis than for insurance and reinsurance broking services in the UK, in the Parties' view it should rely on the shares prepared by the Parties with the assistance of Boston Consulting Group, which estimate the Parties combined share by risk-type of insurance and facultative reinsurance

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<sup>3</sup> Within reinsurance, 'facultative' reinsurance means reinsurance on a risk by risk basis whereas 'treaty' reinsurance is reinsuring a group of risks together.

<sup>4</sup> Annex 31 to the Parties' Merger Notice Form, at slide 3.

<sup>5</sup> An insurance and reinsurance marketplace where large commercial and wholesale specialty risks are written in London. The London Market largely comprises the London Company market and Lloyd's market – see a more detailed description at paragraph 44.

<sup>6</sup> There are also a number of other references in Willis's internal documents to its shares of supply in certain risk types (see for example Annexes 24, 32, 34, 35, and 65 to the Merger Notice Form) that suggest that a share of supply of [20–30]% is enhanced as a result of the Merger.

<sup>7</sup> Also calculated by reference to insurance/reinsurance premiums written by insurers/reinsurers.

premiums in the London Market<sup>8</sup> to be below [20–30]% (as referred to by the CMA in the competitive assessment below).

14. The CMA considers that the supply of insurance brokerage services for marine risks on the London Market is a reasonable description of services and is an appropriate criterion for determining whether the share of supply test under section 23 of the Act is met and it is not necessary for the CMA to calculate merging parties' shares of supply on the basis of previously defined economic markets.<sup>9</sup> This is supported by evidence from third parties obtained during the CMA's market testing which indicated that there are different, more complex requirements in providing broking services for marine risks to be insured on the London Market as compared with other types of insurance broking. Moreover, the Parties have not been able to provide a satisfactory rebuttal of the shares in Willis's internal documents. In particular, the Parties' share data by risk-type does not distinguish between insurance and facultative reinsurance and the Parties themselves highlight a number of limitations in these data.<sup>10</sup>
15. The CMA therefore considers that the share of supply test in section 23 of the Act is met and, accordingly, that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## Frame of reference

16. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>11</sup>

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<sup>8</sup> These shares are based on data used to prepare the London Market Group's and Boston Consulting Group's 2014 report titled *London Matters* (the **London Matters Report**).

<sup>9</sup> The CMA notes that there is a wide discretion in describing the relevant goods or services for the purposes of the 'share of supply' test under the Act (see section 23(5) of the Act and paragraph 4.56 of CMA2 Mergers: Guidance on the CMA's jurisdiction and procedure, January 2014).

<sup>10</sup> Other than the inability to split insurance from facultative reinsurance within the share data, the Parties' principal concern is the difficulty in segmenting the Parties' respective business lines in a reliable manner.

<sup>11</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

## **Product frame of reference**

17. The Parties overlap in the supply of primary insurance, reinsurance and retrocessional reinsurance<sup>12</sup> brokerage services in the UK.
18. Brokerage services (or broking) are a method of insurance, reinsurance and retrocessional reinsurance distribution. Insurance, reinsurance and retrocessional reinsurance brokers act as intermediaries between clients and insurance/reinsurance companies by consulting with clients on their insurance, reinsurance and retrocessional reinsurance needs and negotiating the contract terms with the insurer, reinsurer or retrocessional reinsurer on the clients' behalf.<sup>13</sup>
19. In Marsh/HSBC,<sup>14</sup> the OFT considered the impact of the merger on the supply by brokers of insurance distribution, reinsurance distribution and retrocessional reinsurance distribution services separately without concluding on the precise frame of reference given that, even on a narrow basis, the proposed merger did not raise competition concerns. In addition, in past OFT and European Commission decisions insurance and reinsurance were considered to be distinct frames of references.<sup>15</sup> Finally, in previous OFT and European Commission decisions, a further distinction has been made between life and non-life insurance products.<sup>16</sup> The CMA considers below whether in the present case it is appropriate to analyse these segments separately.

### ***Retail and wholesale broking***

20. The CMA first assessed whether there should be a separate frame of reference for each of wholesale and retail broking.
21. Brokers carry out 'retail' or 'wholesale' broking depending on the customer. Retail brokers deal directly with the end customers (ie, they intermediate directly between the entity ceding the risk and the entity carrying the risk), whereas wholesale brokers provide broking services for retail brokers (ie, they

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<sup>12</sup> Retrocessional reinsurance is where reinsurance companies themselves reinsure some of the risks that they have assumed.

<sup>13</sup> The CMA understands that insurers and reinsurers can be considered to have customers on 'two sides' of the market, ie, they may receive fees both from risk ceders and commissions from risk carriers. However, the CMA has no reason to believe that the conditions of competition differ on the two sides of the market.

<sup>14</sup> OFT decision in ME/4424/10, Anticipated acquisition by Marsh and McLennan Companies Inc of HSBC Insurance Brokers Limited (2012) (Marsh/HSBC), at paragraph 7.

<sup>15</sup> See for example Marsh/HSBC, at paragraph 7, and Case COMP/M.6957 IF P&C/Top Danmark, at paragraph 15.

<sup>16</sup> Case IV/M.1307, Marsh & McLennan/Sedgwick, Commission decision of 23 October 1998 (Marsh/Sedgwick), paragraph 9; Case COMP/M.4059, Swiss Re/GE, Commission decision of 24 April 2006, paragraph 17.

intermediate between the entity carrying the risk and a retail broker who has the contact with the entity ceding the risk).

22. The Parties submit that there are no differences between the skillset, registrations or authorisations, systems or controls that a wholesale broker would be expected to have compared to a retail broker; the contractual terms offered by insurers or reinsurers are the same regardless of whether a risk is placed by a wholesale broker or directly by a retail broker who could access those insurers/reinsurers.<sup>17</sup>
23. Third party responses to the CMA's market enquiries did not suggest that any particular specialist skills were required by a retail broker to provide wholesale broking services and vice versa. Indeed, the vast majority of the Parties' competitors in the London Market, including all of the top ten largest brokers, appear to provide wholesale and retail broking services and all competitors responding to the CMA's market enquiries stated that it would be straightforward for retail brokers to provide wholesale broking services for other brokers and vice versa, and that there are no significant barriers to them doing so.
24. Accordingly, while there may be differences from a demand-side perspective, the CMA considers that there is a high degree of supply-side substitutability between wholesale and retail broking services. Therefore, for the purposes of this investigation, the CMA has considered wholesale and retail broking services together.

### ***Insurance against reinsurance***

25. The CMA considered whether there should be a separate frame of reference for insurance and reinsurance.
26. Insurance is a form of risk management to protect against contingent loss. An insurance contract transfers to an insurer the original risk to which a person or business is exposed, whereas a reinsurance contract transfers risk that has been assumed by an insurer under pre-existing or contemplated insurance contracts. Reinsurance may be placed on a portfolio basis (known as 'treaty reinsurance') or an individual risk basis (known as 'facultative reinsurance').

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<sup>17</sup> Merger Notice Form, at paragraphs 12.9–12.13.

27. In Marsh/HSBC and Aon/Benfield,<sup>18</sup> the OFT assessed the competitive effects in insurance distribution and reinsurance distribution separately without concluding on whether this was the appropriate frame of reference.<sup>19</sup>
28. The Parties did not suggest that the CMA should take a different approach in this case.
29. The CMA has not received any evidence from third parties during its market testing to suggest that it should depart from previous decisional practice. Accordingly, on a cautious basis, the CMA has assessed the Merger using separate frames of reference for insurance and reinsurance distribution.

### ***Retrocessional reinsurance distribution***

30. Reinsurance companies may themselves reinsure some of the risks that they have assumed (this is called retrocessional reinsurance). Reinsurance companies can source retrocessional reinsurance through a number of intermediaries (brokers) or directly from other reinsurance companies.
31. The Parties submit that they overlap in the provision of retrocessional insurance broking services to only a very limited extent, with Miller having a share of less than [0–5]% of UK retrocessional reinsurance supply resulting in a [~~2~~] increment to Willis’s [10–20]% share of supply. Based on this evidence, the CMA has not found it necessary to conclude on the precise frame of reference for retrocessional reinsurance distribution because the Merger does not raise competition concerns on any plausible basis. Accordingly, the CMA does not consider retrocessional reinsurance distribution further in this decision.

### ***Life products against non-life products***

32. The CMA has assessed whether it is appropriate to distinguish between life and non-life insurance and reinsurance products.
33. The OFT and the European Commission have previously concluded that there are separate frames of reference for the distribution of life insurance and non-life insurance on the basis that there tend to be different providers of these services and they are subject to different regulations.<sup>20</sup> The OFT has not previously assessed a separate frame of reference for life reinsurance.<sup>21</sup>

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<sup>18</sup> OFT’s decision in case ME/3884/08, Anticipated acquisition by Aon Corporation of Benfield Group Limited (Aon/Benfield).

<sup>19</sup> Marsh/HSBC, at paragraph 8, and Aon/Benfield, at paragraphs 8–18.

<sup>20</sup> Marsh/HSBC, at paragraph 8.

<sup>21</sup> Aon/Benfield at paragraphs 19 to 21, and Marsh/HSBC, at paragraph 26.

34. The Parties submit that they do not overlap in the provision of life insurance broking services and that they provide only very limited life reinsurance broking services with a combined share of supply in the UK of less than [0–5]%.<sup>22</sup> In view of this, the CMA has not sought to analyse this frame of reference further or to conclude on the exact scope of the life insurance and life reinsurance frame of reference and only non-life insurance and reinsurance distribution will be considered further in this decision.

### ***Distribution channel for non-life insurance and reinsurance***

#### *Non-life insurance distribution*

35. The CMA assessed whether the frame of reference for non-life insurance distribution includes all routes to market (ie, including direct placement) or should be considered more narrowly on the basis of insurance brokers only.
36. The Parties submit that the relevant frame of reference should include all forms of client routes to market, including direct placements to insurers and reinsurers as well as indirect placements via intermediaries such as brokers, banks and agents.<sup>23</sup>
37. The CMA's market testing suggested that the majority of insurers use broking services to distribute their policies, and it is not clear that all insurers would find direct placement a viable alternative for distributing all of their products to all their clients (especially for corporate speciality risks).
38. Accordingly, the CMA has considered the impact of the Merger on the narrowest frame of reference, namely the distribution of insurance via intermediaries, excluding direct sales to customers. However, given that the Merger does not give rise to competition concerns on any reasonably conceivable frame of reference, it is not necessary to conclude on whether the market should be segmented according to the way that primary insurance is distributed.

#### *Non-life reinsurance distribution*

39. As with non-life insurance, the CMA assessed whether the frame of reference for non-life reinsurance distribution includes all routes to market.

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<sup>22</sup> Merger Notice Form, at paragraphs 12.17 & 13.2.

<sup>23</sup> Merger Notice Form, at paragraph 13.4.



40. As stated at paragraph 36 above, the Parties submit that the relevant markets should include all routes to market.
41. The CMA's market testing suggested that the majority of reinsurers use broking services to distribute their policies and it is not clear that all reinsurers would find direct placement to be a viable alternative for distributing all their products and, in particular, for very large or corporate speciality risks.
42. Accordingly, the CMA has considered the impact of the Merger on the narrowest plausible frame of reference, namely reinsurance distribution via intermediaries (brokers). However, given that the Merger does not give rise to competition concerns on any reasonably conceivable frame of reference, it is not necessary to conclude on whether the market should be segmented according to the way reinsurance is distributed.

### ***Lloyd's insurance/reinsurance distribution***

43. The CMA assessed whether there should be a separate frame of reference depending on the marketplace in which brokers place risks with insurers and/or reinsurers on behalf of policy holders or cedants respectively.
44. The Parties are both active in the London Market, which is an insurance and reinsurance marketplace where large commercial and wholesale specialty risks are written in London.<sup>24</sup> The London Market comprises the Lloyd's and the London Company markets. There are additional regulatory requirements to operate as a broker in the Lloyd's market over and above those required to operate in the London Company market, and any broker who satisfies the regulatory requirements to place risk in the Lloyd's market will necessarily satisfy the requirements to place risk in the London Company market. Accordingly, the CMA has examined whether insurance and/or reinsurance broking for risks written in Lloyd's is the narrowest plausible frame of reference for the purposes of this investigation.

### ***Demand side substitution between the Lloyd's market and wider London Market***

45. The Parties submit that there is no separate market for Lloyd's brokers on the basis that there is no material difference between the Lloyd's insurance and reinsurance distribution market and the rest of the London Market. The Parties state that in their experience clients do not come to the London Market to access Lloyd's specifically, but rather look at the competitiveness of the offering across the London Market.

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<sup>24</sup> London Matters Report, at page 8.

46. The CMA received responses to its market enquiries from a number of insurance and reinsurance customers who indicated that access to Lloyd's insurers is very important to them as a key market in which to insure/reinsure risks and all customers that responded use Lloyd's brokers.
47. Therefore, the CMA considers that there is insufficient evidence of demand-side substitution to conclude that the Lloyd's market should be combined with the rest of the London Market.

#### *Supply-side substitution between the Lloyd's market and the rest of the London Market*

48. The CMA considers that the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances in which the CMA may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in prices, for example if suppliers can readily switch capacity between products that are not demand-side substitutes.<sup>25</sup>
49. The Parties submit that there is no longer a regulatory barrier preventing brokers who are not registered with Lloyd's from placing insurance into this market. The Parties also submit that [10–20]% of business placed in the Lloyd's market is by non-Lloyd's firms and they expect this to increase.
50. The CMA notes that of the 217 brokers listed on Lloyd's website, around 180 are London brokers, which would mean the vast majority of the London Market is Lloyd's accredited.
51. The CMA understands that the requirements, and registration process, to become a Lloyd's registered broker are not onerous. The majority of third party responses indicated that it would not be difficult for a non-Lloyd's registered broker to become Lloyd's registered and no respondents suggested that the requirements would be insurmountable.

#### *Conclusion regarding Lloyd's*

52. The CMA considers that, on the demand side, customers have a specific need for Lloyd's registered brokers. While the CMA accepts that there are some indications of supply-side substitutability, there is insufficient evidence to take a firm view on this matter. However, it has not been necessary for the CMA to conclude on the precise frame of reference, because, as set out

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<sup>25</sup> [Merger Assessment Guidelines](#), at paragraph 5.2.17.

below, the Merger does not give rise to competition concerns on any plausible basis.

***Different categories of non-life insurance/reinsurance risk***

53. The CMA assessed whether the frame of reference should be further segmented by risk type.
54. The CMA notes that the Parties largely structure their businesses by risk type:
- (a) Willis's UK business units<sup>i</sup> are:
- (i) Retail.
  - (ii) Property and Casualty.
  - (iii) Fine Art, Jewellery and Specie.
  - (iv) Hughes-Gibb (which covers, livestock, bloodstock, aquaculture, farming and forestry).
  - (v) Special Contingency Risks (including kidnap, piracy and medical incidents).
  - (vi) Faber Global (covering property and casualty).
  - (vii) Financial Lines (executive risks and financial transaction insurance).
  - (viii) Transportation (including marine, energy, aerospace and in-space).
  - (ix) Willis Capital Markets and Advisory (covering treaty and retrocessional reinsurance).<sup>ii</sup>
- (b) Miller lists its business units as:
- (i) marine;
  - (ii) reinsurance;
  - (iii) programmes and facilities;
  - (iv) energy;
  - (v) professional risks; and
  - (vi) property and casualty.

55. The Parties provided market data prepared by Lloyd's which uses the following segmentation: accident and health, aviation, casualty, casualty treaty, energy, marine, overseas motor, property (direct and facultative), property treaty and UK motor.
56. On the basis of information regarding the Parties' business units and the market share data that they have submitted, as well as responses of third parties who indicated that customers acquire insurance/reinsurance for these risk types from both Parties,<sup>26</sup> the CMA is of the view that the Parties overlap in relation to the following risk types:
- (i) energy;
  - (ii) marine;
  - (iii) property and casualty; and
  - (iv) financial lines/professional risks.

#### *Demand-side substitution*

57. The Parties submit that, from a demand-side perspective, different clients can seek insurance and reinsurance broking services for a broad variety of risks depending on their activities and combinations of risk types. Accordingly, it is impossible to delineate clear product markets according to risk or client type.
58. All customers (both insurers and reinsurers) responding to the CMA's market enquiries named specialist risk types for which they require insurance and reinsurance broking services. A number of respondents indicated that specialist knowledge is required to broker different risk types.
59. The CMA considers that there is limited ability to substitute one risk type for another, because if a client has a particular risk that needs to be insured/reinsured then a broker that does not provide services in relation to that risk type would not be able to meet their demand.

#### *Supply-side substitution*

60. The Parties submit that the insurance and reinsurance broking industry is characterised by a high degree of supply-side substitutability in respect of different types of risks and clients. The infrastructure, regulatory approvals and client relationships required to broker non-life insurance and reinsurance

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<sup>26</sup> Other categories that third parties mention include catastrophe risk and cosmetic surgery. However, the Parties do not overlap in these services in areas outside of the segmentation set out above.

are the same across all types of risks and clients in the UK (including wholesale and retail clients). The Parties further submit that there are no particular types of risks or clients that require ‘specialised’ broking skills which would not already be held, or could not be easily acquired through recruitment or training, by a broker servicing other types of risks or clients. The Parties provided a number of examples of personnel specialising in specific risk types moving from one supplier of broking services to another.

61. In Marsh/HSBC and Aon/Benfield, the OFT concluded that brokers who specialise in certain areas are able to switch with relative ease between types of risk.<sup>27</sup>
62. The third party responses to the CMA’s market testing were somewhat mixed. However, all competitors indicated that they would need to hire additional personnel with the requisite experience in a given risk type if they were to enter into a new area.
63. The CMA considers that the evidence shows that suppliers of broking services are not necessarily able to use their existing resources to increase their activity in, or enter into, the distribution of insurance/reinsurance in certain risk types. Suppliers instead have to buy-in labour with that expertise.

#### *Conclusion regarding segmentation by risk type*

64. The CMA has not found it necessary to conclude on whether the frame of reference should be segmented by risk type because the Merger does not give rise to competition concerns on any plausible basis. However, the CMA has assessed the competitive effect of the Merger on the risk types in which the Parties overlap.

#### **Conclusion on product market**

65. For the reasons set out above, the CMA has considered the impact of the Merger in relation to the following frames of reference:
  - (a) non-life insurance broking in the Lloyd’s market; and
  - (b) non-life reinsurance broking in the Lloyd’s market.

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<sup>27</sup> At paragraph 24 and paragraph 21 respectively.

66. As regards segmentation by risk type within each of the two frames of reference identified above, the CMA has assessed the following overlaps where the Parties overlap:
- (a) energy;
  - (b) marine;
  - (c) property and casualty; and
  - (d) financial lines/professional risks.

## **Geographic frame of reference**

67. The Parties consider that the markets for the supply of insurance and reinsurance distribution services are global in nature due to the high degree of both demand and supply-side substitutability occurring on a global basis.
68. The responses of customers requiring insurance and reinsurance broking services to the CMA's market testing suggested that they require, at least, Lloyd's registered brokers with a UK or London presence.
69. The CMA has therefore, on a cautious basis, assessed each product frame of reference on a national basis. However, it has not been necessary for the CMA to conclude on the precise geographic frame of reference, for any of the product frames of reference, since, as set out below, no competition concerns arise on any plausible basis.

## **Counterfactual**

70. The CMA assesses the Merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of a merger. However, the CMA will assess a merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions as between the merging parties.<sup>28</sup> In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward

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<sup>28</sup> See [Mergers Assessment Guidelines](#), paragraph 4.3.5 et seq.

arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

## **Competitive assessment**

### ***Horizontal unilateral effects***

71. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals. Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it may be the case that the Merger may be expected to result in an SLC in relation to unilateral horizontal effects in the frames of reference identified at paragraphs 65 to 69 above.
72. The Parties submit that, for all possible segmentations, Willis and Miller do not compete closely either on a global basis or in the UK due to their very different market positions and competitive strategies; in particular, that Miller is more focused on [REDACTED] whereas Willis is more focused on [REDACTED]. Moreover, the Parties submit that this is reflected in the range of brokers with whom each party competes, with Willis competing with the large global brokers (Marsh, Aon, Jardine Lloyd Thompson (**JLT**) and Arthur J Gallagher) and Miller competing with smaller-scale brokers, of which there are many. Accordingly, the Parties submit that they will continue to be constrained by other brokers post-Merger, as there are many competitors and customers can, and do, switch brokers.
73. The CMA has assessed the areas of overlap between the Parties below. The evidence from the CMA's market testing suggests that Willis and Miller compete more closely in marine insurance broking in the Lloyd's market and marine reinsurance broking in the Lloyd's market than in other possible segments. Therefore, the CMA considers these segments separately below, whereas it does not consider other segments separately for the purposes of this decision because, for the reasons set out below, the Merger does not raise any competition concerns on any plausible basis in relation to these other segments.

### ***Marine reinsurance broking***

74. The Parties provided the CMA with share data by risk type based on Lloyd's data and also estimated London Market shares by risk type. These data combine insurance and facultative reinsurance broking services.

75. The Parties submit that the Lloyd's data is not reliable as there could be coding issues with the data submitted to Lloyd's and there is a small sample size for certain risk types. The Parties raise similar concerns regarding the robustness of the wider London Market shares. The Parties submit that the CMA should instead consider the Parties' shares in the wider insurance and reinsurance segments only (where the Parties' combined shares in the UK are estimated to be approximately [5–10]% and [10–20]% respectively).
76. While the CMA has placed only limited evidentiary weight on the share data submitted by the Parties (given its limitations), the CMA considers that these data are a useful indicator of the Parties' relative shares (both against each other and total premiums written in the Lloyd's market) and a reasonable proxy for the Parties' shares separately in each of insurance and reinsurance broking segmented by risk-type.<sup>29</sup>
77. The Lloyd's share data shows that, for marine insurance and reinsurance broking, the Parties' combined share is [10–20]% with an increment of [5–10]%. The Parties' estimated shares in the wider London Market were [X] than for Lloyd's.
78. A large majority of the third party respondents to the CMA's market enquiries suggested that Willis and Miller do not compete closely in marine reinsurance broking services whether in the Lloyd's market or the broader London Market. A particular difference between the Parties that third parties identified was Miller's lack of complex analytics capability and lack of the global geographic presence that they require in a reinsurance broker. However, the CMA also received evidence to suggest that Willis and Miller compete in tenders for marine reinsurance broking services and that both Parties have won significant tenders. On a cautious basis, the CMA therefore cannot rule out that the Parties compete closely in relation to marine reinsurance broking in the Lloyd's market.
79. Only one customer expressed a concern that the Merger would reduce the choice of quality marine reinsurance brokers and therefore restrict competition. No other marine reinsurance customers were concerned by the Merger. In addition, one supplier of reinsurance also expressed a concern across all of the overlap segments resulting from the loss of Miller as an independent wholesale broker thereby reducing competition.

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<sup>29</sup> The CMA considers that these shares provide a meaningful indication of the Parties' strength in relation to a given risk type, in particular, because Miller's overall shares on the Lloyd's data for insurance broking and reinsurance broking are similar ([0–5]% and [0–5]% respectively), which tends to suggest that it has a similar presence in each segment. This is despite the fact that Willis has a [X] share in reinsurance than insurance ([5–10]% and [10–20]% respectively).



80. Moreover, third party responses indicated that there were a number of credible alternative competitors to the Parties in this segment. All respondents identified at least three other credible competitors (Marsh, Aon and JLT) and most identified significantly more. In addition, it is noteworthy that even the customer who raised concerns identified four alternative credible suppliers. The CMA therefore considers that sufficient constraints on the Parties will remain post-Merger.
81. Based on the evidence above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the marine reinsurance broking segment for customers placing risk at Lloyd's.

### ***Marine insurance broking***

82. As discussed above, the Parties provided shares segmented by risk type combining insurance and facultative reinsurance. The shares at paragraph 77 are, therefore, also relevant in the case of the Parties' activities in marine insurance broking.
83. However, a Willis internal document suggests that the Parties' share of supply in the marine insurance segment could be higher. It states that Willis's share of marine 'premium' in the London market was [30–40]% in September 2012 although it is not clear from this document whether Willis considers that its shares on a narrower basis (ie, in the London Company market and Lloyd's) are similar or differ.<sup>30</sup>
84. Third party responses to the CMA's market testing suggest that Willis and Miller compete to some degree in the marine insurance broking segment of the Lloyd's market and also in the London Market more generally. However, a number of alternative suppliers were identified (including, among others, Aon, Marsh and JLT).
85. The CMA considers that the Parties will continue to be constrained by the strong competition from a larger number of other brokers in the marine insurance broking services segment post-Merger. In addition, no marine insurance customers raised any concerns regarding the Merger.
86. Based on the evidence above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral

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<sup>30</sup> Annex 31 to the Merger Notice Form, at slide 2.

effects in the marine insurance broking services segment for customers placing risk at Lloyd's.

***Insurance and reinsurance broking in the energy, property and casualty and financial lines risk types***

87. The CMA considers together the remaining segments in which the Parties overlap given that no customers raised any concerns regarding these segments and their responses indicated that the Parties are less close competitors in these segments.
88. In energy insurance and reinsurance broking services, the Lloyd's share data submitted by the Parties suggests that the Parties have a combined share of supply in Lloyd's of [20–30]% with an increment of [5–10]%. The wider London market share is [X] at [10–20]% (with an increment of [0–5]%). These shares are broadly consistent with an internal Willis Business plan, which suggests that Willis has London (ie, Lloyd's and London Company market) upstream market share of [10–20]% to [20–30]%.
89. In property and casualty insurance, the Lloyd's share data is split into various segments<sup>31</sup> but suggests that the Parties' combined share of supply is [10–20]% or less in direct and facultative insurance and slightly higher in treaty reinsurance at up to [10–20]% (but, in the latter case, with a very small increment of [0–5]% or less). The Parties' estimate for the wider London Market is higher at [10–20]% but with an increment of only [0–5]%.
90. In financial lines, the Parties were unable to provide Lloyd's data. However, the Parties were able to provide wider London Market shares which suggest that the Parties' combined share of supply is [10–20]% with an increment of [0–5]% (although the CMA has placed only limited evidentiary weight on the London Market share data given its limitations (see paragraph 14 above).
91. The majority of the responses to the CMA's market enquiries indicated that the Parties were not particularly close competitors in any of the risk-types considered above.
92. All third parties responding to the CMA's market enquiries indicated that there were a number of alternative, viable competitors in each segment. Customers in particular identified other large, global brokers who compete in each of these segments being Marsh, Aon and JLT as well as Arthur J Gallagher for property & casualty and financial lines. A number of customers and

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<sup>31</sup> Casualty, Casualty treaty (ie, casualty treaty reinsurance), property direct and facultative, and property treaty (ie, property treaty reinsurance).

competitors indicated that Miller did not have the same capabilities as Willis and these larger brokers.

93. The CMA considers that the Parties will continue to be constrained by a number of alternative credible competitors post-Merger across all of these segments and for each of insurance and reinsurance broking.
94. Based on the evidence above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to insurance and reinsurance broking services in the Lloyd's market for energy, property and casualty or financial lines risks.

### ***Barriers to entry and expansion***

95. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>32</sup>
96. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

97. The CMA contacted customers and competitors of the Parties and relevant trade associations and regulatory bodies, including the Financial Conduct Authority. Only one customer raised concerns in relation to the supply of marine insurance and one supplier raised concerns regarding a reduction in choice of the number of wholesale brokers. No other third parties raised concerns about the Merger.
98. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Decision**

99. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

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<sup>32</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

100. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Jonathan Parker**  
**Director of Mergers**  
**Competition and Markets Authority**  
**21 May 2015**

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<sup>i</sup> Willis confirmed that this should refer to 'businesses' rather than 'business units'.

<sup>ii</sup> Willis confirmed that this should refer to 'Willis Re' rather than 'Willis Capital Markets and Advisory'.