Anticipated acquisition by Arthur J. Gallagher & Co. of the Treaty Reinsurance business of Willis Towers Watson

Decision on relevant merger situation and substantial lessening of competition

ME/6959/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 22 November 2021. Full text of the decision published on 10 December 2021.

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

SUMMARY

1. Arthur J. Gallagher Co. (**Gallagher**) has agreed to acquire Willis Re (the **Target**) (the **Merger**). Gallagher and the Target are together referred to as the **Parties**, and for statements referring to the future, the **Merged Entity**.

2. The Parties both supply non-life treaty reinsurance broking services across a large number of different risk lines to customers in the UK and globally. The Competition and Markets Authority (**CMA**) has considered whether, as a result of horizontal unilateral effects, the Merger may give rise to a substantial lessening of competition (**SLC**).

3. In assessing the competitive effects of the Merger, the CMA considered a range of evidence, including shares of supply, the Parties' win-loss analysis, the Parties' internal documents, as well as third-party evidence. The CMA found that the Parties are not particularly close competitors and that the Merger would result in a small increment across all risk segments. The available evidence also shows that the Merged Entity will continue to face competitive constraints from several providers across all relevant risk classes.

4. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the supply of non-life treaty reinsurance broking services, including across individual risk classes.

5. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

6. Gallagher is active in insurance and reinsurance broking, risk management and consulting services.[1] It is headquartered in the US and listed on the New York Stock Exchange.

7. Gallagher's reinsurance business is called Gallagher Re (previously Capsicum Re). In 2013, Capsicum Re was established as a joint venture between Gallagher and a team of founding individuals. This business enabled Gallagher's entry into reinsurance brokerage, establishing a client portfolio of major insurance carriers across the UK, Europe and Asia. Gallagher subsequently increased its interest to 100% in January 2020.[2]

8. Gallagher's turnover in 2020 was approximately £5,115.2 million worldwide and approximately £[✂] in the UK.

9. The Target is the non-life treaty reinsurance business of Willis Towers Watson plc (**WTW**) and provides treaty reinsurance broking services globally.[3] The Target has offices in 25 countries, represents over 750 insurance and reinsurance company clients.[4]

10. The Target's turnover in 2020 was approximately £[✂] worldwide and approximately £[✂] in the UK.

[1] Final Merger Notice dated 4 October 2021 (**FMN**), paragraph 2.1.
[2] FMN, paragraph 3.3.
[3] The Target includes Willis Re's activities in life reinsurance which are limited, with the GWP Willis Re places in life reinsurance amounting to [✂]% of Willis Re's total GWP. The Target also has marginal activities in facultative reinsurance, which were limited to [✂]% of its business globally.
[4] FMN, paragraph 3.4.

Transaction

11. On 12 August 2021 Gallagher entered into a binding security and asset purchase agreement with WTW to acquire sole control over the Target for $3.25bn.

Jurisdiction

12. Each of Gallagher and the Target is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

13. The UK turnover of the Target exceeds £70 million. Accordingly, the turnover test set out in section 23(1)(b) of the Act is satisfied.

14. The CMA therefore believes 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.

15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 5 October 2021 and the statutory 40 working day deadline for a decision is therefore 29 November 2021.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).[5] In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.[6] In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.[7]

17. The Parties submitted that the appropriate counterfactual is the prevailing conditions of competition.

18. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect.

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[5] Merger Assessment Guidelines (CMA129, March 2021) (**Merger Assessment Guidelines**), paragraph 3.1.
[6] Merger Assessment Guidelines, paragraph 3.2.
[7] Merger Assessment Guidelines, paragraph 3.9.

Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

19. The Merger relates to the provision of reinsurance broking services. While ‘insurance’ refers to the transfer of a risk from a business to an insurer, a reinsurance contract transfers risk assumed by an insurer to another insurer. The insurance of reinsurance (ie the transfer of risk assumed by a reinsurer to another reinsurer) is called ‘retrocessional reinsurance’.

20. Reinsurance contracts generally take one of two basic forms – facultative reinsurance and treaty reinsurance:

    (a) Facultative reinsurance is designed to cover a single risk or a defined package of risks (eg for an engineering plant or for fine art pieces).

    (b) Treaty reinsurance covers an insurance company’s partial or entire book of business within a certain risk class or across several risk classes (eg for homeowners’ risks).

Competitive assessment

Frame of reference

21. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.[8]

22. Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms.[9] In some cases market definition can be an important part of the overall merger assessment process. In other cases, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms’ behaviour, will capture the competitive dynamics more fully than formal market definition.[10] There may be no need for the CMA’s assessment of competitive effects to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether

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[8] Merger Assessment Guidelines, from paragraph 9.1.
[9] Merger Assessment Guidelines, from paragraph 9.2.
[10] Merger Assessment Guidelines, from paragraph 9.2.

particular products or services fall within it).[11] The approach taken by the CMA will reflect the circumstances of the case.

Product scope

The Parties' submissions

23. First, the Parties submitted that the relevant frame of reference should include direct placements by reinsurance carriers as well as intermediaries (ie brokers). The Parties submitted that insurance carriers and reinsurers are sophisticated market participants whose core business is to understand and cede complex risks and that they are able to replicate the value proposition offered by brokers by placing reinsurance directly.

24. Second, the Parties submitted that reinsurance broking services can be segmented into (1) life and non-life reinsurance; and (2) facultative and treaty reinsurance.

25. Third, the Parties submitted there was no need to segment the frame of reference along different risk classes because the Parties and their main competitors are active across all risk classes. The Parties submitted that while brokers will segment by risk classes for administrative or organisational reasons, this does not necessarily reflect distinctions in the conditions of competition or indicate a lack of supply-side substitutability.

26. Finally, the Parties submitted that there was no need to distinguish between primary reinsurance and retrocessional reinsurance, as they are essentially the same product. The Parties submitted that retrocessional reinsurance is a generic term to set it apart from other forms of reinsurance but that the underlying risk is the same. The Parties also submitted that most brokers intermediate both reinsurance and retrocessional risks, and that most reinsurers reinsure all types of risks, including retrocessional reinsurance.

27. The Parties submitted that in any event the exact product market definition could be left open because the Merger does not lead to a realistic prospect of a substantial lessening of competition on any plausible basis.

[11] Merger Assessment Guidelines, from paragraph 9.5.

The CMA's assessment

28. The CMA took as its starting point the overlap between the Parties. The Parties primarily overlap in the supply of non-life treaty reinsurance broking services.[12]

29. The CMA considered whether the frame of reference should be widened (1) to include both facultative and treaty reinsurance and (2) to include both direct placements and brokered insurance. The CMA considers that it would not be appropriate to widen the frame of reference on either basis:

(a) Facultative and treaty reinsurance serve different purposes, with the former insuring single risks or defined packages of risks, while treaty reinsurance covers entire books of business across one or more risk classes. Under a reinsurance treaty contract, reinsurers typically are not able to accept or refuse risks on a policy-by-policy basis. Third parties told the CMA that the provision of facultative reinsurance broking services is different from treaty reinsurance broking services, and that brokers have different skillsets depending on whether they provide facultative or treaty reinsurance broking services.

(b) Some customers told the CMA that they do not place reinsurance directly; instead they use the services of reinsurance brokers, suggesting a lack of demand side substitutability.

30. The CMA also considered whether the frame of reference should be segmented (1) by risk class and (2) into reinsurance and retrocessional insurance:

(a) In relation to risk class, third parties submitted that some brokers are stronger than others in particular risk classes, and that staff experience and modelling capabilities are not easily transferrable between risk classes. Furthermore, third parties submitted that smaller brokers tend to specialise in certain risk classes[13] and that mid-tier brokers are not active across all the risk classes. Customers also submitted that they may use different brokers for different risk classes, rather than contracting with the same reinsurer across their entire portfolio.[14] The CMA therefore

[12] There are only *de minimis* overlaps in life reinsurance (where [✂]), and facultative reinsurance (where the Parties' combined global share of supply is below [0-5]%). For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in respect of either life reinsurance or facultative reinsurance. These are therefore not considered further.
[13] Note of a call with a third party of 23 September 2021.
[14] Note of a call with a third party of 24 September 2021; third-party responses to Q4 of the Customer Questionnaire.

considers that it may be appropriate to segment the frame of reference by risk class.

(b) With regard to reinsurance and retrocessional insurance, several third parties submitted that brokers often provide both capabilities. The CMA does not therefore consider it appropriate to segment the frame of reference into reinsurance and retrocessional insurance.

31. On a cautious basis, therefore, the CMA has considered the effects of the Merger in the supply of non-life treaty reinsurance broking services, including retrocessional broking services. The CMA has taken into account competitive conditions across different risk classes in the competitive assessment.

Geographic scope

32. The Parties submitted that reinsurance services are intrinsically cross-border and global, and that suppliers provide services to customers based in multiple locations globally. The Parties submitted that while regional differences exist in reinsurance, these are not binary between different territories. The Parties also submitted the exact definition of the market can be left open because the Merger does not raise concerns under any plausible market definition.[15]

33. Previous European Commission decisions considered the relevant geographic frame of reference to be global, while a previous CMA investigation left the geographic frame of reference open.[16]

34. The CMA received evidence that some customers require and/or prefer a reinsurance broker to have a London presence. The reasons given were mixed. Some customers said they were based in London or insuring UK risk and therefore preferred to use a broker with a London presence. Others considered that London was a centre of expertise relevant when placing any kind of risk. For instance, one customer explained that its global markets division uses London-based brokers as they tend to have a better understanding of the underlying business being placed. Another customer told the CMA that it only used UK-based brokers as it only required UK cover. Another customer said that, as it is based in London, it is good to have a broker with a London presence. Most competitors also told the CMA that it was important for their business to have a presence in London in order to compete effectively.[17] One competitor submitted that the London reinsurance

[15] FMN, paragraphs 13.40 and 13.46.
[16] Case No. COMP/M.1307, Marsh & McLennan / Sedgwick, Commission decision of 23 October 1998, paragraph 23, ME/6512-15 Willis Group Holdings / Miller Insurance Services LLP, 21 May 2015, paragraph 68.
[17] Third-party responses to Q5 of the Competitor Questionnaire.

market holds deep experience and expertise whereas another submitted that London is a global hub for insurance and reinsurance.

35. The CMA has therefore considered the effects of the Merger on a global basis, but has taken into account the Parties' and their competitors' London presence in assessing closeness of competition between the Parties and the strength of alternatives.

Conclusion on frame of reference

36. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of non-life treaty reinsurance broking services on a global basis, but has taken into account conditions of competition across different risk classes and the Parties' and their competitors' London presence in its competitive assessment.

Horizontal unilateral effects

37. 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 to degrade quality on its own and without needing to coordinate with its rivals.[18] Horizontal unilateral effects are more likely when the merging parties are close competitors.[19]

The Parties' submissions

38. The Parties submitted that their shares of supply in (1) non-life treaty reinsurance broking services (including retrocessional reinsurance broking services) and (2) non-life treaty reinsurance broking services segmented by risk classes are below the level that could give rise to competition concerns. Additionally, the Parties submitted that the Merger would result in a minimal share increment.

39. The Parties further submitted that Aon and Marsh McLennan, in addition to multiple rival brokers, would exert significant competitive pressure over the Parties. In addition, reinsurers continuing to seek to win business directly from cedents and alternative capital providers would also impose additional competitive constraints on brokers.

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[18] Merger Assessment Guidelines, paragraph 4.1.
[19]

Shares of supply

40. Table 1 shows the Parties' global shares of supply estimates based on GWP in the provision of non-life treaty reinsurance broking services (including retrocessional reinsurance broking services) on a global basis. The Parties estimated shares of supply for their competitors based on their knowledge of the market.

Table 1: Non-life Treaty Reinsurance – Global – brokered channel (2020)

	Value (GBP million)	*Share*
Gallagher	[✄]	[0-5]%
The Target	[✄]	[10-20]%
Combined	[✄]	**[10-20]%**
Aon	[✄]	[20-30]%
Miller	[✄]	[0-5]%
Marsh McLennan	[✄]	[20-30]%
Talanx Reinsurance Broker	[✄]	[0-5]%
Hyperion Group/RKH/Howden/Matrix	[✄]	[0-5]%
BDO	[✄]	[0-5]%
Others	[✄]	[30-40]%
Total	[✄]	**[90-100]%**

Source: Table 8 FMN.

41. The figures in Table 1 show that the Parties' combined shares of supply in non-life treaty reinsurance broking services (including retrocessional reinsurance broking services) based on a brokered channel only (ie reinsurers acting directly are excluded) are approximately [10-20]% on a global level, with an increment of less than [0-5]%. The shares of supply estimates also show that Aon will remain the largest supplier post-Merger, with Marsh McLennan being the second largest supplier on a global basis. In addition, a tail of smaller brokers will remain post-Merger at global level. The CMA understands that most of the Parties' competitors have a London presence.[20]

42. The Parties also estimated their shares of supply in the provision of non-life treaty reinsurance broking services across different risk classes on a global basis based on GWP, estimating the total market size based on their knowledge. Table 2 shows the Parties' combined shares of supply would remain below 25% in all overlaps and that the increment brought about by the Merger is very low (below [0-5]%).

[20] FMN, paragraphs 15.15-15.72.

Table 2: Non-life Treaty Reinsurance – Global – brokered channel (2020)[21]

Non-life treaty risk classes	*The Target share*	*Gallagher share*	***Combined share***
Accidents & health	[5-10]%	[0-5]%	**[5-10]%**
Aviation	[10-20]%	[0-5]%	**[10-20]%**
Casualty	[10-20]%	[0-5]%	**[10-20]%**
Marine, Energy & Construction	[10-20]%	[0-5]%	**[20-30]%**
Motor	[0-5]%	[0-5]%	**[5-10]%**
Property	[10-20]%	[0-5]%	**[10-20]%**
Retrocessional	[5-10]%	[0-5]%	**[5-10]%**
Trade, Credit & Surety	[20-30]%	[0-5]%	**[20-30]%**

Source: Annex 050, FMN.

43. GWP data supplied by competitors in some instances significantly differed from the estimates of the Parties. The CMA has therefore put limited weight on the Parties' share of supply estimates for competitors. Nevertheless, the third-party feedback confirmed the overall structure of the market, ie that there are three large brokers (Aon, the Target and Marsh McLennan) in the supply of non-life treaty reinsurance services and a long tail of significantly smaller brokers, of which Gallagher is part, as reflected in the share estimates above.[22]

44. The Parties' internal documents also show that Aon, Marsh McLennan and the Target are the largest suppliers in the supply of reinsurance broking services, ahead of the remaining competitors. For example, in one WTW internal document the Target compares its performance during Q1 2020 with that of [✂].[23] A Gallagher internal document providing an overview of the top 10 reinsurance brokers in 2019 also shows that [✂] are the largest three providers, with all others, including [✂], being grouped in the 'Other category'.[24]

Closeness of competition

45. To assess closeness of competition between the Parties, the CMA has considered (1) the Parties' win-loss analysis, (2) the Parties' internal documents, and (3) third-party evidence.

The Parties' win-loss analysis

46. The CMA asked the Parties to analyse the data that they hold on the business opportunities each pursued. The Parties were only able to provide this

[21] As set out in paragraph 42, the shares of supply are based on GWP.
[22] Some third parties identified Gallagher as one of the mid-tier reinsurance brokers, together with Miller, Lockton or McGill.
[23] WTW internal document, [✂], July 2020.
[24] Gallagher internal document, [✂], 3 March 2021.

assessment for the Target, with the dataset including [✂] observations – [✂] opportunities lost and [✂] opportunities won during the period 2018-2021. This analysis suggests that the Parties are not particularly close competitors. In particular:

(a) Of the [✂] opportunities lost by the Target, only [✂] were lost to Gallagher, [✂] including a UK customer. Even excluding opportunities where the client decided to retain the risk, or where the winner was unknown, the opportunities lost to Gallagher were less than [✂]% of the total. Of the [✂] opportunities won by the Target, in only [✂] was Gallagher identified as the incumbent.

(b) Of the [✂] opportunities that the Target lost to Gallagher, [✂] identified as falling in the 'Cyber' risk class and [✂] as 'Casualty', while [✂] were recorded simply as 'Reinsurance'.

(c) The Target lost to [✂] much more frequently ([✂] and [✂] opportunities respectively).

(d) The Target lost to a large number of other competitors, including [✂].

47. The CMA notes, however, that the Parties' analysis has a number of limitations. In particular, it is possible that including Gallagher's data within the analysis would have identified additional business opportunities pursued by both Parties. Moreover, the identity of the competitor to which an opportunity is lost is not always recorded. The CMA has therefore only placed limited weight on the analysis, but notes that it is consistent with the evidence on the overall structure of the market set out above.

The Parties' internal documents

48. The CMA found that the WTW's internal documents showed that the Target mostly monitors Aon and Marsh McLennan, alongside a few other reinsurers, with Gallagher not frequently referred to. For example, an internal document reviews the operating performance [✂].[25] Another document that focuses [✂] includes an overview of [✂] shares of supply, but not of [✂].[26]

[25] WTW internal document, [✂], July 2020.
[26] WTW internal document, [✂], 2020.

49. Similarly, a Gallagher internal document refers to [✄]. The document, however, also refers to [✄].[27] In another internal document Gallagher assesses itself against [✄].[28]

Third-party evidence

50. While a few third parties submitted that the Parties compete closely, with one highlighting motor and casualty as an area of close competition, the majority of customers submitted that competition between the Parties is limited. For example, one customer submitted that while Gallagher has limited geographic presence, the Target is a 'significant, multi-line global broker'. Half of the competitors also mentioned Gallagher's smaller size when compared to the Target, with no competitor submitting that the Parties compete closely.

51. Several customers also submitted that the Parties had not bid against each other in tenders, or had only done so on isolated occasions, with one submitting for example that, for its treaty placements, the Parties 'do not compete at all'. Where customers provided information on the number of the placements for which both Parties competed, this showed that for most of these customers, the number of those placements represented a very low share of the customers' overall number of placements.

52. Most customers also did not suggest that the Parties are particularly close competitors within specific risk lines. While, as noted above, one suggested that the Parties compete closely in 'motor' and 'casualty', the same customer also named three alternative providers to the Parties it considered able to provide equivalent services in those specific risk lines. One competitor also referred to competition between the Parties in cyber, marine and energy, and aviation, but again listed three other alternative providers to the Parties. The same competitor also submitted that there was a substantial gap between the global brokers (Aon, Marsh McLennan and the Target) and the rest of the market, including Gallagher. Another competitor told the CMA that Gallagher has a more significant position in motor and cyber reinsurance. However, the largest customers of the Parties in motor and cyber reinsurance did not raise any concerns about the impact of the Merger.

Competitive constraints

53. In addition to the share of supply data and win-loss analysis discussed above, the CMA has considered within its assessment (1) evidence from internal

[27] Gallagher internal document, [✄], 3 March 2021.
[28] Gallagher internal document, [✄], September 2019.

documents, and (2) third-party evidence as regards competitive constraints which will continue to impose a constraint on the Merged Entity.

The Parties' internal documents

54. As referred to above, the Parties' internal documents are consistent with the share of supply estimates, and show that the supply of non-life reinsurance broking services is led by three major suppliers (Aon, Marsh McLennan and the Target) followed by a long tail of smaller suppliers. While, as discussed at paragraph 48, both Parties closely monitor Aon and Marsh McLennan in their internal documents (with Gallagher also monitoring the Target), both also refer to a number of other competitors.

Third-party evidence

55. While a few third parties raised concerns about the impact of the Merger, submitting for example that competition on prices would be weakened[29] and that the Merger would continue to propagate a highly concentrated UK market,[30] several customers submitted that there would be little impact on competition as a result of the Merger, with one customer referring to it as 'negligible'.

56. In addition, all customers identified several alternative suppliers able to provide equivalent services to the Parties,[31] with more than ten different competitors being named overall. In particular, Aon, Marsh McLennan and Lockton were regularly referred to as alternatives to the Parties. In addition, most UK customers identified at least three alternatives to the Parties, with all of the providers named having a presence in London.

57. When considering individual risk classes, two competitors submitted that they are active across all the risk classes the Parties are active in, accounting for significantly more GWPs than the Parties. The Parties' largest customers were all able to identify several alternative suppliers to the Parties.[32] Overall, customers told the CMA that there are other brokers apart from the Parties that are able to provide services across all individual risk lines. Customers also submitted there are several brokers that provide bespoke non-life treaty broking services, focusing on certain risk lines.[33] No third party raised a

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[29] Note of the call with a Third Party.
[30] Third-party submission to the CMA of 19 October 2021.
[31] One third party also raised a point that did not relate to the impact of the Merger on competition and submitted that large retail insurance brokers impose restrictions on their employees depriving brokers of the opportunity to compete for certain business. Based on the findings in the competitive assessment, the CMA believes that the ability to engage in such a strategy would not materially increase as a result of the Merger.
[32] Third-party responses to Q8 of the Customer Questionnaire.
[33] Third-party responses to Q5b of the Customer Questionnaire.

concern about the impact of the Merger with reference to any particular risk lines.

Conclusion on horizontal unilateral effects in the supply of non-life treaty reinsurance broking services (including retrocessional reinsurance broking services)

58. On the basis of the evidence above, the CMA considers that the Merger will not bring about a material change to the market structure, and that the supply of non-life treaty reinsurance broking services, including across individual risk lines, will continue to be led by three large competitors (Aon, Marsh McLennan and the Target (or Merged Entity post-Merger)) with a long tail of smaller suppliers that are comparable to Gallagher. The Merger only results in a limited increment and the available evidence shows that the Parties are not close competitors, and post-Merger the Merged Entity will continue to be constrained by Aon and Marsh McLennan. Accordingly, the CMA does not believe that there is a realistic prospect of an SLC in respect of in the supply of non-life treaty reinsurance broking services as a result of horizontal unilateral effects.

Third-party views

59. The CMA contacted customers and competitors of the Parties. Third-party comments have been taken into account where appropriate in the competitive assessment above.

Decision

60. 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.

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

Naomi Burgoyne
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22 November 2021