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***Case No COMP/M.5597 -
TOWERS PERRIN/
WATSON WYATT***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) in conjunction with Art 6(2)
Date: 03/12/2009

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EUROPEAN COMMISSION

Brussels, 3.12.2009
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5597 – Towers Perrin/ Watson Wyatt
Notification of 14.10.2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 14 October 2009, the European Commission ("the Commission") received a notification of a proposed concentration pursuant to Article 4, and following a referral pursuant to Article 4(5), of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertaking Towers, Perrin, Forster & Crosby, Inc., ("Towers Perrin", U.S.) enters into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation with Watson Wyatt Worldwide, Inc. ("Watson Wyatt", U.S.).

I. THE PARTIES AND THE OPERATION

2. *Watson Wyatt* is a global consulting firm providing human capital and financial management consulting services, mainly focusing on retirement benefits, pensions administration, investment consulting, human capital services as well as insurance and financial services consulting in 34 countries, including Austria, Belgium, France, Germany, Ireland, Italy, Portugal, Spain, Sweden, the Netherlands, and the UK.
3. *Towers Perrin* provides human capital and financial management consulting services, mainly in the areas of retirement benefits, investment consulting, human capital consulting (including surveys), investment consulting, insurance and financial services

¹ OJ L 24, 29.1.2004 p. 1.

consulting, and reinsurance broking services in 27 countries, including Belgium, France, Germany, Ireland, Italy, the Netherlands, Spain, and the UK.

II. CONCENTRATION

4. The concentration is a merger of equals of all activities of Watson Wyatt and Towers Perrin (together "the Parties") within the meaning of Article 3(1)(a) of the Merger Regulation.

III. EUROPEAN UNION DIMENSION

5. The operation does not have a European Union dimension within the meaning of Article 1 of the Merger Regulation². The proposed transaction does not meet the thresholds of Article 1(2) of the Merger Regulation as the Parties' aggregate worldwide turnover is [...], i.e. below EUR 2 500 million. The proposed transaction also does not meet the turnover thresholds of Article 1(3) of the Merger Regulation.
6. On 14 August 2009, the Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) with respect to the transaction based on the consideration that the transaction would otherwise be subject to review under the national merger control regimes of Germany, the Netherlands, Spain and the UK. A copy of this submission was transmitted to the Member States on 17 August 2009.
7. The case fulfils the two conditions set out in Article 4(5) of the Merger Regulation, since (i) the transaction is a concentration within the meaning of Article 4(5) of the Merger Regulation, and (ii) the proposed concentration is capable of being reviewed under the national competition laws of at least three Member States.
8. As none of the Member States competent to review the transaction expressed their disagreement as regards the request to refer the case to the Commission, the transaction falls within the jurisdiction of the Commission pursuant to the Article 4 (5) referral request filed by the Parties.

IV. COMPETITIVE ASSESSMENT

9. The Parties provide that they are active within human capital and financial management consulting services, mainly and more specifically in the areas of (a) retirement benefits and pension administration, (b) insurance and financial services consulting, (c) investment consulting and (d) human capital consulting, including surveys.

² The terminology of the Regulation is here and elsewhere adapted following the entry into force on 1 December 2009 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.

A. RETIREMENT BENEFITS CONSULTING AND PENSIONS ADMINISTRATION

1. Relevant product markets

10. The Parties recognized that retirement benefits consulting might constitute a separate product market, consisting of consulting and actuarial services to corporations, trustee bodies and other entities regarding retirement and health benefits for employees' pension funds. These services include *inter alia*: plan design and implementation, actuarial and financial valuations, retirement risk management, due diligence process, research, market surveys and benchmarking studies, pension fund management, compliance and administration of funds and other actuarial services.
11. The market investigation confirmed that retirement benefits consulting constitutes a separate product market due to the specific knowledge required to be active in this field.
12. The Parties also indicated that they were active in the area of pensions administration, which consists of facilities to allow scheme members to access their fund balances and to perform certain operations via for example websites. Taking into consideration that the Parties provide advice on retirement benefits, it was considered whether pensions administration might constitute a follow-on market to retirement benefits, provided largely or exclusively to clients of the latter.
13. The replies to the market investigation showed that retirement benefits consulting and pensions administration constitute separate markets, because different skills are required to perform these activities. For retirement benefits the main skill required is, as described above, specific knowledge in the area of pension funds, while, IT systems and IT knowledge play a vital role in the area of pensions administration. Also, the market investigation suggested that there might be different providers for these two services: consulting firms for retirement benefits with IT companies playing a much greater role in pensions administration.

2. Relevant geographic markets

14. The Parties submit that the geographic market for retirement benefits consulting, just as several of the other markets where the Parties are active, has both national and international aspects, due to the frequent cross-border nature of the Parties business on the one hand and the need for local knowledge of national pension regulations on the other. Consequently, the Parties provided market share estimations on both levels – national and EEA-wide.
15. The market investigation confirmed that the geographic scope of retirement benefits consulting has both national and international characteristics. The national aspect, as suggested by the Parties, is linked to the knowledge of national pension systems required to operate on this market. However, the market investigation also indicated that the retirement benefits consulting market could have some aspects which are broader than national as large multinational companies purchasing these services would require a service offering covering a number of countries, in particular with regard to the need to reconcile pension accounting with a single underlying set of accounting standards.

16. The market investigation suggested that the geographic market for the pensions administration market could be more national in scope than retirement benefits consulting in view of the fact that pension administration systems depend on local regulatory frameworks and factors such as social security or tax rules.
17. For the assessment of the present transaction, the exact geographic market definition can, however, be left open as no serious doubts arise as to the compatibility of the notified transaction with the internal market on either market, irrespective of the geographic market definition adopted.

3. Competitive Assessment

Retirement benefits consulting

18. According to the data provided by the Parties, their combined market shares on the market of retirement benefits consulting would be below [30-40%] in all the affected markets on the assumption that such markets were national in scope, including in Belgium, Germany and the Netherlands, where the highest range of market shares has been estimated.
19. According to the market investigation, the Parties' combined market share in Belgium would be around [20-30%] and they would face important competitors such as AON, Mercer and Conac with market shares of around 10-30% each.
20. In Germany, the market investigation confirmed that the Parties' combined market share would be around [20-30%] post transaction. Mercer would remain the largest player with a market share above 30% and other competitors would be present on the market such as Hewitt with around [10-20%] market share.
21. In the Netherlands, the combined market share of the Parties would amount to [30-40%] with strong competitors such as Mercer, Hewitt and AON with market shares of around 10-20% each.
22. In all other EEA Member States where the Parties' activities in retirement benefits consulting overlap, their combined market share is below [20-30%] and no concerns were raised during the market investigation.
23. On an EEA-wide basis, the Parties estimated their combined market shares in retirement benefits consulting as [20-30%]. The market investigation also confirmed the presence of a number of competitors active at the EEA level in retirement benefits consulting on a multi-jurisdictional basis, such as Hewitt, Mercer and the Big Four accounting firms (E&Y, KPMG, Deloitte, PWC) as well as Milliman (which entered the retirement benefits consulting segment in 2009).
24. Although the respondents pointed to high barriers to entry into the retirement benefits consulting market, due to the need for specialist knowledge and reputation as well as fulfilment of national regulatory and capital requirements, barriers to expansion for companies already active in this field were considered not to be significant, as the major requirement would only be the employment of additional specialist staff.

25. Therefore, on the basis of the above it can be concluded that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market in the area of retirement benefits consulting, regardless of the geographic scope of the market considered.

Pensions administration

26. In the notification, the Parties indicated that affected markets would arise in the area of pensions administration only in two EEA Member States, namely in Belgium (combined market share estimated in the range of [10-30%], with an increment due to Towers Perrin of [0-5%]) and in Germany (combined market share [20-30%], with an increment due to Towers Perrin of around[5-10%]). On an EEA-wide market, the combined market share would remain below [10-20%].
27. None of the respondents to the market investigation in Belgium or Germany raised competition concerns as regards the position of the Parties in the pensions administration. A number of competitors are active in these countries in pensions administration field, such as Conac, Hewitt and Mercer in Belgium and Deutsche Post, Mercer and Hewitt in Germany with market shares of around 5-35% in the respective national markets.
28. Therefore, on the basis of the above it can be concluded that the transaction will not give rise to serious doubts as to its compatibility with the internal market in the area of pensions administration.

B. INSURANCE CONSULTING AND ACTUARIAL SOFTWARE

1. Relevant product markets

General description of insurance consulting

29. The Parties initially proposed a definition of "insurance and financial services consulting" (hereafter "insurance consulting") to include the provision of consulting services to insurance and financial service institutions such as advice on market entry, distribution strategy, financial and risk management, financial and risk modelling, financial reporting and performance management, compliance and statutory reporting, advice on premium rating and product design, insurance valuation, claims reserving, M&A advisory, and supply of supporting actuarial and risk management software.
30. Within this area of the Parties' business, the possibility of a further distinction was recognized between: (i) life insurance consulting; and (ii) non-life insurance consulting.
31. The market investigation carried out by the Commission indicated that "insurance consulting", as engaged in by the Parties, essentially consists in consulting on financial matters specific to the insurance industry and is founded on the actuarial skill-set in addition to specific industry experience. It is to be distinguished, therefore, from other types of consulting service which may be provided to the insurance industry (including the reinsurance sector for the purposes of this Decision) but in which the specific features of that industry, namely the management of non-financial risk, do not play a

major role, for example IT systems consulting, HR consulting and so on³. The latter set of activities would fall within the domain of other general or specialized consultancies whose sectoral focus would normally be wider than the insurance industry. In relation to certain matters this boundary is nonetheless loosely drawn, in particular as regards sign-off of actuarial value, capital management and business strategy where the Parties are active with particular industry skills but providers of general consulting services may also play a role in serving insurance clients.

32. The Commission has not previously defined these markets. In cases involving the Big Four accounting and consulting firms, the Commission has observed that markets had both national and international characteristics but without considering possible narrower product market definitions and without concluding on geographic scope of the markets concerned⁴.
33. With respect to insurance consulting, it is relevant to note that the Commission has consistently determined that insurance markets themselves were mostly national in scope, with the exception of some classes of large corporate non-life risk and reinsurance.⁵ In previous cases relating to insurance markets, the Commission has distinguished between life and non-life insurance and, within both categories, further subdivided the market, in life insurance between protection, pension and investment products and within non-life insurance between different categories of risk. The relevance of a distinction between life and non-life insurance was also reflected in the market investigation for the consulting market as further set out below. Further subdivisions of the consulting market by type of insurance were, however, considered in the context of this case by market participants not to be relevant for the purposes of market definition.
34. The market investigation has shown that the conditions of competition are appreciably different in the various segments of insurance consulting and accordingly that there is a need to define the relevant product markets more narrowly than initially proposed by the Parties, distinguishing in particular between (a) financial valuation and capital adequacy consulting, (b) general insurance consulting, with a possible distinction within this segment between life and non-life consulting and (c) actuarial software for life insurance companies⁶.

(a) Financial valuation and capital adequacy consulting for insurance companies

³ Non-financial risk is understood as all risk arising outside of financial markets against which insurance can be written.

⁴ See e.g.: case COMP/M.2810 *Deloitte & Touche / Andersen (UK)*, Commission Decision of 1 July 2002, paragraph 30.

⁵ See e.g.: case COMP/M.5075 *Vienna Insurance Group/EBV*, Commission Decision of 17 June 2008, paragraphs 25 and 42.

⁶ In the field of actuarial software for non-life insurance the Parties' activities do not presently overlap in the EEA.

35. Financial valuation and capital adequacy consulting includes activities such as (i) embedded value analysis in the context of financial reporting and (ii) related M&A advice, as well as (iii) financial modelling and valuation advice for the insurance industry, the latter having acquired greater prominence in connection with the proposed Solvency II Directive⁷.
36. This set of services may perhaps constitute a single relevant product market as they are provided by the Parties and their competitors on a homogenous basis across a number of jurisdictions. However, any further breakdown of this category between these three types of service may be left open in the framework of the present Decision, since, independently of such a further breakdown, serious doubts do not arise as to the compatibility of the notified transaction with the internal market in respect of these services.

(b) General insurance consulting (life and non-life)

37. General insurance consulting consists of all other insurance consulting services than those set out in the previous section, the conditions of competition in relation to which are, as the underlying insurance markets themselves, national in scope. Examples of such services are the implementation of new financial modelling systems, statutory valuations, profit reporting, review of economic capital requirements, risk management consulting, asset and liability modelling, benchmarking and competitors analysis, stochastic financial modelling, product development and pricing, including research and analysis of regulatory compliance and selling practices and appointed actuary work.
38. The market investigation also indicated that within this segment of the market, separate markets should be identified for life insurance consulting services and non-life insurance consulting services despite the fact that the Parties are present in both. These branches require distinct specialist technical and market knowledge and may therefore constitute separate product markets. The market investigation suggested, however, that a further breakdown of the non-life consulting market by class of risk would be artificial as such a degree of specialization is in general not present or required in the consulting market.
39. However, for the purposes of the present Decision the possible further segmentation between life and non-life insurance consulting services can be left open since, irrespective of such a further breakdown, serious doubts do not arise as to the compatibility of the notified transaction with the internal market.

(c) Actuarial software for life insurance

40. This market includes the supply of actuarial software for life insurance to insurance companies.

⁷ COM(2008) 119 final of 26 February 2008; Position of the European Parliament adopted at first reading on 22 April 2009.

41. Both Parties sell software for actuarial calculations for life insurance. The Parties' products, MoSes (Towers Perrin) and VIPitech (Watson Wyatt), are financial modelling software solutions which enable the user to build and run financial models of life insurance business. Both systems enable the user to project cash flows and regulatory capital requirements into the future for single policies or many policies. Their respective software is designed to enable the creation of complex actuarial models for life insurers and supports calculations and projects required for regulatory reporting purposes, asset liability, risk and capital management, product development and pricing, including modelling for the purpose of embedded value calculations, M&A transactions, Solvency II and other regulatory capital requirements. In addition to the respective software system, each party sells a number of code libraries and applications which are necessary to use the software. The code libraries take into account minimum capital requirements, tax regulations and other EEA-wide or country-specific regulatory requirements.
42. The Parties, as well as its main competitor in the EEA, Sungard, have also developed and are starting to market new versions of their software which enable its use on an enterprise level (i.e. accessible throughout the organization) and not merely as a desktop solution.
43. The market investigation indicated that there exists a separate market for actuarial software for life insurance. Although the MoSes platform could theoretically be used for non-life insurance, it is designed for life insurance and the available applications are limited to this segment. Towers Perrin also does not market MoSes as a non-life product. In addition, the fact that the Parties sell other actuarial software solutions for non-life insurance and other competitors also have dedicated software for non-life insurances (such as Igloo by EMB) shows that actuarial software for life and non-life insurance are separate markets.

2. Relevant geographic markets

(a) Financial valuation and capital adequacy consulting

44. The market investigation has indicated that services such as embedded value and M&A advice for the insurance industry are provided on an EEA or worldwide basis, while financial modelling and valuation advice in connection to Solvency II is provided on an EEA-wide basis as this Directive is applicable within the EEA.
45. Whilst these activities tend to be built on top of the national footprint that providers already have, they are distinct in nature and a permanent establishment in the jurisdiction of the client is not indispensable; it may also be possible to associate local resources with a project where there is a need to do so by working on a contract basis. The players active in this field, which include the Parties, almost all have a significant international presence.
46. It can therefore be concluded that there is a market for financial valuation and capital adequacy services for the insurance industry which is at least EEA-wide in scope. However, there is no need to conclude on the exact geographic scope of this market

since, regardless of the geographic scope considered, serious doubts do not arise as to the compatibility of the notified transaction with the internal market.

(b) General insurance consulting

47. The market investigation has shown that both life and non-life general insurance consulting services are provided on a basis which is national in scope. Such services cater to needs related to the national insurance market and are provided by both multinational consulting firms such as the Parties as well as players whose geographic scope of activity is more limited, typically to the jurisdiction in question.

(c) Actuarial software for life insurance

48. The Parties argue that the market for financial modelling software is worldwide. They state that in previous cases⁸ the Commission has identified software markets the geographic scope of which was worldwide on the basis that customers would consider vendors from all parts of the world and that there are no technological barriers that restrict vendors from responding to bids from all over the world. The Parties further submit that the software can be developed anywhere and that most market players operate on an international basis, transport cost in the software industry are immaterial, there are no language barriers and that local technical or sales support presence is not necessary.

49. The market investigation has not confirmed the arguments of the Parties but has instead shown that the relevant geographic market for actuarial software for life insurance is EEA-wide. While the base for the software is the same in various regions, different regulatory requirements and different business environments call for country or region specific code-libraries and applications. Therefore there is a need to provide software and support which is tailored to regional reporting requirements, the applicable EU norms,⁹ and the national context in which insurance is written and claims arise.

50. The precedents the Parties refer to in order to establish a worldwide market cannot be relied upon for the purposes of the present case since they relate to software packages which are considerably more generic in nature or in respect of which, at least, market conditions have converged to international standards.

51. A worldwide market can, in the present case, be excluded on the basis that the conditions of competition are appreciably and demonstrably significantly different outside the EEA. For example, Milliman, which is the market leader for actuarial

⁸ See e.g.: case COMP/M.3216 *Oracle/People Soft*, Commission Decision of 26 October 2004 paragraph 176, case COMP/M.4609 *Siemens/UGS Corporation* of 29 March 2007 paragraphs 12 and 19, and case COMP/M.5080 *Oracle/BEA* of 29 April 2008.

⁹ Notably Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance as well as the upcoming Solvency II Directive.

software for life insurance in the US, has yet to achieve sales to insurers based in Europe, even though it is present on the European insurance consulting market. Similarly, GGY with its software Axis has a significant market position in Canada, but only minor sales in the US and is not active in the EEA at all. This shows that vendors are not responding to bids from all over the world and/or are not necessarily operating on an international basis.

52. Narrower markets than the EEA can be excluded since according to the Parties' submissions, the Parties' respective software is supplied on a consistent pricing basis in an identical form within the EEA. Moreover numerous parameters of the insurance business are harmonized by EU Directives, giving rise to a relatively homogenous business environment for insurance within the EEA and therefore lower costs to adapt to national specificities within the EEA than with respect to other jurisdictions.

3. Competitive Assessment

(a) Financial valuation and capital adequacy consulting

53. The market investigation has indicated that both Parties are currently significant players within this market in the EEA. Reliable estimates of their combined market share are, however, difficult to obtain. According to the Parties, they may represent up to [40-50%] of the segments of embedded value and M&A, whereas in relation to Solvency II implementation they would represent no more than [20-30%]. According to some competitors, combined market shares might be even higher than this on some segments, although other competitors equally estimated similar or even slightly lower figures to those of the Parties. In some instances, competitors' estimates of the strength of the Parties referred to a national market perspective and may be considered to reflect certain conjunctural factors specific to the country in question, in particular to recent M&A activity involving undertakings based in that country.
54. A significant part of the value created in these market segments appears to be linked to life insurance consulting, which requires projections of financial value over a much longer time horizon, and in respect of which the Parties are comparatively in a stronger market position than in respect of non-life consulting. The Parties achieve a significant proportion of their turnover from this type of activity, although they are also strongly positioned in a number of national general insurance consulting markets.
55. Next to the Parties, the main players in this market are the Big Four accounting, audit and consulting firms (i.e. PWC, Deloitte, Ernst & Young and KPMG) plus the specialized insurance consultancy Milliman and, for Solvency II only, EMB (which is specialized in non-life consulting). Certain players with a more national footprint do, nonetheless, also compete successfully in this field such as, for instance, Triple A Risk Finance in the Netherlands. Looking at the sample of those 20 European insurance companies which have formed an association for the development of standards for

stating embedded value,¹⁰ clearly shows that also the Big Four accounting firms have a significant presence in this field.

56. Whilst embedded value analysis is a recurring need of insurance firms, M&A activity is more cyclical. The challenges linked to Solvency II implementation make this segment into a growing one in which all of the relevant players are keen to position themselves.
57. Notwithstanding the high combined market shares calculated on a pro-forma basis, the market investigation has provided a significant amount of evidence to suggest that the actual market share of the combined company in respect of these services is likely to be lower than a simple addition of market shares suggests. This is primarily because there are low barriers to expansion for any of the qualified and established market players listed above which are already active on the market. In addition, it seems likely that the Big Four are well positioned to continue to gain market shares in this field, as it is related to accounting and auditing (even if there is no formal requirement to audit insurance accounts based on embedded value) and they are not impeded by conflict of interest rules (such as under the Sarbanes-Oxley Act in the US) from offering this service to their audit clients.
58. It can therefore be concluded that serious doubts do not arise as to the compatibility of the notified transaction with the internal market in respect of the EEA market for financial valuation and capital adequacy consulting services to insurance companies.

(b) General insurance consulting

General life insurance consulting

59. According to the Parties, although reliable estimates for national life insurance consulting markets were difficult to obtain, the combined market shares of the Parties might exceed 30% and could represent up to [30-40%] in Ireland, [30-40%] in the Netherlands, [40-50%] in Sweden, and [40-50%] in the UK.
60. The information gathered in the course of the market investigation made it possible to establish more precise figures for the market share data estimated for competitors by the Parties. The results of the investigation indicate that the proposed transaction would result in markets where the Parties' combined market shares would exceed 30% only in the following markets: the UK ([40-50%]) and the Netherlands ([30-40%]). In Sweden, Towers Perrin has [...] and the increment to the market share of Watson Wyatt is marginal.
61. In the UK, despite the relatively high combined market share of the Parties ([40-50%]), the Big Four accounting firms are also present on the market with market shares in the range of 5-20% each. A few other players (players with a national footprint as well as

¹⁰ CFO Forum: <http://www.cfoforum.nl/>. Out of 20 companies Towers Perrin serves 5 insurers, Watson Wyatt 2 insurers, E&Y 1 insurer, Deloitte 1 insurer, PwC 5 insurers, KPMG 3 insurers and Milliman 1 insurer. The remaining two insurers do not publish their embedded value analyst or does not require such analysis.

Milliman, a company with cross-jurisdictional presence) account for 10-15% of the remaining market.

62. In the Netherlands, two of the Big Four accounting firms are present on the market with market shares in the range of 15-20% each. A strong local player, Triple A Risk Finance, as well as Milliman entered in 2006 and gained market shares in the range of 5-10% each. A number of other players (two out of the Big Four accounting firms together with companies with a more national footprint) account for the remaining of the market.
63. Furthermore, the market investigation indicates that the only important barriers to expansion for life insurance consulting are related to the need to recruit sufficiently qualified staff, in particular for senior management positions, the related know-how, building local reputation and brand awareness and having access to specialised actuarial software.
64. The established actuarial consulting firms can therefore expand their activities in response to any market opportunity that may arise as a result of the merger by hiring additional qualified staff. Several respondents in the market investigation did indeed indicate that the merger might in fact create additional business opportunities for existing players. The market data also suggest that greenfield entry by established consultants and academics into general insurance consulting is possible and does occur. In relation to some indications during the market investigation that the installed base of software might raise barriers to expansion for competitors, it is unnecessary to arrive at a definitive view since the divestiture by the Parties of one of the actuarial software packages for life insurance proposed as a commitment in the current case in response to concerns in the software market, on which see further below, can be expected significantly to reduce any degree of dependency which might arise in the related markets for consulting services.
65. In the view of the above, serious doubts as to the compatibility of the notified transaction with the internal market can therefore be excluded in the segment of general life insurance consulting in all affected national markets.

General non-life insurance consulting

66. For general non-life insurance consulting, the Parties have estimated that their combined market share may exceed 30% and could amount to up to [30-40%] in Ireland and [30-40%] in the Netherlands. The verification of the market data in the market investigation however indicates the combined market shares of the Parties would exceed 30% in the Netherlands ([30-40%]) and in Spain ([30-40%]).
67. In the Netherlands, three out of the Big Four accounting firms have market shares in the range of 5-15% each, and at least six other companies have market shares of in some cases up to 15%.
68. In Spain, where the Parties combined market share is slightly above [30-40%], the market shares of Deloitte and a strong local company, Ideas, can be estimated to be above 20% in both cases; a large number of other companies with a more national footprint are also present.

69. The market investigation therefore confirms that a sufficient number of competitors remain in all of the above markets to constitute competitive constraints on the merged entity.
70. The market investigation indicates that the major barriers to expansion for non-life insurance consulting are essentially the same as for life insurance consulting which were discussed above, namely the need for access to qualified staff and related issues around know-how and reputation. The role of software in this regard can be disregarded since in any case the Parties are not particularly strong and their existing activities do not overlap in respect to non-life software.
71. In the view of the above, serious doubts as to the compatibility of the notified transaction with the internal market can therefore be excluded in the segment of general non-life insurance consulting in all affected national markets.

(c) Actuarial software for life insurance

72. The fact of the Parties' overlap in actuarial software for life insurance came to light during the market investigation when several respondents raised concerns as to the impact of the merger in this regard.
73. Towers Perrin is active in this field with its MoSes / Risk Agility software, whilst Watson Wyatt has a comparable and competing product called VIPitech.
74. Regarding the market for actuarial software for life insurance in the EEA, the presence of other competitors is limited. The only significant competitor active in the EEA is Sungard, an IT company whose software solution "Prophet" is, next to MoSes, the leading software package in the EEA.
75. The Parties estimated during the procedure that market shares for 2008 were as follows: Towers Perrin (MoSes) around [30-40%], Watson Wyatt (VIPitech) [5-10%], Sungard (Prophet) [30-40%], Milliman (ALFA) [10-20%], OAC (Mo.Net) [0-5%] and others at [0-5%].
76. While the relative size of Towers Perrin, Watson Wyatt and Sungard was roughly confirmed by the market investigation, the investigation showed that Milliman is not yet active in this market in the EEA (having no turnover at all in 2008) and can only be considered a potential entrant. On this basis the transaction would lead to reduction from 3 to 2 players in the market, with an estimated combined market share of the merged entity in the area of [50-60%].
77. Under paragraph 68 of the Horizontal Guidelines, for entry to be considered a sufficient competitive constraint on the merging Parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger. In the case of Milliman, which has already been providing consulting services in the EEA for a number of years and is established in multiple EEA jurisdictions, the fact of having failed so far to establish a significant presence in the software market is evidence that the standard of likely, timely and sufficient entry is not met.
78. In addition, the bidding data submitted by the Parties shows that the Parties' products closely compete for system replacements and add-ons (e.g. modules for Solvency II); in

all bids submitted by VIPitech recently for new installations or replacements MoSes (as well as Sungard) were considered to be competitors. The market investigation also showed that OAC's software Mo.Net (in addition to having only marginal sales) is seen as less sophisticated and has fewer and narrower applications. The market investigation confirmed that it is not closely competing with the Parties' software.

79. The market investigation has confirmed significant barriers to entry into the market of actuarial and risk management software for life insurance. The most important barriers to entry are actuarial and regulatory know-how as well as development costs. The Parties estimated the cost of development of each of their products at about EUR[...] while other competitors estimated the cost at EUR 50-60 million over a longer period of time, i.e. including development of upgrades, further applications, etc.
80. Although the market investigation indicated that there were a very limited number of examples of very large insurance companies developing actuarial software in-house on the basis of generic enterprise software, the cost of development was generally considered far higher than the cost of buying in and adapting one of the Parties' products, such that the vast majority of insurance companies would have no incentive to rely on an insourcing solution. In addition, the core actuarial software market is relatively mature in the sense that there are few new customers, and switching from one software platform to another one is costly.
81. It can therefore be concluded that the merger would lead to the elimination of an important competitor and the number of actual suppliers in the EEA market would be reduced from three to two.
82. On this basis, it can be concluded that the transaction as notified would give rise to serious doubts as to its compatibility with the internal market in respect of the EEA market for actuarial and risk management software for life insurance.
83. However, as indicated below, the Parties have made use of their right under Article 6(2) of the ECMR to submit modifications to the concentration in order to remove the serious doubts identified by the Commission.

C. INVESTMENT CONSULTING

1. Relevant product market

84. The Parties submitted that investment consulting consists in providing investment strategy advice based on risk assessment, strategic asset allocation and investment manager selection. The Parties provide these services typically to pension funds.
85. For the purposes of the present Decision, it is unnecessary to conclude on whether or not this constitutes a distinct relevant product market and, if so, on the exact scope and definition of such a market, since even on the narrowest possible product market definition of investment consulting services provided to pension funds, the notified transaction does not lead to serious doubts as to its compatibility with the internal market.

2. Relevant geographic market

86. The Commission has recognised in the past that the markets for provision of management consultancy services have both national and international aspects.¹¹ The relevant geographic market for the investment consulting services provided by the Parties might be considered to be national due to the different regulatory framework in different countries. On the other hand, to serve large multinationals, it might be necessary to be established in a number of jurisdictions and offer services across those jurisdictions, in which case purely national players might be unable to compete for this class of business.
87. Consequently, in the notification, the Parties provided market data on an EEA-wide basis as well as on the narrowest possible geographic market, i.e. on a national basis.
88. For the purpose of this Decision it is not necessary to decide on the exact geographic market definition as regards the relevant investment consulting market as the notified transaction does not lead to serious doubts as to its compatibility with the internal market, regardless of the geographic market considered.

3. Competition assessment

89. According to the Parties, in investment consulting, the following possible markets would be affected by the transaction: in the EEA, the Parties would achieve a combined market share of [20-30%] with Towers Perrin contributing an increment of [0-5%]; within national markets, the transaction would lead to market shares above 15% only in Germany (combined [10-20%], Towers Perrin [5-10%]), the Netherlands (combined [20-30%], Towers Perrin [5-10%]) and the UK (combined [20-30%], Towers Perrin [0-5%]).
90. In addition to the relatively modest market shares and small increment due to the merger, it should be noted that none of the respondents to the market investigation raised concerns in relation to the Parties' position in investment consulting post-transaction.
91. On the basis of the above, serious doubts may be excluded as to the compatibility of the notified transaction with the internal market within possible EEA or national markets for investment consulting.

D. HUMAN CAPITAL CONSULTING SERVICES

1. Relevant product market

92. According to the Parties, human capital services include advice to clients in relation to, among other things, executive compensation, rewards, sales effectiveness and base pay arrangements. Within this activity, the Parties assist clients with talent management and the implementation of HR strategies to align a company's workforce with its business strategies in order to attract, retain and motivate employees and conduct surveys in this respect.

¹¹ See e.g.: case COMP/M.1016 *Price Waterhouse/Coopers & Lybrand*, Commission Decision of 20 May 1998 paragraphs 55-68 and case COMP/M.2810 *Deloitte & Touche/Andersen (UK)*, Commission Decision of 1 July 2002 paragraphs 28-30.

93. The main activities of the Parties within human capital services relate to executive compensation advice, i.e. advice related to pensions, contract and severance terms and M&A/IPO advice as well as advice in regard to strategic rewards, i.e. compensation and benefits programme design, improving the effectiveness of sales and base pay arrangements.
94. For the purposes of the present Decision, it is unnecessary to conclude on whether or not this set of services constitutes a distinct relevant product market and, if so, on the exact scope and definition of such a market, since even on the narrowest possible product market definition the notified transaction does not lead to serious doubts as to its compatibility with the internal market.

2. Relevant geographic market

95. The Commission has recognised in the past that the markets for provision of management consultancy services have both national and international aspects.¹² The relevant geographic market for the human capital consulting services provided by the Parties might be considered to be national due to the different regulatory framework in different countries. On the other hand, to serve large multinationals, it might be necessary to be established in a number of jurisdictions and offer services across those jurisdictions, in which case purely national players might be unable to compete for this class of business.
96. Consequently, in the notification, the Parties provided market data on an EEA-wide basis as well as on the narrowest possible geographic market, i.e. on a national basis.
97. For the purpose of this Decision it is not necessary to decide on the exact geographic market definition as regards the relevant human capital consulting market as the notified transaction does not lead to serious doubts as to its compatibility with the internal market, regardless of the geographic market considered.

3. Competition assessment

98. According to the Parties, in the field of human capital consulting services, the transaction will lead to combined market shares of around [10-20]% in the EEA, with an increment due to Watson Wyatt of around [0-5]%. The following possible national markets would be affected by the transaction: Belgium (combined [10-20] %, Watson Wyatt [5-10] %) and the UK (combined [10-20] %, Watson Wyatt [0-5] %)¹³.
99. In addition to the relatively modest market shares and small increment due to the merger, it may be noted that none of the respondents to the market investigation raised concerns in relation to the Parties' position in human capital consulting post-transaction.

¹² See e.g.: case COMP/M.1016 *Price Waterhouse/Coopers & Lybrand* Commission Decision of 20 May 1998 paragraphs 55-68 and case COMP/M.2810 *Deloitte & Touche/Andersen (UK)* Commission Decision of 1 July 2002 paragraphs 28-30.

¹³ The market shares do not include the turnover resulting from surveys, where Watson Wyatt's turnover is minimal.

100. On the basis of the above, serious doubts may be excluded as to the compatibility of the notified transaction with the internal market within possible EEA or national markets for human capital consulting.

V. COMMITMENTS RECEIVED FROM THE NOTIFYING PARTIES

101. In order to render the concentration compatible with the internal market, the Parties have modified the notified concentration by entering into certain commitments, the final form of which is annexed to this Decision and forms an integral part thereof.

102. On 12 November 2009, the Parties submitted commitments to remedy the serious doubts which the Commission had provisionally identified in the market for actuarial software for life insurance.

103. According to the initial commitments, the Parties would divest, at their option, either Towers Perrin's life insurance software business ("MoSes Business") or Watson Wyatt's life insurance software business ("VIPitech Business"). The business to be divested would comprise respectively: the MoSes or VIPitech assets including the source codes of the respective software products, all the relevant trademarks and documented know-how including manuals for users, implementation and maintenance and all license and support agreements as well as key personnel dedicated to the MoSes or VIPitech respective business (including personnel devoted to product management, training, product support and sales). The commitments also foresaw the possibility of transitional service agreements for a period [...] during which the Parties would, at the option of the Purchaser, provide general corporate support services to the divested business.

104. In addition, the Parties entered into related commitments, as foreseen under the Commission's remedies notice¹⁴, *inter alia* regarding the separation of the divested businesses from their retained businesses ("ring fencing"), the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

105. The Parties also expressed the intention to remain free to use the know-how related to the divested business and that they would keep this know-how confidential. Also, the Parties expressed their intention to enter into an agency agreement with the Purchaser as a result of which they would be able to market products of the divested business on behalf of the Purchaser.

VI. ASSESSMENT OF THE PROPOSED REMEDIES

Market test

¹⁴ OJ C267 of 22 October 2008, p.1.

106. Without prejudice to the acceptability or otherwise of the alternative divestment solution initially proposed by the Parties, the Commission market-tested the commitments which the Parties had submitted on 12 November 2009.
107. The proposed commitments generally received a positive evaluation from competitors, both consultancy firms and software companies, and customers during the market test. The market test confirmed that the divestiture of one of the Parties' software business was acceptable and that under certain circumstances both businesses would be considered viable businesses. An interest in acquiring either of the businesses was expressed by a number of companies which are active in the provision of insurance consultancy services and/or related software.
108. Despite the overall positive responses some respondents to the market test were critical of a number of elements in the commitment offer. In particular, the market test indicated that the MoSes Business, as presented in the initial offer of commitments, was lacking an important element, i.e. the newly developed software platform called Risk Agility which was described by some respondents as being the "enterprise version" of MoSes. Overall, the Moses Business was therefore considered less attractive than the VIPitech Business which includes the VIPitech enterprise version, with a number of respondents being of the view that MoSes without RiskAgility would not be attractive to potential purchasers.
109. Secondly, respondents to the market test criticised the terms initially used by the Parties in relation to a "retention" of IP rights in relation to the divested software business. The concerns related to the right of the Parties to use all documented know-how of the divested business after the completion of the divestment; in particular, the respondents were concerned that the merged entity might use the know-how in the future development of the software which they retained.
110. Respondents to the market test also criticised the possibility that the Parties could enter into an agency agreement with the purchaser of the divested business allowing them to continue to market the divested software system. In addition, the proposed duration of [...]for the transitional service agreements was considered too short. Some market participants also pointed out that at the option of the Purchaser, sufficient sales and support personnel should be made available to a purchaser and were of the view that the commitments offer was not sufficiently clear in this respect.

Improvements to the commitments

111. Following the results of the market test, the Parties improved the commitments in several respects:
- The Parties dropped the alternative remedy structure and committed to divest the VIPitech Business. This business includes also the enterprise version which is due for release in [...].
 - Regarding the use of know-how the Parties clarified that this covers the use of knowledge about the VIPitech Business which employees acquired when working with this software. As the knowledge cannot be erased, the Parties

were of the view that it could not be avoided that individuals use this knowledge. The commitments were improved to make clear that all documented know-how will be divested to the Purchaser. The know-how includes, but is not limited to, manuals, implementation know-how, maintenance know-how and training know-how.

- Regarding the possibility of an agency agreement, the Parties clarified that the commitments were not conditional on the Purchaser entering into an agency agreement, but that the agency agreement would be at the option of the Purchaser and that the agency agreement would be non-exclusive. Depending on the strategy of the Purchaser, the Commission considers that this option should not be excluded as it might contribute to the competitiveness of the divested business in the event that the Purchaser were to benefit from additional marketing efforts and licensing income.
- The Parties also clarified that all key personnel will be transferred and that this covers all VIPitech Business functions, including development, support, product management, training and sales and distribution.
- The duration for transitional service agreements was extended to [...]at the option of the Purchaser.

112. The commitments will address the competition concerns identified in the present decision. The commitments entered into by the Parties fully eliminate the horizontal overlap in the market for actuarial software for life insurance in the EEA and are therefore sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

113. The commitments in section B, paragraphs 1 through 3 of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

VII. CONCLUSION

114. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B, paragraphs 1 through 3 of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission

Case M. 5597 – Towers Perrin/ Watson Wyatt

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “**Merger Regulation**”), Towers, Perrin, Forster & Crosby Inc. (“**Towers Perrin**”) and Watson Wyatt Worldwide, Inc. (“**Watson Wyatt**”) hereby provide the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the Notified Concentration compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

These Commitments are provided without prejudice to the Parties’ position that the Notified Concentration does not impede effective competition in the common market or in a substantial part thereof and is therefore compatible with the common market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Towers Perrin and/or Watson Wyatt (as the case may be) or following completion of the Notified Concentration by Towers Watson, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the *VIPitech*-business as defined in Section B and the Schedule, being the business of Watson Wyatt relating specifically to the development, marketing, licensing, upgrading, and/or provision of customer support services (including maintenance) for the actuarial software *VIPitech* and any standard applications developed in relation thereto, that the Parties commit to divest, but excluding those sales and marketing activities associated with a broader range of client responsibilities carried out by Watson Wyatt employees falling outside those listed in Group 1 of the Schedule.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Towers Watson and who has received from Towers Watson the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the date of implementation of the Notified Concentration.

Hold Separate Manager: the person appointed by Watson Wyatt for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in Group 1 of the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Watson Wyatt and Towers Perrin, and who has the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Notified Concentration: the proposed merger between Towers Perrin and Watson Wyatt to form a new publicly listed company called Towers Watson which was notified to the Commission on 14 October 2009 (Case M.5597).

Parties: Towers Perrin and Watson Wyatt, together with Towers Watson following completion of the Notified Concentration.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, share personnel and the additional personnel listed in Group 2 of the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Towers Watson: the company jointly formed by Towers Perrin and Watson Wyatt and which will become the holding company controlling Towers Perrin and Watson Wyatt following completion of the Notified Concentration. Towers Perrin and Watson Wyatt shall ensure that the obligations which they have undertaken pursuant to these Commitments are also made binding on Towers Watson.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

VIPitech Business: the business of Watson Wyatt specifically relating to the development, marketing, licensing, upgrading, and/or provision of customer support services (including maintenance) for the actuarial software *VIPitech* and any standard applications developed in relation thereto, but excluding those sales and marketing activities associated with a broader range of client responsibilities carried out by Watson Wyatt employees falling outside those listed in Group 1 of the Schedule.

Section B. The Divestment Business

Commitment to divest

- 1 In order to restore effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16. This divestment will guarantee effective competition on an ongoing basis. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestment Period. If neither Watson Wyatt or Towers Watson has entered into such an agreement at the end of the First Divestiture Period, Towers Watson shall grant the Divestiture Trustee an exclusive

mandate to sell the Divestment Business in accordance with the procedure described in paragraph 25 in the Trustee Divestiture Period.

- 2 The Parties shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, a final binding sale and purchase agreement has been entered into, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 16, and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] after the approval of the purchaser and the terms of sale by the Commission.
- 3 In order to maintain the structural effect of the Commitments, the Parties shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously determined that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

- 4 The Divestment Business consists of the elements described in the Schedule to these Commitments. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Parties intend to enter into an agency agreement with the Purchaser of the Divestment Business pursuant to which the Parties would be authorised to market *VIPitech* Systems (including corresponding *VIPitech* Standard Applications and software interfaces developed in connection with the *VIPitech* System) as an agent on behalf of the Purchaser.
- 5 For the avoidance of doubt, it is hereby confirmed that:
 - (a) These Commitments are not conditional on the Purchaser entering into an agency agreement with the parties in respect of *VIPitech* Systems;
 - (b) Insofar as the Purchaser decides to enter into an agency agreement with the Parties in respect of *VIPitech* Systems, such an agreement shall be non-exclusive; and
 - (c) the Purchaser must – as part of the Purchaser Requirements demonstrate the intention, resources and capabilities to market and distribute the *VIPitech* software independently from the Parties.
- 6 The Divestment Business, described in more detail in the Schedule, includes:
 - a. all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.
 - b. insofar as relevant all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - c. all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a) - (c) hereinafter collectively referred to as “**Assets**”);
 - d. the Key Personnel listed in Group 1 of the Schedule. As regards other Personnel described in Group 2 of the Schedule, Watson Wyatt and/or Towers Watson

undertakes to take all reasonable steps and to offer all reasonable assistance in procuring the transfer of these individuals to the Divestment Business in the event that the Purchaser wishes to employ, at its option, any of these individuals after Closing; and

- e. at the option of the Purchaser, for a transitional period of up to twelve months after Closing and on commercial terms to be negotiated at arm's length the provision of support to the Divestment Business, as explained in the Schedule.
- f. without prejudice to the foregoing,
 - i. Watson Wyatt or Towers Watson, as the case may be, remain free to continue to use all of their and their employees' knowledge about the Divestment Business as described in the Schedule including, in particular, all knowledge about the *VIPitech* know-how; and
 - ii. Watson Wyatt or Towers Watson may enter into a non exclusive licence agreement with the Purchaser to allow either or all of the Parties and/or their Affiliated Undertakings to use for the purpose of providing consultancy services, the actuarial software *VIPitech* and any applications relating thereto whose ownership has been transferred to the Purchaser. The financial terms of the software licence agreement will be negotiated at arm's length with the Purchaser. The licence agreement shall, at the option of Watson Wyatt or Towers Watson, as the case may be, include all future improvements, updates and new releases of the *VIPitech* software effected by the Purchaser and any application relating thereto.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- 7 From the Effective Date until Closing, Watson Wyatt and Towers Watson shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, Watson Wyatt and Towers Watson undertake:
- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

- 8 The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining and to ensure that the Key Personnel - including the Hold Separate Manager - have no involvement in any business retained and *vice versa*. Watson Wyatt and/or Towers Watson shall also ensure that the Key Personnel and the Personnel, insofar as carrying out functions relating to the Divestment Business, do not report to any individual outside of the Divestment Business. For the avoidance of doubt, this Commitment does not prohibit, subject to the oversight of the Monitoring Trustee, interactions between the Divestment Business and Watson Wyatt (and *vice versa*) which are necessary in order to sustain more general corporate and financial governance standards, and HR support to the Divestment Business (including to the usual HR processes relating to pay, benefits and rewards, adherence to Watson Wyatt quality standards, and the provision of legal support).
- 9 Until Closing, Watson Wyatt and Towers Watson shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. For the avoidance of doubt, the Divestment Business is currently not operated as a distinct legal entity. It is operated as a business unit of Watson Wyatt Limited. Watson Wyatt and Towers Watson undertake pursuant to these Commitments to operate the Divestment Business as a distinct and saleable business unit separate from the businesses retained by the Parties. Watson Wyatt shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

- 10 The Parties shall implement all necessary measures to ensure that they do not, after the Effective Date, obtain access to any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. The foregoing is without prejudice to the right of the Parties to obtain information relating to the Divestment Business insofar as the disclosure of that information is reasonably necessary for the divestiture of the Divestment Business or is required by law. For the avoidance of doubt, this Commitment does not prohibit interactions, subject to the oversight of the Monitoring Trustee, between the Parties and the Divestment Business (and *vice versa*) which are necessary in order to enable the Divestment Business or the Parties (as the case may be) to respond to a request for proposal / commercial terms from a prospective client which is seeking to procure the VIPitech actuarial software together with a range of consultancy services.

Non-solicitation clause

- 11 The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due Diligence

- 12 In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Watson Wyatt and/or Towers Watson shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

- 13 Watson Wyatt and/or Towers Watson shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the date of every month following the Effective Date (or otherwise at the Commission's request).
- 14 Watson Wyatt and/or Towers Watson shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

- 15 In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
- 16 The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Watson Wyatt or Towers Watson, as the case may be, has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Watson Wyatt or Towers Watson must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment

Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

- 17 Watson Wyatt and Towers Perrin shall appoint a Monitoring Trustee to carry out the function specified in the Commitments for a Monitoring Trustee. If Watson Wyatt or Towers Watson has not entered into a binding sales and purchase agreement [...] before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Watson Wyatt or Towers Watson at that time or thereafter, Towers Watson shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
- 18 The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The trustee shall be remunerated by the parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

- 19 No later than one week after the Effective Date, Watson Wyatt and Towers Perrin shall submit a list of one or more persons whom Watson Wyatt and Towers Perrin proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than [...] before the end of the First Divestiture Period, Towers Watson shall submit a list of one or more persons whom Towers Watson proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed trustee fulfils the requirements set out in paragraph 18, and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

- 20 The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Watson Wyatt, Towers

Perrin, and/or Watson Towers (as the case may be) shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Watson Wyatt, Towers Perrin, and/or Watson Towers (as the case may be) shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

- 21 If all the proposed Trustees are rejected, Watson Wyatt, Towers Perrin, and/or Watson Towers (as the case may be) shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 17 and 20.

Trustee nominated by the Commission

- 22 If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Watson Wyatt, Towers Perrin, and/or Watson Towers (as the case may be) shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- 23 The trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Watson Wyatt, Towers Perrin, and/or Watson Towers (as the case may be), give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

- 24 The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 7 and 8 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of the Commitments;
 - (c) (i) in consultation with the Parties, determine all necessary measures to ensure that the Parties do not after the effective

- date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business and (ii) decide whether such information may be disclosed to any of the Parties as the disclosure is reasonably necessary to allow Watson Wyatt and/or Towers Watson to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Towers Watson or Affiliated Undertakings;
 - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (iv) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
 - (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
 - (vi) provide to the Commission, sending to each of the Parties a non-confidential copy at the same time, a written report within 15 days after the date of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending each of the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that either of the Parties is / are failing to comply with these Commitments;
 - (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the sustainability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the

Divestment Business after the sale, taking into account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 25 Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 16. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to affect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Watson Wyatt and/or Towers Watson, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 26 In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

- 27 The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Watson Wyatt's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Watson Wyatt and the Divestment Business shall provide the Trustee upon request with copies of any document. Watson Wyatt and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 28 Watson Wyatt and/or Towers Watson shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Watson Wyatt and/or Towers Watson shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Watson Wyatt and/or Towers Watson shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- 29 Watson Wyatt and/or Towers Watson shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture

- Trustee, Watson Wyatt and/or Towers Watson shall cause the documents required for effecting the sale and the Closing to be duly executed.
- 30 The Parties shall indemnify the Trustee and its employees and agents (each an ***Indemnified Party***) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to any of the Parties for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisers.
- 31 At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 30 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Watson Wyatt and/or Towers Watson during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
- IV. Replacement, discharge and reappointment of the Trustee
- 32 If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require the Parties to replace the Trustee, or
 - (b) the Parties, with the prior approval of the Commission, may replace the Trustee.
- 33 If the Trustee is removed according to paragraph 32, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-22.
- 34 Beside the removal according to paragraph 32, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

35 The Commission may, where appropriate, in response to a request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee:

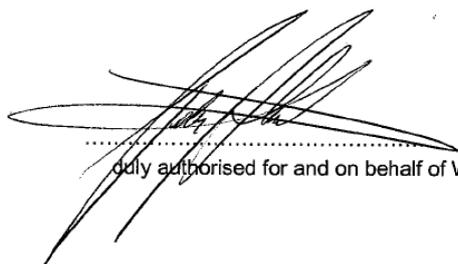
- (i) grant an extension of the time periods foreseen in the Commitments; or
- (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where the Parties seek an extension of a time period, they shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.



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.....
duly authorised for and on behalf of Towers Perrin



.....
duly authorised for and on behalf of Watson Wyatt

GIBSON, DUNN & CRUTCHER LLP
Avenue Louise 480
1050 Brussels
VAT : BE 440.514.810

SCHEDULE

1 Legal and functional structure

The Divestment Business as operated to date has the following legal and functional structure:

The *VIPitech* business of Watson Wyatt forms an integrated part of Watson Wyatt Limited, which is located and registered at:

Watson Wyatt Limited
Watson House
London Road
Reigate
RH2 9PQ
United Kingdom

2 *VIPitech* Assets

2.1 Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to the tangible and intangible assets set out below:

- all the source codes of:
 - the *VIPitech* Modeller system
 - *VIPitech* Enterprise Production Server (due for release [...])
 - the *VIPitech* Modeller template code
 - the *VIPitech* Grid Connector
- all relevant trademarks connected to the *VIPitech* system and applications (see **Annex 3**);
- all documented know-how; including but not limited to all manuals for users, implementation, maintenance, and training used in connection with *VIPitech* and certain pages related to *VIPitech*, as referenced at the external website <http://www.watsonwyatt.com/services/ifs/software/vip.asp>; and on the internal intranet of Watson Wyatt
- all licence, support and distribution agreements

3 **VIPitech Personnel**

3.1 The *VIPitech* Business includes all Key Personnel within Watson Wyatt Limited (currently located in the United Kingdom) required to continue operation of the *VIPitech* business functions including: (i) Development, (ii) Support, (iii) Product management, (iv) Training; and (v) Sales and Distribution who are entirely dedicated to *VIPitech*. In addition, the *VIPitech* Business includes other *VIPitech* related Personnel (i.e. not dedicated 100% to the *VIPitech* Business. See also **Annex 1**.

Group 1: The Key Personnel - Dedicated to VIPitech

- [...] – [...] as Hold Separate Manager. [...] [...] in relation to *VIPitech*.
- [...]– developer
- [...]– training
- [...]– sales
- [...]– support
- [...]– developer
- [...]– sales
- [...]– support
- [...]– support
- [...]– client management administration
- [...]– training administration

(all the above personnel are in the Insurance & Financial Services practice)

- [...]– e solutions development
- [...]– e sols development
- [...]– e sols development
- [...]– e sols development
- [...]– e sols development
- [...]– e sols development
- [...]– e solutions support and deployment
- [...]– e solutions support
- [...]– e solutions support
- [...]– e solutions testing

Group 2 Other VIPitech related Personnel (i.e. personnel that are involved with the VIPitech Business but which are not dedicated to it and have other responsibilities within Watson Wyatt or who are based outside the United Kingdom)

- [...] - senior consultant and [...]
- [...] - client manager
- [...] - administrator [...]
- [...] - sales (US based)
- [...] - sales (Hong Kong based)
- [...] - support
- [...] - Consultant - (advisory role to the VIPitech Business)
- [...] - Consultant - (advisory role to the VIPitech Business)
- [...] - sales (US based)

3.2 The VIPitech Hold Separate Manager is [...].

4 VIPitech Customers

4.1 A list of current VIPitech customers is attached at **Annex 2** to this Schedule. [This Annex is confidential in its entirety] In any divestiture of the Divestment Business, Watson Wyatt and/or Towers Watson undertake to use their best endeavours to procure the transfer of these customers to the Purchaser.

5 Transitional Arrangements.

5.1 All functions which are essential to the Divestment Business are operated at the level of the existing VIPitech Business of Watson Wyatt. The Divestment Business currently benefits from general corporate support functions provided by Watson Wyatt including, for example, HR support. However, these general corporate support functions are not specific to the Divestment Business and any prospective buyer of the Divestment Business would have these functions available as part of its own pre-existing infrastructure.

5.2 It is therefore not anticipated that it would be necessary for arrangements to be put in place for the supply of any of these support services for a transitional period, but Watson Wyatt, Towers Watson, or their Affiliated Undertakings would be prepared to agree to supply any such services on arm's length terms after Closing, if required by the Commission at the request of the Purchaser, for a transitional period of twelve months.