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Case No IV/M.1307 - MARSH & McLENNAN / SEDGWICK

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 23/10/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.10.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1307 – Marsh&McLennan / Sedgwick
Notification of 22 October 1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22 October 1998**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Marsh&McLennan Companies Inc. ("Marsh&McLennan") will acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Sedgwick Group plc ("Sedgwick") by way of purchase of the Sedgwick's entire share capital.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Marsh&McLennan is an international professional services group with activities in the following fields: insurance and reinsurance distribution, insurance underwriting management, investment management, human resources consulting, risk finance insurance consultancy and economic and management consultancy. Marsh&McLennan carries out its insurance distribution activities through its subsidiary J&H Marsh&McLennan Inc. and its subsidiaries. The consulting side of Marsh&McLennan's business is conducted through the Mercer Consulting Group Inc. and its subsidiaries. Marsh&McLennan is also involved in investment management through its subsidiary Putnam Investments Inc.

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4. The principal activities of Sedgwick are in two main areas: insurance and reinsurance distribution, and employee benefits consulting. Insurance and reinsurance distribution consists of advising on and placing (re)insurance across a range of risks world-wide and is carried out through the company's Sedgwick Limited operating division. Sedgwick's employee benefits consulting business is conducted through Sedgwick Noble Lowndes and, as far as outsourcing of related services is concerned, through Sedgwick Limited.

5. The notified operation consists of a public offer by Marsh&McLennan to acquire the whole of the issued and to be issued share capital of Sedgwick. The offer has the agreement of the board of Sedgwick who have recommended that Sedgwick's security holders accept the offer. After completion Sedgwick will be a wholly-owned subsidiary of Marsh&McLennan.

II. COMMUNITY DIMENSION

6. Marsh&McLennan and Sedgwick have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Marsh&McLennan, ECU 5,298 million; and Sedgwick, ECU 1,408 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Marsh&McLennan, […][1]; and Sedgwick, […][1]). Marsh&McLennan do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. RELEVANT MARKETS

7. The parties activities overlap in the areas of insurance and reinsurance distribution and human resources consulting.

Insurance distribution

Relevant Product Markets

8. Both parties are active as insurance brokers. They define the relevant product market as the market for the distribution of insurance services in general, comprising distribution by direct writers, tied agents and intermediaries such as banks and brokers. The distribution of insurance involves procuring insurance cover for individual and corporate customers[2].

9. A distinction can be made between the distribution of life and non-life insurance, as different providers tend to be involved and the distribution of life insurance in Europe is regulated separately from other types of insurance. The present analysis will focus on the distribution of non-life insurance since the parties have considerably less significant activities with respect to life insurance distribution.

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[1] Deleted. Business secrets.

[2] Insurance distribution can also involve the placement of insurance on behalf of customers of other providers, where one provider considers that the other can better meet the client's requirements. Given that the parties submit […], this aspect will not be pursued further.

10. The parties claim that the insurance distribution market should not be segmented further on the basis of the distribution channels (brokers and other insurance distributors), the type of product (the risk insured and the insurance cover provided) or client size (individuals, small/medium-sized and large clients).

11. According to the parties, a range of providers compete to distribute insurance cover to end customers and can therefore be considered as operating in the same market, i.e. brokers such as the parties, other types of intermediary such as insurance agents and banks, tied agents of insurers and insurers writing direct. The parties argue that all these providers are contesting the same customers and competing to supply the same product, i.e. insurance cover. Customers throughout Europe are prepared to look to underwriters dealing direct, brokers or others to provide the cover they require, and are prepared to switch between different types of provider where they believe they will get better value for money elsewhere. Coverage by direct writers is being increasingly facilitated by new computer and electronic communication technology which makes it easier to deal with clients directly, and allows clients to select the best deal themselves. Also, various banks and other financial institutions are distributing all lines of insurance to personal and commercial customers.

12. In a recent decision[3], the Commission considered activities of brokers to be different from those of (re)insurers. The latter market their own products and have a vested commercial interest in selling these products to their clients, whereas brokers act as intermediaries between (re)insurers and clients, acting on their clients' behalf and seeking to place their clients' risk with the most suitable and competitive insurers.

13. From a demand-side perspective, the market investigation has confirmed that corporate customers clearly distinguish between the kind of services they can procure from a broker on the one hand and from direct dealing insurers or insurance agents on the other. Brokers are perceived as acting in the client's interest while underwriters are seen to act in their own profit interest. Brokers' services are requested where independent advice is needed. Moreover, the range of services which large corporate customers, and to a lesser degree medium-sized and even small companies, seek from brokers normally goes beyond the actual placement of insurance cover. This range of services may include an array of ancillary services which can be tailored to meet the client's needs, such as identification and assessment of risk, independent risk management advice, security rating of insurers, insurance market intelligence, independent actuarial services and claims support. From the point of view of corporate customers, underwriters dealing direct or insurance agents are not able to provide these services to the same degree and cannot therefore fully substitute brokers. Although some larger corporate customers are using brokers as well as placing business directly with insurers, they are nonetheless conscious of the different services provided by brokers and insurers.

14. In contrast, other intermediaries are becoming increasingly viable competitors for traditional insurance brokers. Certain merchant banks already maintain insurance consultancy and underwriting operations. There are indications that accounting firms are recruiting insurance brokers in order to be able to compete in the provision of risk management consultancy and services. Therefore, corporate customers might

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3 Decision of 24 August 1998 in Case No IV/M.1280 – KKR/Willis Coroon

increasingly be able to substitute brokers' services, as described above, with those of other intermediaries.

15. From a supply-side perspective, the market investigation has provided evidence that brokers have a more complete range of skills to advise comprehensively on the best products across the whole insurance market and to provide services ancillary to broking.

16. The market investigation also indicated that a further distinction could be made between the provision of broking services to commercial customers on the one hand and to private customers (including possibly small businesses presenting straightforward risk coverage needs) on the other. Brokers normally provide a different kind of service to commercial customers (i.e. broking as well as an array of associated services) and private clients (just placement of insurance cover). Broking services to private customers are therefore more easily substitutable by direct dealing insurers, insurance agents or other intermediaries. Accordingly, private clients are more likely than commercial clients to switch to direct sellers. Even in those Member States where brokers have traditionally been the preferred means of distribution, direct sale to consumers, for instance through mass marketing and telesales, would seem to be becoming an increasingly widespread form of distribution for certain classes of insurance, e.g. private motor insurance or household insurance. This penetration of the market by direct sellers is at the expense of brokers' market shares.

17. Moreover, third parties have indicated that commercial broking should be further segmented by client size, in that large corporations and multinationals prefer dealing with brokers. As a matter of fact, brokers would appear to be in a far better position to meet large customers' considerable requirements for risk management services and advice. The parties dispute that the broking market has to be segmented further on the basis of client size. They argue that, from a demand-side perspective, the progression of customer needs across the spectrum is gradual and not clearly delineated. From a supply-side perspective, the skills needed to meet the developing needs of a client do not change fundamentally as a function of client size. This distinguishes in the parties' opinion the broking sector from the auditing sector where a separate market for the provision of auditing services to multinational corporations can be considered[4]. In the end, although there is some evidence that large corporations could constitute a separate market , the question can be left open since serious doubts as to the compatibility with the common market can be excluded under any aspect.

18. Finally, the parties argue that it would not be appropriate to sub-divide the broking market further on the basis of business sectors or the type of risk insured. Whilst there have been indications that as regards certain industries (i.e. marine, aviation and space, energy) as well as certain risk types (i.e. directors' & officers' liability) distinct markets may be identified by reasons of limited substitutability on both demand and supply-side, this question can be left open because not specific concerns arise in the present case.

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4 Decision of 20 May 1998 in Case M.1016 – Price Waterhouse/Coopers&Lybrand

19. In conclusion, the product markets considered for the purpose of the present competitive analysis are the insurance broking market and, within this market, the sectors of consumer broking (placement of insurance cover for personal risks), broking for commercial clients (placement of insurance cover for commercial risks and related services) and in particular broking for large corporate clients. The final product market definition can be left open because, even on the basis of the narrowest segmentation, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant geographic market

20. There is a wide variation in the methods of insurance distribution from Member State to Member State. In Austria, Denmark, Finland, France, Germany, Greece, Italy, Portugal and Sweden between 75% and 95% of insurance services are distributed directly by insurance companies or their tied agents, with independent intermediaries having a smaller share of the market of below 20%. It cannot be excluded, however, that intermediaries such as brokers will increase their market share in those countries where the distribution of insurance is being deregulated. In other countries, in particular Belgium, the Netherlands, Ireland and the United Kingdom, direct client contact has historically been largely the preserve of the broker as intermediary, with brokers placing between 45% and 90% of insurances. Brokers' activities are subject to different regulatory frameworks in the different Member States.

21. Customers normally procure broking services in those countries in which they are active. Large and especially multi-national clients tend to use one broker to place insurance for some types of risk, notably if this risk affects a number of countries in which the company is active, whereas different brokers may be used to cover risks of a more limited geographical scope. For the purpose of the present analysis, the question whether the relevant geographic is larger than national can be left open since, in all alternative geographic market definitions considered, serious doubts about the compatibility with the common market can be excluded.

Reinsurance distribution

Relevant Product Market

22. The distribution of reinsurance involves the placement of reinsurance on behalf of insurers and reinsurers. The parties submit that the relevant product market includes services provided by both intermediaries and reinsurers who reinsure risks directly. They argue that, from the point of view of insurer and reinsurer clients, reinsurance companies and brokers are substantial and direct competitors because the top reinsurance companies all act as direct insurers for a substantial part of their business. It is not necessary to decide whether a distinct product market for reinsurance broking exists because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

Relevant Geographic Market

23. The Commission has recognised in previous decisions that risks for insurer and reinsurer clients are placed on a world-wide basis[5]. Likewise, related broking services are provided on a world-wide basis. For the present analysis, the relevant geographic market can therefore be considered to be world-wide in scope.

Human resources consulting

Relevant product market

24. The parties submit that their human resources consulting activities mainly overlap with respect to Retirement and Employee Benefits consulting. In this area the parties advise on and administer in particular pension and other benefits schemes for corporate customers[6]. The parties provide such consulting services almost exclusively to corporate clients and to individuals only within the framework of a corporate client mandate.

25. The market investigation has confirmed that Retirement and Employee Benefits consulting should be considered as a distinct product market. Consulting in this area requires specific sets of skills, qualifications and technical resources. In particular, Retirement and Employee Benefits consulting often involves actuarial input, for instance in designing and implementing retirement benefit packages, whereas no significant actuarial competence is required other areas of human resources consulting. Likewise, corporate customers distinguish between the specific services required in both areas and, where necessary, procure these services separately.

26. In the area of non-retirement/non-benefits human resources consulting, the parties' activities overlap only to a limited extent, as […] does not have substantial consultancy activity in this sector.

Relevant geographic market

27. The different fiscal and regulatory environments with respect to pensions, healthcare and other benefits across the Member States could be seen as an indication that the geographic markets for the above services are largely national. For the particular reliance on occupational benefits provided by the employer rather than through social security systems, the UK and Ireland have the most well developed corporate funded pension arrangements. On the other hand, it can be observed that part of the consulting services in question is procured by multi-national corporations from large, internationally active consultants. However, it is not necessary to further delineate the relevant geographic markets because affected markets exist only in the United Kingdom and Ireland and effective competition would not be significantly impeded in these markets (see below).

IV. <u>COMPETITIVE ASSESSMENT</u>

Insurance distribution

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5 Decisions of 20 December 1996 in Case M.862 – AXA/UAP and 16 February 1998 in Case M.1043 – BAT/Zürich

6 Healthcare schemes can be considered an insignificant service component in most countries.

28. The following assessment refers to the non-life insurance market only, the life-insurance activity of the parties being considerably less important.

29. As noted above, there are indications that the substitutability of broking operations by other insurance distribution channels generally tends to increase the smaller the size of clients becomes. Although there may be some notable exceptions such as small commercial clients presenting complex risk coverage requirements, it appears that direct underwriters, tied agents, banks and to a certain extent direct sellers compete actively with brokers on the lower end of the customer-range (personal lines and small commercial business), whereas brokers are by far the preferred provider of insurance and risk management services as far as the upper end of the customer-range is concerned, that is large corporations and multinationals. Thus, the major impact of the concentration is to be felt on the market of commercial broking (i.e. excluding personal lines) and more in particular in the segment of large corporations and multinationals. The following market share analysis starts from a larger market configuration and then focuses on the large corporation segment where the impact of the concentration will be most significant. Precise market share information is difficult to obtain, in particular in respect to the broking sector taken alone. Several competitors have been unable to provide their own estimates, so that sometimes crosschecking the figures provided by the parties has been problematic. However, the market investigation has provided indications that have enabled the Commission to make a substantiated assessment in spite of some missing or just roughly estimated figures.

Market shares and other market data

30. Marsh & McLennan and Sedgwick are reported to be the first and the third largest brokers worldwide respectively in terms of brokerage revenue. Other brokers of major size include Aon Corporation (US) and Willis Corroon Group plc (UK). These appear to be the only four groups with global presence. Other sizeable competitors include Arthur J. Gallagher, Jardine Lloyd Thomson, Accordia, Lambert Fenchurch and Forbes Group.

31. As regards the market analysis of non-life insurance placement (both including and excluding direct underwriters), the parties have provided estimates of market sizes and market shares based on gross premiums (thus referring to the value of insurance placed).

32. Taking into account the total non-life insurance placement (brokers plus other forms of insurance distribution), the parties' combined share, according to the notification, does not exceed [5-15%][7] in any EEA country and amount to [<5%][7] at EEA level.

33. If insurance placements via brokers alone are taken into account, the data available become less accurate. They must be constructed based on estimates of the shares of insurance placements that are sold via brokers, which as noted above vary significantly amongst different Member States. According to the parties, their combined market shares in this case will amount to [10-15%][7] at EEA level, the major competitors being Aon and Willis Corroon with shares of between 5% and

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15% as well as Jardine Lloyd Thomson and Lambert Fenchurch with shares below 5%. Aon and Willis Corroon have a quite extensive presence in most EEA countries. In addition, in Member and EFTA states there are a number of smaller brokers mainly operating at domestic level.

34. As regards individual member states, the parties present their own and their main competitors' market shares are presented as follows (in %)[7]:

Belgium		United Kingdom (largest national market)	
MML/Sedgwick	[<20%][7]	MML/Sedgwick	[<20%][7]
Van Breda	[<10%][7]	Aon	[<20%][7]
Aon, Menage &Jowa/		Willis Corroon	[<10%][7]
Gras Savoye, TCD	[10%][7] approx	Jardine Lloyd Thomson	[<10%][7]
France		Italy	
MML/Sedgwick	[<20%][7]	MML/Sedgwick	[<25%][7]
Gras Savoye	[<20%][7]	Willis Corroon, Gruppo	
Aon	[<10%][7]	Taverna and GPA	[<10%][7]
Assurances Verspieren	[<10%][7]		
Portugal			
MML/Sedgwick	[<25%][7]		
Ecosel	[<15%][7]		
Joao Mata	[<15%][7]		
Aon	[<10%][7]		
Finland (very small market)		Sweden	
MML/Sedgwick	[<35%][7]	MML/Sedgwick	[<35%][7]
Aon	[<30%][7]	Aon	[<30%][7]
Willis Corroon and		Willis Corroon and	
First Broker	[<10%][7]	Säkra Skog & Rosen	[<10%][7]

35. It follows from the above that certain countries present strong penetration rates of brokers as opposed to direct underwriters and other forms of insurance distribution. The merger will impact more strongly on these countries, namely Belgium and the UK. The parties' combined share will also exceed [<25%][7] in a number of other countries (France, Italy, Portugal), in which, however, the penetration rate of brokers is generally lower than 20%. It must be noted that Sweden and Finland, the only two countries where the parties would exceed [<40%][7], feature a very low rate of penetration of the broker channel (less than 5%) as opposed to the other channels of distribution of insurance products. In the Netherlands and Ireland the parties market shares are below [<20%][8].

36. The market investigation carried out by the Commission has shown that the above market share data are not substantially challenged by competitors. Some discrepancies as regards specific national markets do not put into question the final assessment of the merger.

37. If, as it would appear more appropriate in the light of the product market definition above, the analysis is limited to commercial broking (i.e. insurance placed via brokers excluding personal lines), the parties would have a share at EEA level amounting to [20-25%][8]. Their combined shares will exceed [<20%][8] in

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a number of countries, namely France ([<20%][8]), Portugal ([<25%] [8]), Ireland ([<25%][8]), Italy ([<35%][8]), The Netherlands ([<30%][8]), UK ([<30%][8]), Sweden (<35%][8]), Belgium ([<35%][8]) and Finland ([<40%][8]). These figures provided by the parties have not been challenged during the market investigation. No data are available concerning competitors.

38. As regards the segment of commercial broking to large corporations, the Commission considers that the assessment of the merged entity's position on the market is better expressed in terms of brokers' total revenues rather than insurance premiums. As explained above, commercial broking to large corporations include a large degree of ancillary services. These services are increasingly remunerated on a fee basis, which is in addition to, and independent from the fees or commissions received on the insurance cover placed. In addition, the parties have submitted that they receive also additional payments from insurers, which are calculated by reference to the overall book of business placed by the broker with the underwriter. Hence, the total revenue of the broker provides a more precise parameter to evaluate market strength in this segment.

39. However, precise revenue based market sizes and market shares are not available, missing any public information in this respect. The parties have provided a break down of their revenues between commission and fees for all Member and EFTA States impacted by the merger, in respect of corporations whose turnover exceeds US$ 100M and US$ 850M respectively. These figures demonstrate that in most countries the importance of the fee component (relating to ancillary services) of the broker revenue is not significant […][8], which means that the premium's based market shares can still be taken as a good indicator of the market position of the parties. The exceptions are Belgium, Ireland, The Netherlands, UK and Sweden, i.c., apart from the latter, those countries were the penetration rate of brokers in the total insurance distribution is highest. For all these countries the parties have provided estimates of their own and of the other brokers' share of insurance services supplied to the national top 20 corporates by revenue (which are in the large majority of cases also within the Euro 500 list if the top 500 companies by revenue in the EU). The picture resulting demonstrates that whilst Marsh & McLennan and Sedgwick together are constantly amongst the main provider of broking services in all countries examined and indeed in many cases can be said to be market leader, the large majority of customers appoint two or more brokers to meet their needs, often in addition to direct underwriters themselves. The picture also confirms the diversity of patterns from country to country. Swedish corporations still have limited recourse to broker's services as opposed to other forms of procuring insurance cover. In UK, The Netherlands and Belgium there is a wide variation in the ways in which large corporates choose to satisfy their insurance needs and, accordingly, the proportion of cover provided by brokers varies considerably from company to company. In Ireland, probably due to the smaller size of top corporates, there are various brokers operating at domestic level, which can provide a viable alternative to the merged entity.

Assessment

40. In general, it appears that the market trend for commercial insurance business indicates that there has been a general decrease of insurance premiums and costs. This seems to be due to the recent lack of major casualties (which is a cyclical phenomenon) and to the over-capacity in the supply offered to large corporate

clients, the latter resulting both from the insurers capital base's increase as well as from the growing risk retention by clients through captive insurance or self insurance. Price competition among insurers to maintain the premium volume and the pressure exerted by brokers to get the best deal for their clients have assisted this trend. Moreover, the development of alternative risk management programs offered by financial institutions has provided further pressure on brokers and insurers.

41. Some insurance companies have expressed the view that this merger will result in increased buying powers of the parties. However, in general they consider that market transparency and competition between brokers will ultimately reduce the importance of this aspect. Especially large insurers have submitted that they will have sufficient counter leverage and that they do not see any significant impact on their commercial policy arising from the merger.

a) Large corporates

42. The large majority of the third parties interviewed by the Commission, whilst confirming that the major impact of the operation is to be felt on the segment of commercial broking for large corporations, have supported the conclusion that any serious concerns for competition either in this segment or more in general on the broking market can be excluded. In addition to broadly confirming that the figures provided by the parties are not substantially wrong, they have submitted a number of other arguments, which at the same time complement and enable a correct evaluation of the above market data.

43. Firstly, other intermediaries such as merchant banks, accounting firms and other consultants and financial institution providing risk management consultancy and services (so called alternative risk management programs) are said to be already an important source of at least potential competition to brokers. Large customers have indicated that they expect those operators to become increasingly viable competitors for traditional insurance brokers and some customers declared that they would be ready to switch totally or partially to this alternative providers, should insurance brokers attempt to raise prices at supracompetitive levels.

44. Secondly, the market investigation has confirmed that large customers have the option to (partially) internalise the services provided by brokers, by creating risk management functions and/or internal insurance operations. Indeed, this practice is extensively in use in certain countries (i.e. this is a traditional feature in German corporations).

45. Thirdly, large corporations do normally have an important degree of countervailing power that serves to constrain any market power of insurance brokers.

46. Fourthly, as the segment includes as client types large corporations and multinationals, it is evident that the geographical scope of the market tends to exceed national countries to become increasingly EEA wide, if not worldwide especially as regards certain risk types (i.e. aviation and space, financial institutions).

47. The combination of these factors allows excluding the possibility that serious concerns for competition arise from the merger in respect of the market for

commercial broking to large corporations. Also, these factors are normally to be found across the whole range of risk types or client industries. Indeed, the market investigation has provided no indications that the merged entity may price discriminate or otherwise abuse in respect of any particular risk type or category of clients.

b) Medium-sized and small commercial customers

48. It is evident that the weight of these factors decreases if medium-sized and small business customers are taken into account, especially if they do not require coverage for complex risks. The market investigation has confirmed that for this segment other factors such as easy new entries due to the absence of substantial barriers and a much higher supply-side substitutability by other insurance distributors prevent the merger to cause any serious concerns for customers and competitors.

c) Consumer broking

49. Finally, as already noted, no major impact is expected on the consumer broking segment of the market, where substitutability by other forms of insurance distribution is highest and hence the parties' market shares considerably less significant. In this business, where brokers play a less important role and the risk covers are more standardised and market transparency higher, there has been an increasing disintermediation process following the general trend already registered in the financial business area. The IT's role in this area appears to be significant and have contributed to a further reduction of the costs to the consumers.

50. In view of the above it can be concluded that, whatever market definition adopted, the merger between Marsh & McLennan and Sedgwick will not lead to the creation or strengthening of a dominant position in respect to their insurance broking operations.

Reinsurance

51. The market for reinsurance distribution appears to be highly competitive due to a number of factors, such as the strength of the capital markets, the entrance of new capacity and the recent lack of major casualties. In this regard the merger of brokers active in this market is perceived by the market as to exert additional pressure on reinsurers regarding prices and coverage.

52. Estimates provided by the parties attribute to brokers some 25% of the total reinsurance placement market, while reinsurance companies direct handle the remaining 75%. This estimate has been roughly confirmed as applying as well to the European market. According to the notification the merger between Marsh & McLennan and Sedgwick will afford them a worldwide position comparable to that of the other major broker Aon (between [5% and 10%][9] of the premiums going into the worldwide market, between [20% and 35%][9] if direct reinsurers are excluded). A number of other brokers compete in this sector including Willis

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Faber, EW Blanche, Benfiels Greig, Jardine Lloyd Thompson and Le Blanc de Nicholay. In addition, whether they are taken as direct or only potential competitors, direct reinsurers such as Munich Re, Swiss Re, Employers Re and General Re, which between them hold [<35%][9] of the worldwide premiums, can be taken to exert sufficient competitive pressure on the parties.

53. The market investigation has confirmed this conclusion: the parties combined market shares for the European market is said not to exceed [<20%][9] of reinsurance placement by brokers, a number other players will remain in the market place and customers such as large insurance companies will have significant countervailing power. The third parties contacted have not expressed any substantial concern about the effect of the concentration, supporting the conclusion that actual and potential competition in the relevant market will remain sufficiently viable, so as to exclude that the operation will significantly affect competition in the market concerned.

Human resources consulting

54. Each of the parties provide Retirement and Employee Benefits consulting services. Both parties have substantial market shares only in Ireland and the United Kingdom. The parties are active through their subsidiaries William Mercer Companies and Sedgwick Noble Lowndes (UK)/Irish Pension Trust (Ireland) respectively.

Ireland

55. A substantial number of firms, both international and local, are already established in the Irish Retirement and Employee Benefits consulting market. The market is of a relatively small size in a European context (e.g. covering a workforce of approximately 1.4 million). Customer companies are generally small or medium-sized, with relatively few large corporations[10].

56. The parties estimate their own and their main competitors' market shares on the basis of the revenue earned from Retirement and Employee Benefits consulting as follows[11]:

Consultant	Total Revenue (IR£M) Estimates	Market Share (%) Estimates
IPT (Sedgwick)	[<15][12]	[<20][12]
Mercer	[<10][12]	[<15][12]
Coyle Hamilton	below [5][12]	below [10][12]

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10 There are 39 pension schemes in Ireland with more than 1,000 members, accounting for a total of 279,000 members (source: Irish Pensions Board Annual Report 1997).

11 The parties estimate the total market revenue by attributing assumed average revenue per actuary and staff member based on the average for Mercer and IPT (Segwick) to all staff active in the Retirement and Employee Benefits sector. Revenues of other consultants are estimated on the same basis and have been confirmed by the investigation with respect to the main competitors.

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Aon Consulting	below [5] [12]	below [10] [12]
Buck	below [5] [12]	below [10] [12]
Watson Wyatt	below [5] [12]	below [10] [12]
Woodchester	below [5] [12]	below [10] [12]
FBD Life & Pensions	below [5] [12]	below [10] [12]
L&P Financial Services	below [5] [12]	below [10] [12]
KPMG	below [5] [12]	below [10] [12]
Howard Johnson	below [5] [12]	below [10] [12]
Beckets	below [5] [12]	below [10] [12]
Bacon & Woodrow	below [5] [12]	below [10] [12]
Others	[<30] [12]	[<45] [12]
Total	[…] [12]	100

57. If only the largest competitors are compared, i.e. those that can be considered as effectively or at least potentially competing in the provision of a comprehensive Retirement and Employee Benefits consulting service, the market shares are as follows:

Consultant	Total Revenue (IR£M) Estimates	Market Share (%) Estimates
IPT (Sedgwick)	[<15] [12]	[<35] [12]
Mercer	[<10] [12]	[<25] [12]
Coyle Hamilton	below [5] [12]	below [10] [12]
Aon Consulting	below [5] [12]	below [10] [12]
Buck	below [5] [12]	below [10] [12]
Watson Wyatt	below [5] [12]	below [10] [12]
Woodchester	below [5] [13]	below [10] [13]
FBD Life & Pensions	below [5] [13]	below [10] [13]
L&P Financial Services	below [5] [13]	below [10] [13]
KPMG	below [5] [13]	below [10] [13]
Howard Johnson	below [5] [13]	below [10] [13]
Beckets	below [5] [13]	below [10] [13]
Bacon & Woodrow	below [5] [13]	below [10] [13]

58. An alternative method of calculating the parties' market shares could be based on the number of members (individuals) in pension schemes for which the parties provide consulting or administration services:

	Defined Benefits[14]	Defined contributions[15]	Aggregate
Mercer	[…] [13]	[…] [13]	[…] [13]

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14 Defined Benefits: A fixed pension will be paid to the beneficiary.

15 Defined Contributions: The beneficiary pays fixed contributions into the scheme.

IPT (Sedgwick)	[…][13]	[…][13]	[…][13]
Total members[16]	419,000	100,000	519,000
Mercer share (%)	[<10] [13]	[<20] [13]	[<10] [13]
IPT share (%)	[<20] [13]	[<20] [13]	[<20] [13]
Combined share (%)	[<30] [13]	[<40] [13]	[<30] [13]

59. In the end, it is not necessary to determine the parties' market shares further because serious doubts about the proposed concentration's compatibility with the common market can be excluded on the basis of the following considerations:

60. Customer companies normally tender Retirement and Employee Benefits consulting services. The parties provide some evidence that Human Resources consultants such as Aon Beech Hill, Coyle Hamilton, Buck Consultants and Watson Wyatt have been competing effectively for business to date. According to the parties, in tendering for […][13] new business prospects over the last 12 months, Mercer were successful in […][13] while Sedgwick were successful in […][13]. […][13] awarded to the parties jointly.

61. A majority of Irish companies are of small and medium sized and oursource all pension services, including administration. Whereas large companies are able to handle these activities in-house as an alternative to procuring such services, smaller companies may not easily be in a position to make this choice.

62. On the other hand, small and medium-sized clients have a choice amongst a number of Retirement and Employee Benefits consultants in Ireland, given that up to ten medium-sized providers remain active. In fact, smaller companies may be more inclined to choose a local service provider, and some clients may prefer a more personal and individual service. This choice is not removed by the present concentration. More specifically, a sufficient number of Retirement and Employee Benefits consulting providers present in the market retain a comprehensive consulting capacity (in terms of staffing and administrative back-up) with respect to advice on as well as administration of retirement and benefits schemes.

63. With respect to the more limited number of large corporate customers for Retirement and Employee Benefits consulting services in the Irish market, the investigation has produced some evidence that these have a certain preference for large benefit consultants. In particular, multi-national companies may tend to procure the services of consultants operating on an international basis. However, apart from having the option to internalise at least partly the services provided by Retirement and Employee Benefits consultants, the investigation results set out below confirm that large corporate customers will continue to have a choice amongst suitable competitors, and that internationally operating suppliers will be able to expand their market position or enter the market.

64. Existing and potential competition by insurance companies as well as non-specialised consulting firms needs to be taken into account. Insurance companies have already established a certain presence in the Irish Retirement and Employee Benefits market with respect to the distribution of Defined Contribution pension

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16 Source: Irish Pensions Board Annual Report 1997.

schemes which does not require specific actuarial input. Defined Contribution schemes accounted for approximately 20% of members in pension schemes in 1997, with a faster growth rate than Defined Benefit schemes, and therefore would seem to present a recognised alternative to other types of pension scheme. The most common type of pension scheme, the Defined Benefit scheme, does require actuarial calculations and certification by actuaries in Ireland. However, the actuarial input required for such schemes may be procured by consulting firms without an in-house actuarial capacity, from third party actuaries or from a number of insurance companies providing actuarial services for Defined Benefits schemes such as Irish Life, New Ireland, Standard Life and Friends First.

65. The main barriers to entry and expansion in the Retirement and Employee Benefits consulting market can be described as: the need for qualified and experienced staff; the time or capital needed to acquire a client basis; the necessary reputation; and the need for a certain administrative back-up capacity (notably for outsourced pension scheme administration). Relevant capital costs relate to recruitment and staff costs as well as systems and marketing expenditure.

66. Some of the parties' main competitors in the Irish Retirement and Employee Benefits consulting market belong to international professional services groups (in particular Aon Beech Hill, Watson Wyatt, Buck Consultants, KPMG and Bacon&Woodrow). Although these competitors hold significantly smaller market shares than the parties, there is no evidence to suggest that they will not be able to expand their presence in the market concerned. Each of these competitors has substantial international activities and most are well established in the United Kingdom. As multi-national firms, all competitors quoted above have the reputation, the staff, the capital and the administrative capacity necessary to reinforce their presence in Ireland. It can assumed that these competitors have to a similar degree access to large corporate (multi-national) clients as the parties.

67. With respect to the recruitment of qualified staff in particular, employment contracts in the market concerned do not generally impose severe restrictions on staff mobility. The investigation has also confirmed that there is mutual recognition of qualifications by the relevant professional actuarial bodies. Language does not constitute an entry barrier. Therefore, competitors do not normally face serious legal or practical obstacles to attracting qualified staff or using UK-based actuarial staff where necessary. There is some evidence to confirm that large accountancy and consultancy firms, such as Pricewaterhouse Coopers, are recruiting actuaries in order to reinforce their pensions and actuarial consultancy in Ireland.

68. Although specialised, the relevant market seems to be sufficiently open, providing that those willing to enter have the relevant expertise of its resources, a credible organisation and an adequate customer base. In this regard the international consultancy firms which have recently shown interest in entering the market seem to be in the best position.

69. In summary, the evidence gathered does not raise serious doubts that the proposed concentration will significantly impede effective competition in the market concerned, in particular, that the parties, after combining their operations, will be able to act to a large extent independently of competitors and customers. On the basis of the information available, it can be assumed that existing and potential

competition in the relevant market will be sufficiently viable to counter any possible attempt by the parties to exploit their position, and that new market entries and the expansion of competitors' existing market position remain possible.

United Kingdom

70. The parties quantify their own and their main competitors' market shares on the basis of the number of clients as follows:

	Market share (%)
Watson Wyatt	[<25][17]
William Mercer	[<20][17]
Sedgwick	[<20][17]
Bacon & Woodrow	[<20][17]
Aon Consulting	[<20][17]
Hymans Robertson	[<20][17]
Buck Consultants	[<20][17]
Lane Clark & Peacock	[<20][17]
Towers Perrin	[<20][18]
Hogg Robinson	[<20][18]
HSBC Gibbs Benefit Consultants Ltd	[<20][18]
Abbey National Benefit Consultants Ltd	[<20][18]
Punter Southall & Co.	[<20][18]
Barnett Waddingham & Co.	[<20][18]
SBJ Benefit Consultants Ltd.	[<20][18]
Others	[<20][18]
Total	100

71. The market investigation has confirmed that the parties' combined market share will not probably exceed […][18] and that a number of substantial competitors will remain in the market place. The results of the investigation do also suggest that the conditions for entry and expansion in the Retirement and Employee Benefits consulting market are similar to those described above. This supports the conclusion that existing and potential competition in the relevant market will remain sufficiently viable. The competitors and trade associations contacted have not expressed any substantial concerns about the effect of the concentration.

72. On the demand side, the UK Retirement and Employee Benefits consulting market comprises a significant number of corporate customers with substantial buying power. Corporate customers have expressed a cost-conscious approach and would seem to be ready to consider alternative suppliers in the procurement of consulting services on a case-by-case basis. Some customers stressed that their choice is not guided by the provider's size but by skills and experience. They considered that viable competitors to Marsh&McLennan and Segdwick are available.

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17 Business secrets.

18 Business secrets.

73. In conclusion, there is no strong evidence to suggest that the proposed concentration will significantly affect competition in the market concerned.

V. CONCLUSION

74. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,