



EUROPEAN COMMISSION
DG Competition

***Case M.9196 - MARSH
& MCLENNAN
COMPANIES /
JARDINE LLOYD
THOMPSON GROUP***

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: 22/03/2019

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: Case M.9196 – MARSH & MCLENNAN COMPANIES / JARDINE LLOYD THOMPSON GROUP
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 1 February 2019, the Commission received notification of a concentration pursuant to Article 4 of the Merger Regulation, which would result from a proposed transaction by which Marsh and McLennan Companies Inc (“MMC”, or “the Notifying Party”) incorporated in the United States intends to acquire sole control, within the meaning of Article 3(1)(b) of the Merger Regulation, over the whole of Jardine Lloyd Thompson plc (“JLT”), incorporated in the United Kingdom (“the Transaction”).³ The concentration is to be achieved by way of public bid announced on 18 September 2018. MMC and JLT are designated hereinafter as “the Parties”. The undertaking that would result from the Transaction is referred to as “the combined entity”.

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 53, 11.02.2019, p. 5.

1. THE PARTIES

- (2) MMC is a global professional services firm offering clients advice and solutions in the areas of risk, strategy and people. MMC consists of four key lines of business operated by the following entities (i) Marsh, active in insurance broking and risk management solutions; (ii) Guy Carpenter, active in reinsurance and capital strategies; (iii) Mercer, active in health, wealth and career consulting; and (iv) Oliver Wyman, a strategy, economic and brand consultancy.
- (3) JLT is a publicly listed company incorporated in 1997. JLT has two principal business areas: (i) Risk & Insurance, encompassing insurance and reinsurance broking; and (ii) Employee Benefits, comprising advice and services to companies, pension trustees and individuals, including retirement solutions; benefits consulting; wealth and investment management; and technology solutions.

2. THE TRANSACTION

- (4) On 18 September 2018, MMC announced its intention to make a public offer under section 2.7 of the City Code on Takeovers and Mergers to acquire the entire issued and to be issued share capital of JLT. The Transaction is intended to be implemented by way of a court-sanctioned scheme of arrangement pursuant to Part 26 of the Companies Act 2006. MMC also has the right to implement the Transaction by way of a takeover offer pursuant to Part 28 of the Companies Act 2006. After completion, MMC will hold directly 100% of the shares in JLT, following which the JLT business will be integrated into MMC's business. JLT will be delisted from the London Stock Exchange and be re-registered as a private limited company.
- (5) The Transaction would therefore result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (MMC: EUR 12 425.3 million and JLT EUR 1 572.8 million). Each of them has an Union-wide turnover in excess of EUR 250 million (MMC EUR [...] million; JLT EUR [...] million). JLT achieves two-thirds of its aggregate Union-wide turnover in the UK, but Marsh does not.
- (7) The concentration has therefore an Union dimension pursuant to Article 1(2) of the Merger Regulation.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

4. RELEVANT MARKETS

- (8) The Parties are both active primarily in the provision of insurance and reinsurance broking services, as well as in the provision of retirement and employee benefits-related services such as the fiduciary management of pension funds.
- (9) The overlap between the Parties' activities leads to affected markets in the broker services for Aircraft Operators, Aerospace Manufacturing, Energy, Space and FinPro and on the market for fiduciary management services. As the provision of reinsurance (including retrocessional reinsurance) broking services, and the provision of retirement and employee benefits services (with the exception of fiduciary management of pension funds) are not affected markets, they will not be further discussed in this Decision.
- (10) In its previous decision *Marsh&McLennan / Sedgwick*⁵, the Commission noted that the product markets are likely to be more limited in scope than the distribution of insurance services in general, comprising distribution by direct writers, tied agents and intermediaries such as banks and brokers. The Commission considered 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 Commission also considered whether non-life insurance distribution could be further segmented based on (a) sales channels, (b) customer size/type, or (c) business sector / risk type. The Commission ultimately left the exact product market definition open⁶.

4.1. Brokerage and other insurance management alternatives

- (11) The Parties operate as insurance brokers servicing large, generally multinational companies with highly technical operations – such as energy companies or airline operators – by placing their risk in the insurance market.
- (12) The activities of brokers are different from those of insurers and subject to a different regulatory framework⁷. The typical broker services provided by the Parties consist in assisting clients in securing suitable and competitive cover to achieve their risk management goals. For that purpose, brokers will scan the insurance market for an insurer or a consortium of insurers capable of carrying the client's risks. They will typically conduct the negotiation with the insurer(s) on behalf of their clients with the goal of achieving the best possible rates and conditions. In addition to these intermediation services, brokers can also provide advisory services, such as on risk management strategies or policy wording. In the event that the client has to make a policy claim, brokers will typically also handle the process vis-à-vis the insurer. These additional services are equally valued by customers, and clearly separate broking activities from other insurance distribution channels.
- (13) According to the Parties, the market for the distribution of commercial non-life insurance for specialty sectors ought to be defined by taking into account all the

⁵ See IV/M.1307 – Marsh & McLennan / Sedgwick (1998), recital (19).

⁶ See IV/M.1307 – Marsh & McLennan / Sedgwick (1998), recital (19).

⁷ IV/M.1280 – KKR / Willis Corroon (1998)

risk management channels available to its customers: (i) using a broker to place risks on the insurance market; (ii) retaining the risk (including through the use of captive insurers⁸); (iii) placing the risk directly with an insurer and (iv) accessing alternative forms of capital. In the Parties' view, these channels are interchangeable and are equally attractive risk management alternatives for customers.

- (14) The Commission considers that the relevant product market is limited to the distribution of insurance via brokers, as the market investigation revealed that most customers consider that the other risk management channels are not substitutes for broking services, at least as far as corporate customers are concerned⁹. The Commission noted in *Marsh & McLennan / Sedgwick* that corporate customers clearly distinguish between the types of services they can procure from brokers and from insurers¹⁰. The results of the present market investigation confirmed that large corporate customers in the specialties concerned consider the activities of brokers as a separate from those of insurers, and that they do not consider insurers to compete directly with brokers in the distribution of insurance for large risks¹¹. Moreover, the vast majority of insurers consulted in the market investigation do not operate their own distribution network which would enable them to compete with brokers directly, and none of them considers it viable to create one¹².
- (15) Concerning risk retention as a viable alternative to corporate customers, there are different degrees to which this option is relevant depending on the specialty risk considered. For the most part, however, the market investigation revealed that customers would generally retain only small portions of their risk portfolio¹³, which did not appear to decrease their need for broker services. The decision to set up a captive insurer appears to be a strategic choice for companies, influenced by strategic considerations such as risk appetite, prevailing market prices and the skills available to the company¹⁴. Even when customers retain risk, brokers might still provide additional services such as managing the captive insurer where the risk can be placed¹⁵. In conclusion, broker services are also distinct from risk retention and belong to separate markets from other insurance management channels.

4.2. Risk broking specialties

- (16) Taking the assessment in Section 4.1 into account, wherein the Commission concludes that broking is a separate form of insurance distribution, this Section will focus on the plausible sub-segmentations of the market for brokerage.

⁸ A captive insurer is a distinct entity, typically within the same corporate group as its parent entity, that acts as an insurer for other entities within the group. The captive insurer is a separate, licensed body that writes policies and received premiums just as a third party insurer would. Some captive insurers also act as insurers for third party risk.

⁹ Replies to questionnaire Q1 – customers, question 6.

¹⁰ IV/M.1307 *Marsh & McLennan / Sedgwick* (1998), recital (13)

¹¹ Replies to questionnaire Q1 – customers, question 15.

¹² Replies to questionnaire Q2 – insurers, questions 7.1 and 8.

¹³ Replies to questionnaire Q1 – customers, question 6.

¹⁴ See minutes of call with customer on 18.01.2019 at 2:30 pm.

¹⁵ Replies to questionnaire Q1 – customers, question 4.

- (17) The Parties submit that their activities only overlap for large corporates and middle-market corporate clients. For the purpose of this decision, the Commission thus does not further assess the possibility to segment the market of non-life insurance broking based on customer size/type. The Commission also notes that the activities of the Parties are not segmented along the lines of customer-size but based on risk-type or business sector.
- (18) In relation to a possible segmentation of the market for insurance broking by business sector / risk type, the Parties submit that such segmentation does not exist and that segmentation varies across brokers. However, the Parties also submit that brokers generally sub-segment the market for non-life insurance broking between broking for property and casualty risks (“P&C”) and broking for a number of specialty risks (“Specialties”). The Parties further submit that it is not appropriate to segment commercial non-life broking into narrower business sector/risk types, since there is significant supply-side substitutability across and within P&C and Specialties. According to the Parties, the basic skills for broking are largely the same across all risk categories and the client relationships and industry expertise resides within small and mobile teams. In their view, expansion into new broking areas is speedy and not very costly, with the threat of new entry constantly exerting constant pressure on incumbents.
- (19) However, the Commission considered in a previous decision¹⁶ that as regards certain industries as well as certain risk types, distinct markets may be identified by reasons of limited substitutability on both demand and supply-side. Concerning supply-side substitutability, the Commission found that for certain product lines or sectors of the market for the distribution of non-life insurance, a considerable degree of knowledge and specialisation is required in order to compete effectively. The Commission ultimately left the market open.
- (20) The results of the market investigation support the Commission’s previous views on the limited scope for demand-side substitutability. Most customers¹⁷ indicate that each risk type / business sector requires specific know-how and a good track record. The market investigation also showed that brokers tend to have specialized teams for a business sector / risk type and that the perception of which competitors are stronger varies for each sectors / risk type¹⁸. Customers active in a particular industry also do not consider it realistic to switch to a broker that does not have the necessary expertise or proven track-record in that particular industry, indicating a lack of demand-side substitutability at the level of business sector / risk type¹⁹.
- (21) As regards the potential supply-side substitutability, competitors to the Parties noted during the market investigation that experienced teams with strong technical capabilities are needed to build customer and market relationships²⁰. Also, there are high barriers to entry into sectors / risk types not currently covered by a broker particularly as concerns the requirements for a good track record,

¹⁶ See IV/M.1307 Marsh & McLennan / Sedgwick (1998), recital (18).

¹⁷ Replies to the questionnaire Q1 – customers, questions 23, 24, 25 and 26.

¹⁸ Replies to questionnaire Q1 – customers, questions 23, 24, 25 and 26.

¹⁹ Replies to questionnaire Q1 – customers, questions 23, 24, 25 and 26.

²⁰ Customer reply to questionnaire Q3 – competitors, question 12.1

ample data, and industry expertise²¹. These factors appear to indicate that there is little supply-side substitutability between business sector / risk types.

- (22) For the purpose of this Decision, the Commission therefore considers that the market for non-life insurance brokerage can be further segmented based on business sector / risk type. The Commission concludes from the market investigation that a segmentation based on business sectors / risk types corresponds with customers' identification of homogenous risks and competitors' preference to structure their company based on the different risk types (e.g. a separate division for Energy or Aerospace Manufacturing). The Commission therefore considers that a segmentation of the brokerage market based on business sector / risk type is the most appropriate for the purpose of this Decision.
- (23) Following the Commission's conclusion on the narrowest plausible market segmentation, the Commission notes that the Parties' activities overlap in the provision of specialised broker services for Aircraft Operators, Aerospace Manufacturing, Energy, Space and FinPro. FinPro is the insurance broking segment that covers the risks associated with the professional indemnity of directors, managers, and employees as well as the financial exposures of a company.

4.2.1. Broker services for Aircraft Operators

- (24) Both Parties are active in the broking of commercial insurance for aircraft, jet fleet and rotor fleet operators. This type of insurance predominantly consists of the coverage against damage to the aircraft ("hull coverage") and general liability to passengers and third parties. Ancillary coverage covering replacement/repair of spare parts and/or coverage against damage or liability arising out of malicious acts (e.g. war or terrorism) is also typically distributed in this business line.
- (25) The aircraft insurance industry is characterised by the threat of very low frequency catastrophic events that can trigger very high losses on airline operators. Customers in this segment seek on the one hand good insurance premiums, but they also expect brokers to provide skilful claims handling services should any catastrophic event happen²². Customers purchase such a specific combination of reach, business and technical expertise, and track record that a separate product market might be considered on the basis of customer characteristics alone.

4.2.1.1. Product market Definition

- (26) The Parties submit that the relevant product market is that of the distribution of Aircraft Operators insurance, regardless of channel. In their view, brokers compete with third party and captive insurers in the distribution of insurance in this segment.
- (27) The Commission has not previously considered the existence of a separate product market for the distribution of commercial aircraft operator insurance. However, it has noted in the past that a distinct market for the distribution of

²¹ Replies to questionnaire Q1 – customers, questions 14 and 18.

²² Replies to questionnaire Q1 – customers, question 7.

specialty insurance for certain industries – including for aviation – could potentially exist²³. The market investigation confirmed that most commercial aircraft respondents identified Aircraft Operators as a distinct market and that they generally contract separate brokers for different types of risks²⁴.

- (28) As far as the distribution channel is concerned, as already discussed in section 4.1 the market investigation confirmed that neither dealing directly with third party insurers, nor setting up a captive are considered to be appropriate alternatives in the management of large aviation risks²⁵.
- (29) Therefore, based on the reasoning above, the Commission concludes that for the purpose of this Decision, the relevant product market is the broking of commercial Aircraft Operators insurance.

4.2.1.2. Geographic market definition

- (30) The Parties submit that the geographic scope for the Aircraft Operators market is at least EEA-wide. The Commission has not previously considered the geographic scope of an Aircraft Operators market.
- (31) The market investigation has confirmed that the large majority of customers in this segment purchase broking services at a global level. Most airlines surveyed had operations in territories larger than the EEA, prompting them to purchase insurance brokerage at a global level to ensure consistent coverage for all countries where they operate in. However, there were also indications that the market characteristics at EEA level were different to those at global level, particularly in the number of available competitors, which appeared to be more reduced at EEA than at global level.²⁶
- (32) For the purposes of the present analysis, the exact geographic scope of the market for the broking of commercial Aircraft Operator insurance can be left open between EEA and global, since the competitive assessment would remain the same, and serious concerns arise under both possible geographic market definitions.

4.2.2. *Broker services for Aerospace Manufacturing*

4.2.2.1. Product market definition

- (33) The market for the Specialty sector of Aerospace Manufacturing refers to the distribution of commercial insurance to cover risks associated with the manufacturing of aerospace products. Manufacturers of aerospace components purchase cover to insure against damage caused by, or liability arising out of, defects in their products. The most common risk types in this specialty are manufacturers' hull and liability and aircraft product liability. Other risk types include insurance for airframe, engine part and component manufacturers.

²³ See IV/M.1307 Marsh & McLennan / Sedgwick (1998), recital (18).

²⁴ Replies to questionnaire Q1 – customers, questions 4 and 23.

²⁵ Replies to questionnaire Q1 – customers, questions 6 and 15.

²⁶ Replies to questionnaire Q1 – customers, question 6.

- (34) The Parties submit that, if the Commission were to segment the market for the distribution of commercial non-life insurance, the narrowest plausible product market in relation to Aerospace Manufacturing would be the distribution of all commercial Aerospace Manufacturing insurance, regardless of the specific channel (see also recital (13)). The Parties submit that there is significant demand-side substitutability between each of these channels, allowing clients to flex between the various alternatives depending on their attractiveness. However, as described in recital (15) the Commission considers broker services to form a separate market from the other risk management channels.
- (35) The Commission has not previously assessed the market for broker services in the Specialty sector of Aerospace Manufacturing. The Commission noted in a previous decision that a distinct market for the distribution of specialty insurance for certain industries – including for aviation – could potentially exist²⁷. However, the product market definition was ultimately left open.
- (36) According to the results of the market investigation, nearly all customers in this market consider there is little to no direct competition from insurers²⁸ and that the market for the Specialty sector of Aerospace Manufacturing does not lend itself to using other risk management channels than brokers²⁹.
- (37) The insurers responding to the market investigation confirmed the customers' views, stating that the vast majority of their business in the Aerospace Manufacturing is realised through the intermediation of a broker³⁰. The insurers also confirmed that none of them currently operate their own distribution network in the market for Aerospace Manufacturing³¹.
- (38) Based on the results of the market investigation, the Commission concludes, for the purpose of this Decision, that the relevant product market includes the broking activities in the Specialty sector of Aerospace Manufacturing.

4.2.2.2. Geographic market definition

- (39) The Parties submit that the geographic market definition for broking in the Specialty sector of Aerospace Manufacturing is at least EEA-wide. The Parties refer to brokers' ability to supply their services to clients wherever they are located, travelling to the client as and when necessary. The Parties also submit that Specialist brokers are able to operate using local office licenses, or partner with a local licensed broker.
- (40) The Commission has not assessed the market for broker services in the Specialty sector of Aerospace Manufacturing. In *Marsh & McLennan / Sedgwick*³², the Commission assessed the geographic scope of the overall market for insurance distribution but left open whether the relevant geographic market definition for insurance distribution is larger than national.

²⁷ See IV/M.1307 *Marsh & McLennan / Sedgwick* (1998), recital (18).

²⁸ Replies to questionnaire Q1 – customers, question 15.

²⁹ Replies to questionnaire Q1 – customers, question 4.

³⁰ Replies to questionnaire Q2– insurers, question 6.

³¹ Replies to questionnaire Q2– insurers, question 7.

³² See IV/M.1307 *Marsh&McLennan / Sedgwick* (1998), recital (21).

- (41) According to the results of the market investigation, the majority of customers in the market segment of Aerospace Manufacturing purchase broker services at a global or EEA-wide level³³. The results of the market investigation with brokers also suggest that the competition between brokers for specialty risks such as Aerospace Manufacturing takes place on a larger geographic scope such as EEA-wide or global³⁴.
- (42) For the purpose of this Decision, the Commission concludes that the geographic scope of the market for broker services in the specialty market of Aerospace Manufacturing is at least EEA-wide.

4.2.3. *Broker services for Space*

4.2.3.1. Product market definition

- (43) The market for broking in the Specialty sector of Space refers to the distribution of commercial insurance to cover risks associated with damage and liability arising out of aircraft in orbit (e.g. satellites) as well as risks that might derail launches of such aircraft. The space industry is characterised by very high financial exposures due to the significant potential for high losses when an insured event occurs.
- (44) The Parties submit that if the Commission were to segment the market for the distribution of commercial non-life insurance, the narrowest plausible product market in relation to this specialty would be the distribution of all commercial Space insurance, regardless of the specific channel. According to the Parties, the market thus includes all different channels by which customers can satisfy their Space risk-management needs (see recital (13) for the description of all different channels). The Parties submit that there is significant demand-side substitutability between each of these channels, allowing clients to flex between the various alternatives depending on their attractiveness.
- (45) The Commission has not previously defined a separate product market for broking in the Specialty sector of Space. However, the Commission has noted in previous decision that a distinct market for the distribution of specialty insurance for certain industries – including for space – could potentially exist³⁵. However, the product market definition was ultimately left open.
- (46) According to the results of the market investigation, nearly all customers in this market consider there is little to no direct competition from insurers³⁶. This view is confirmed by the market investigation with insurers, which revealed that none of the participants in the investigation had developed their own distribution networks to compete with brokers such as the Parties³⁷.

³³ Replies to questionnaire Q1 – customers, question 8.

³⁴ Replies to questionnaire Q3 – competitors, question 6.

³⁵ See IV/M.1307 Marsh & McLennan / Sedgwick (1998), recital (18).

³⁶ Replies to questionnaire Q1 – customers, question 15.

³⁷ Replies to questionnaire Q2 – insurers, question 7.

- (47) Based on the results of the market investigation, the Commission concludes, for the purpose of this Decision, that the relevant product market is broking in the Specialty sector of Space.

4.2.3.2. Geographic market definition

- (48) The Parties submit that the geographic market definition for broking in the Specialty sector of Space is at least EEA-wide and should most appropriately be considered to be global in scope. The Parties refer to brokers' ability to supply their services to clients wherever they are located, travelling to the client as and when necessary.
- (49) The Commission has not assessed the market for broker services in the Specialty sector of Space. In *Marsh & McLennan / Sedgwick*³⁸, the Commission assessed the geographic scope of the overall market for insurance distribution but left open whether the relevant geographic market definition for insurance distribution is larger than national.
- (50) According to the results of the market investigation, the majority of customers in the market segment of Space purchase broker services at a global or EEA-wide level³⁹. The results of the market investigation with brokers also suggest that the competition between brokers for specialty risks such as Space takes place on a larger geographic scope such as EEA-wide or global⁴⁰.
- (51) For the purpose of this Decision, the Commission concludes that the exact geographic scope of the market for broker services in the specialty market of Space is at least EEA-wide.

4.2.4. *Broker services for Energy*

- (52) The specialty of Energy insurance broking refers to the distribution of commercial insurance to cover the risks associated with the complex operations of the production chain for fossil fuels such as coal, oil and natural gas. This includes both upstream (i.e. exploration and extraction) and downstream (i.e. transformation of hydrocarbons into petroleum-based products) activities.

4.2.4.1. Product market definition

- (53) The Parties claim that further segmentation of the specialty would not be appropriate, as the skillset required to offer such services is broadly the same for both upstream and downstream processes. In their view, brokers readily compete with third party and captive insurers in the distribution of energy insurance. They conclude by submitting that the relevant product market is that of the distribution of energy insurance, regardless of channel.
- (54) The Commission has not previously assessed the existence of a separate market for energy insurance distribution. For the reasons outlined in recitals (14) and

³⁸ See IV/M.1307 *Marsh&McLennan / Sedgwick* (1998), recital (21).

³⁹ Replies to questionnaire Q1 – customers, question 8.

⁴⁰ Replies to questionnaire Q3 – competitors, question 6.

(15), the Commission considers that the relevant market is not that of insurance distribution regardless of channel, but instead that of insurance broking in Energy.

- (55) The market investigation revealed that most customers identify either an energy market or an upstream/downstream market⁴¹, which would confirm the product market definition suggested by the Parties. As far as potential sub-segmentations in this specialty are concerned, the market investigation confirmed that most customers purchase both upstream and downstream insurance broking services from the same brokers when they are active in both markets⁴². Customers did not express any particularities or significant differences in the competitive landscape of the upstream and downstream energy insurance markets. There were little indications that any other the market sub-divisions would be appropriate or relevant.
- (56) In any event, for the purpose of this Decision, it can be left open whether broker activities in the segment of Energy constitute a separate product market from commercial non-life brokerage or whether it should be further segmented, since no doubts as to the compatibility of the notified concentration with the internal market arise under any plausible product market definition.

4.2.4.2. Geographic market definition

- (57) The Parties submit that the geographic scope for the Energy market is at least EEA-wide. They claim that oil and gas companies purchase insurance broking services for all of their global activities via a central purchasing function. In their view, adopting a smaller scope than at least EEA-wide would distort the nature of the market.
- (58) The Commission has not previously considered the existence or the geographic scope of a market for commercial broking of Energy insurance. The results of the market investigation would suggest that the large majority of customers in the market segment of Energy purchase broker services at a global level⁴³. Those who purchase at a national level do so because their operations are limited to only a few countries. This would appear to be in support of the Parties' view that the market is at least EEA-wide.
- (59) The exact geographic scope of the market of Energy broking can be left open between EEA and global, since no serious doubts as to the compatibility of the notified concentration with the internal market arise under any plausible geographic market definition.

4.2.5. *Broker services for FinPro*

- (60) FinPro is the insurance broking segment that covers the risks associated with the professional indemnity of directors, managers, and employees. It can also cover the financial exposures of a company, such as those borne from M&A transaction or cyber negligence, among others.

⁴¹ Replies to questionnaire Q1 – customers, question 4.

⁴² Replies to questionnaire Q1 – customers, question 4.

⁴³ Replies to questionnaire Q1 – customers, question 8.

4.2.5.1. Product market definition

- (61) The Parties submit that the skillset necessary to provide FinPro broking services is broadly similar across all risks, companies and industries. Moreover, they posit that in their FinPro insurance broking activities they compete with the other insurance distribution channels discussed above, namely placing the risk directly with the insurer, retaining risk, or accessing alternative forms of capital. In their view, FinPro insurance distribution should be the narrowest plausible product market.
- (62) The Commission notes that the market investigation has not given any reason to challenge the product definition advanced by the Parties as far as the business sector / risk type is concerned. On the other hand, for the reasons outlined in recitals (14) and (15), the Commission considers the relevant product market to be the broking of FinPro insurance, thus excluding all other distribution channels.
- (63) In any event, for the purpose of this Decision, it can be left open whether broker activities in the segment of FinPro constitute a separate product market from commercial non-life brokerage, since no doubts as to the compatibility of the notified concentration with the internal market arise under any plausible product market definition.

4.2.5.2. Geographic market definition

- (64) The Parties submit that FinPro insurance broking services are purchased by clients active in multiple jurisdictions, while at the same time acknowledging that professional indemnity is largely required by national laws across EU-member states. In their view, the relevant geographic market for FinPro is global or at least EEA-wide.
- (65) By contrast, the market investigation revealed that most customers purchase FinPro insurance brokerage at a national level⁴⁴, and that customers have a preference for brokers with local presence⁴⁵. These findings would favour an interpretation of the geographic market being national in scope. However, as the concentration in the market for FinPro does not raise serious doubts as to its compatibility with the internal market even under the narrowest possible geographic market definition, the relevant geographic market can be left open.

4.3. Other products (non-broker activities of the Parties)

- (66) As stated in recital (8), the Parties are also active the provision of retirement and employee benefits related services, including fiduciary management for pension funds.

4.3.1. Fiduciary management

- (67) The Parties' activities also overlap in the provision of retirement and employee benefits consulting, and more precisely in the provision of fiduciary management to pension scheme trustees. MMC is active predominantly through its Mercer

⁴⁴ Replies to questionnaire Q1 – customers, question 8.

⁴⁵ Replies to questionnaire Q1 – customers, question 18.

operating company and to a much lesser extent through Marsh. MMC provides these services across the EEA, with the UK being the main market. JLT is substantially smaller and almost exclusively active in the UK.

4.3.1.1. Product market definition

- (68) Fiduciary management involves the provision of advice to pension scheme trustees in relation to one or more of the following:
1. investment strategy: high level advice on the different types of investment that can be made;
 2. strategic asset allocation: advice on the mix and proportion of different asset classes to invest in; and
 3. asset manager selection: advice on which asset manager to invest funds with.
- (69) Fiduciary management also includes the legal delegation of some investment and decision-making powers by the client to the fiduciary manager so that the fiduciary manager can implement the client's preferred investment strategy.
- (70) The Commission has not previously assessed or defined the market for the supply of fiduciary management services to pension schemes.
- (71) With respect to the product market definition, the UK Competition and Markets Authority published its Final Report on Investment Consultancy Market Investigation ("UK CMA Final Report") on 12 December 2018, stating that the supply of fiduciary management services to pension schemes constitutes a distinct market⁴⁶.
- (72) The Parties consider that the supply of fiduciary management services to pension schemes do not constitute a distinct market, but that these services form part of the wider market for the supply of investment management services to pension schemes. However, the Parties also submit that the relevant product market definition can be left open for the purpose of this case.
- (73) In any event, for the purpose of this Decision, the exact product market definition for fiduciary management services to pension schemes can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the product market definition.

4.3.1.2. Geographic market definition

- (74) As stated in recital (70), the Commission has not previously assessed the market for the supply of fiduciary management services to pension schemes.
- (75) The Parties submit that it is not necessary for the Commission to conclude on the relevant geographic market for the supply of fiduciary management services to pension schemes, as no competition issues arise on the narrowest plausible market.

⁴⁶ See UK CMA Final Report, paragraph 4.129

- (76) The UK CMA has considered the relevant geographic market for the supply of fiduciary management services as UK-wide in its recent UK CMA Final Report⁴⁷.
- (77) According to the results of the market investigation, the majority of responding customers purchase fiduciary management services to pension schemes on a national basis⁴⁸, indicating that the geographic scope could be national.
- (78) The exact geographic scope of the market for the supply of fiduciary management services to pension schemes can be left open between national and EEA-wide, since no serious doubts as to the compatibility of the Transaction with the internal market arise, regardless of the geographic scope of the market concerned.

5. COMPETITIVE ASSESSMENT

- (79) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are to be declared compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.
- (80) The Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings⁴⁹ (the "Horizontal Merger Guidelines") distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.
- (81) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each merging party on the other, as a result of which the combined entity would have increased market power without resorting to coordinated behaviour. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger. According to recital (25) of the preamble of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the combined entity would not have a dominant position on the market concerned.
- (82) The overlaps between the Parties' activities give rise to horizontally affected market in the following markets/segments at a geographic level that is at least EEA-wide level: (i) Aircraft operators, (ii) Aerospace Manufacturing, (iii) Energy, (iv) Space, and in two markets/segments that have a national scope: (v) FinPro, in Ireland and (vi) fiduciary management to pension schemes in the UK.

⁴⁷ See UK CMA Final Report, paragraph 4.36

⁴⁸ Replies to questionnaire Q1 – customers, question 36.1.

⁴⁹ OJ C31, 5.2.2004, p. 5.

5.1. Aircraft Operators

5.1.1. Market shares and competitive landscape⁵⁰

- (83) The Parties have provided the following market shares for themselves and their closest competitors:

Table 1: The Parties' market shares in "Aircraft Operators"

| | The Parties | | | Closest competitors | | Other competitors | | | Estimated market size (in million EUR) |
|--------|-------------|----------|----------|---------------------|---------|-------------------|---------|----------|--|
| | MMC | JLT | Combined | WTW | Aon | Albatros | Aelia | Others | |
| EEA | [10-20]% | [10-20]% | [30-40]% | [20-30]% | [5-10]% | [5-10]% | [5-10]% | [20-30]% | [...] |
| Global | [20-30]% | [20-30]% | [40-50]% | [20-30]% | [5-10]% | [0-5]% | [0-5]% | [20-30]% | [...] |

- (84) The Parties submit that they do not systematically track market shares in the various plausible markets, and that third party sources that could provide total market sizes only have limited amounts of reliability, as most do not focus on broker-level developments directly.
- (85) In reviewing the market shares provided by the Parties, the Commission observes that these have a risk to underestimate the market size and market shares for Aircraft Operators in two ways. The first one is that the market shares of the Parties could be higher, following some third-party insights that have been shared with the Commission. For instance, a customer stated that the combined entity would hold around 70% of the market shares for Aircraft Operators⁵¹. A report by the UK's Financial Conduct Authority on wholesale broking markets⁵² found that around 80% of all GWP in aviation was brokered by the top three brokers⁵³, while an insurer suggested that the top three brokers could hold as much as 91% of the same segment⁵⁴. The second way the Parties' estimates might underestimate the actual competition taking place in Aircraft Operators is in the way they portray smaller competitors as accounting for a very substantial part of the market. The Commission's market investigation showed instead that customers did not consider competitors outside of the top 4 brokers to be viable in this segment (more information in section 5.1.2 below) and therefore other brokers may be over-represented in these markets.

⁵⁰ The present assessment has been completed on the basis of the market shares provided by the Parties. These market shares represent the amount of business contracted by each broker each year, for which they employed the proxy of gross written premium (GWP) intermediated by the Parties and their competitors. The Parties claim to not have any visibility over the brokerage fees of their competitors, which would enable to calculate market shares on the basis of broker revenue and would provide a more precise picture of the competitive situation in the brokerage markets.

⁵¹ Replies to questionnaire Q1 – customers, question 29.

⁵² The report in question only looked at the London insurance broking market, which accounts for the large majority of the EEA insurance broking market.

⁵³ FCA Wholesale Insurance Broker Market Study - Final Report, Feb. 2018, pg.22.

⁵⁴ Replies to questionnaire Q2 – insurers, question 16.

5.1.2. *The Commission Assessment*

- (86) The Parties submit that competition in this segment comes from top competitors such as Aon and Willis Towers Watson (“WTW”) but also from a long tail of smaller and regional brokers. In the Parties’ view, these competitors exert competitive pressure over the Parties, particularly by exerting pressure on the level of premiums.
- (87) The market investigation revealed that the Aircraft Operators market is concentrated around three or four major brokers, depending on the geographic level (i.e. EEA and global). The Commission has observed that the large majority of customers considered Aon and WTW as the only viable alternatives to the Parties, with other competitors lacking the experience or geographic reach required to service them⁵⁵. A minority of respondents identified other brokers such as Price Forbes or Gallagher, who appear to have a focus outside of the EEA. Competitors consulted provided on average larger lists of viable competitors, which most customers did not consider suitable to service them.
- (88) The Commission noted certain regional differences on the levels of market concentration. While several US-based customers considered Gallagher and Lockton to be viable competitors in Aircraft Operators specialty, no EEA customer did⁵⁶. Concerning Aon’s market position, most EEA customers did not consider it a viable alternative, or were sceptical of its capacity to handle their business. Respondents noted that Aon had “de-emphasised aviation over the last 10 years”⁵⁷, that the “technical team and expertise was lost in 2009 when the team moved en-masse to JLT and no capability has been rebuilt” and that they were “not a major player for aviation anymore”⁵⁸.
- (89) The majority of customers, insurers and competitors⁵⁹ agreed that JLT and Marsh were very close competitors, and that both would be in the top 3 providers of Aircraft Operators insurance broking services.
- (90) The Parties submit that the Aircraft Operators market is dynamic, with accounts frequently switching between brokers. As an illustration of this fact, the Parties claim that they win or lose between [...] % and [...] % of their business every year. The Parties submit that customers possess considerable buyer power, particularly when organised in buying groups able to leverage their concentrated and stronger position vis-à-vis brokers. The Parties characterise customers as very price sensitive, and willing to switch to a different provider who services them at a lower cost.

⁵⁵ Replies to questionnaire Q1 – customers, question 23.

⁵⁶ Replies to questionnaire Q1 – customers, question 23.

⁵⁷ Replies to questionnaire Q1 – customers, question 5.

⁵⁸ Replies to questionnaire Q1 – customers, question 23.

⁵⁹ Replies to questionnaire Q1 – competitors, question 15; Q2 – insurers, question 11; Q1 for customers, question 5.

- (91) By contrast, the Commission’s investigation revealed that only 11% of respondents had changed in the Aircraft Operators specialty over the past 5 years, which amounts to an average yearly churn rate of [0-5]%⁶⁰.
- (92) Customers in this segment considered expertise of the broker’s staff and quality of the services provided as the top two selection criteria for potential brokers⁶¹. At an aggregate level, worldwide presence, knowledge of local markets and a wide portfolio of services were equally ranked as top selection criteria. While also important for customers, price was not commonly ranked as the most important selection criteria. This suggests that competition in this specialty takes place more in the quality of staff and services provided than in the broker’s prices. The fact that competition takes place on the quality of staff and services represents a significant barrier to entry into the Aircraft Operators insurance broking market, as experienced and knowledgeable staff are scarce in this specialty.

5.1.2.1. Barriers to entry

- (93) The Parties submit that entry barriers into broking are low, given that expertise and relationships reside in small and mobile teams of individuals. Given this, entry into a new market could feasibly be achieved by acquiring the necessary human capital – including from competitors – to effectively compete with incumbents.
- (94) Despite the Parties’ claims that entry into new markets is easy, most customers⁶² and insurers⁶³ were only able to identify JLT as a significant new entrant into the Aircraft Operators specialty in the past 5 years. The Parties have claimed that a new wave of potentially disruptive insurers, characterised by their use of technology and data – commonly referred to as “Insurtech” companies – threaten expansion into the distribution of specialty insurance. However, the activities of these companies have focused predominantly on the smaller and simpler risks of private individuals and SMEs, and corporate clients do not consider broker services interchangeable with those provided by insurers. Overall, the competitive landscape does not appear to have significantly evolved during the past 5 years.
- (95) Human capital is the most valuable asset in brokerage⁶⁴. The market investigation results showed that expertise of the broker’s staff was the highest rated consideration for customers in the Aircraft Operators segment⁶⁵. The fact human capital is scarce in the specialised insurance broking sectors – which can sometimes trigger a “war for talent”⁶⁶ – increases barriers to entry. Expansion into this market seems to occur only through acquisition of the required talent, supported by the necessary infrastructure. This is indeed how JLT initially entered the Aircraft Operators specialty.

⁶⁰ Replies to questionnaire Q1 – customers, question 16.

⁶¹ Replies to questionnaire Q1 – customers, question 14.

⁶² Replies to questionnaire Q1 – customers, question 19.

⁶³ Replies to questionnaire Q2 – insurers, question 13.

⁶⁴ Minutes from call with Competitor, 17.01.2019, 11:00 am.

⁶⁵ Replies to questionnaire Q1 – customers, question 14.

⁶⁶ Customer reply to in Q1 – customers, question 27.

- (96) Other barriers to entry are likely to exist in the specialty business line of Aircraft Operators. Firstly, entry into this specialty requires economies of scale and a large upfront investment⁶⁷. Incumbents, as they control a large share of the market, are capable of handling business costs effectively and compete on price, in addition to possessing staff with the right expertise and contacts. Moreover, the global nature of the operations of customers in this segment requires a global footprint that not many competitors (current or potential) appear to possess⁶⁸. Though the Parties claim that customers do not require a global, integrated broker, and that customers are equally served by networks of smaller brokers, the large majority of customers expressed a preference for an integrated broker. Customer noted on the one hand the risks of service interruption that broker networks are subject to, and on the other hand the superior communication and efficiency potential of an integrated global broker⁶⁹.

5.1.2.2. Countervailing buyer power

- (97) Clients seeking Aircraft Operators broking services generally do so via requests-for-proposal, generally launching a tender every 2-5 years⁷⁰. Contracts for broker services have a duration of 1 to 3 years, which is on average larger than that of insurance contracts (in most cases 1 year)⁷¹. Contracts are often renewed or extended, also without a new tender. The Parties submit that through the tender process, clients create competitive pressure among competitors to ensure that prices and conditions are kept as competitive as possible. The Parties additionally advance that clients may also choose to place two or more brokers for a single risk category (“co-broking”) to maintain competitive pressure even after the tender allocation. They conclude that clients currently have the balance of power in their favour.
- (98) The Commission has found that competitive pressure is very high around a small number of large and profitable accounts⁷². It has also observed that customers tend to have a single broker per risk category, and when they do use co-broking scheme, they do so following a rationale of business continuity and/or of complementing the service capabilities of competitors⁷³. There appears to be bias towards broker retention, as customers believe that switching brokers would be costly and time consuming, particularly due to the wealth of knowledge about the customer’s operations accumulated by the incumbent⁷⁴.
- (99) Customers expressed concerns that the balance of power might shift post-transaction⁷⁵. With the reduction in viable competitors brought by the Transaction, some customers expressed that if the quality of broker services dropped they would not be able to easily find a replacement. A customer found

⁶⁷ Replies to questionnaire Q2 – insurers, question 14.

⁶⁸ Replies to questionnaire Q1 – customers, questions 8, 10, and 23.

⁶⁹ Replies to questionnaire Q1 – customers, question 10.1.

⁷⁰ Replies to questionnaire Q1 – customers, question 11.

⁷¹ Replies to questionnaire Q1 – customers, question 13.

⁷² Other third party correspondence, submission received on 20.02.19

⁷³ Replies to questionnaire Q1 – customers, question 3.1.

⁷⁴ Replies to questionnaire Q1 – customers, question 17.

⁷⁵ Minutes from pre-notification call with customer, 25.01.19 [2:30 pm CET]

that brokers would have less incentives to find the best offer on the market due to reduced competition⁷⁶.

- (100) In relation to the observation in recital 88 that the market appears to be more concentrated at EEA level, EEA customers expressed more concerns than non-EEA respondents. In particular, a customer pointed to a risk that prices could “increase dramatically” as broker remuneration increases⁷⁷. Others expressed concerns that the options in the market might be insufficient⁷⁸ and that the quality of services offered could deteriorate.

5.1.3. Conclusion

- (101) The above observations point to the competitive landscape of Aircraft Operators as being one where only the Parties and WTW are considered to be viable competitors, with no immediate threat or potential disruption in sight. The concentration thus appears to reduce the number of viable competitors from 4 to 3 at a global level and from 3 to 2 in the EEA – an observation which is shared by a number of respondents⁷⁹
- (102) In view of the above considerations and taking account of the results of the market investigation and all of the evidence available to it, the Commission [...] that the concentration raises serious doubts as to its compatibility with the internal market due to its likely horizontal non-coordinated effects in markets for Aircraft Operators at both EEA-wide as well as a global level given the high combined market shares, the concentrated nature of the specialty, the reduced number of competitors and the high barriers to entry.

5.2. Aerospace Manufacturing

5.2.1. Market shares and competitive landscape

- (103) The Parties’ market shares for broking in the specialty sector of Aerospace Manufacturing are presented in the table below

Table 2: The Parties’ market shares for broking in the specialty sector of Aerospace Manufacturing

*Should read *concludes*.

⁷⁶ Minutes from pre-notification call with customer, 11.01.19 [4:00 pm CET]

⁷⁷ Replies to questionnaire Q1 – customers, question 27.

⁷⁸ Replies to questionnaire Q1 – customers, question 28.

⁷⁹ Other third party correspondence, submission received on 20.02.19.; replies to questionnaire Q1 – customers, question 28.

| | 2017 market share (%) in the EEA | 2017 EEA market (million USD) | 2017 market share (%) globally | 2017 Global market (million USD) |
|-----------------|----------------------------------|-------------------------------|--------------------------------|----------------------------------|
| MMC | [20-30]% | [...] | [50-60]% | [...] |
| JLT | [5-10]% | [...] | [0-5]% | [...] |
| Combined | [30-40]% | [...] | [60-70]% | [...] |
| WTW | [60-70]% | [...] | [20-30]% | [...] |
| Aon | [0-5]% | [...] | [5-10]% | [...] |
| Others | [0-5]% | [...] | [5-10]% | [...] |
| Total | 100% | [...] | 100% | [...] |

(Aerospace manufacturing EEA and Global 2015-17)

- (104) It follows from the market shares shown in Table 2 that MMC already holds a dominant position at global level ([50-60]%) and a relatively strong position on the EEA-market ([20-30]%). The increment caused by the proposed Concentration would further strengthen MMC's position, both globally and in the EEA. Following the proposed Concentration, the combined entity and WTW would hold a combined market share of [90-100]% in the EEA and [80-90]% globally, indicating that the proposed Concentration would lead to a reduction of credible suppliers from 3 to 2.
- (105) According to the Parties, typical customers in this segment are large aerospace manufacturers such as airframers (e.g. Boeing and Airbus) and engine/avionics/other part suppliers (e.g. Rolls Royce, UTC, GE and Honeywell) as well as smaller part manufacturers and are located across the globe. The Parties argue that all customer are able to exercise leverage against brokers as a wide set of brokers compete for their business.
- (106) The Parties submit that customers typically look for brokers with sufficient expertise and track record and the capability to provide ongoing servicing. As a result, relationships are particularly important in this segment. According to the Parties, the typical larger customers in the aerospace manufacturing sector tend to show a preference for request-for-proposals to procure a new broker.
- (107) The Parties submit that switching costs only play a minimal role in the customers' decision making process. According to the Parties, customers engage in a competitive process every three to five years, putting prospective brokers in direct competition with each other. The Parties submit that this process leads to an average of [...] % of MMC's customers engaging in a competitive process each year.
- (108) According to the Parties, customers do not require their brokers to have an integrated, global network. Most clients use different brokers for different risk types in different jurisdictions, and will also utilise networks of brokers where

necessary. The product offerings of the brokers active in this segment are largely similar according to the Parties, with differences mostly relating to the level of service and expertise that a broker can offer. The Parties do however recognise that only MMC, Aon and WTW can offer the size of teams that is required to successfully service the largest customers.

- (109) According to the Parties, the barriers to entry in this sector relate to the breadth of knowledge and expertise required to provide the bespoke service demanded by aerospace manufacturing clients. The cost of entry to the segment is considered low by the Parties and would be limited in time (1 year to 1.5 year).

5.2.2. *The Commission assessment*

- (110) The results of the market investigation with customers provide a mixed picture in relation to the use of tenders to select a broker and average period between market consultations. Customers indicated that the average contract with a broker can be anywhere between one and three years⁸⁰, but the period between market consultations can be longer (up to 5 years, or evergreen contracts)⁸¹. When asked on whether they switched brokers in the last 5 years, the majority of the respondents indicated that they have not switched brokers in the recent past for their activities in Aerospace Manufacturing⁸². The majority of customers however indicated that it would be possible to switch between brokers, even though it requires an investment in time to educate the broker on the customers' unique requirements (time estimates range between a couple of weeks to nearly a year)⁸³.
- (111) For a customer to switch, a broker must meet specific criteria. When asked to rank the most important criteria, the quality of the service provided, know-how and staff expertise are considered the most important. Price is considered relatively important, but not the most dominant selection criterion⁸⁴. A broker intending to start servicing customers in the specialty sector of Aerospace Manufacturing must have sufficient know-how, the ability to cover the full geographic footprint of their client's activities, the ability to comply with regulatory requirements and an overall positive track record⁸⁵. The geographic footprint could be seen as part of the quality of the service required by customers since customers indicate that a global footprint is required to place their global insurance programs⁸⁶. The majority of customers also indicate a preference towards brokers that have established their own global network, over brokers that cooperate with local entities through an informal network⁸⁷.
- (112) According to the market investigation, customers consider the Parties to be part of the 4 top providers of broker services in the specialised sector of Aerospace

⁸⁰ Replies to questionnaire Q1 – customers, question 13.

⁸¹ Replies to questionnaire Q1 – customers, question 11.

⁸² Replies to questionnaire Q1 – customers, question 16.

⁸³ Replies to questionnaire Q1 – customers, question 17.

⁸⁴ Replies to questionnaire Q1 – customers, question 14.

⁸⁵ Replies to questionnaire Q1 – customers, question 18.

⁸⁶ Replies to questionnaire Q1 – customers, question 10.

⁸⁷ Replies to questionnaire Q1 – customers, question 11.1

Manufacturing (i.e.MMC, WTW, Aon and JLT)⁸⁸. This is confirmed by the majority of the Parties' competitors⁸⁹.

- (113) Customers consider Aon and WTW to be the closest competitors to MMC, while JLT is mentioned as a fourth competitor, but on average not the closest to MMC⁹⁰. However, the competitors to the Parties consider JLT as the closest competitor to MMC⁹¹. When asked to name the closest competitor to JLT, customer identified Marsh as the closest competitor, closely followed by Aon and WTW⁹². This list of close competitors does not change whether assessed on a global or an EEA-scale.
- (114) The market investigation indicated that the majority of customers consider that there will be sufficient alternative suppliers active on the market post-transaction, even though the number of available suppliers seems to be reduced from 4 to 3⁹³. The majority does not expect an impact on their business⁹⁴ or in the EEA⁹⁵.
- (115) The majority of customers do not expect a new entrant on the market, nor have they seen a new entrant in the past five years⁹⁶, further strengthening the view that the transaction will lead to a reduction of choice. The selection criteria requested by customer (see recital 111), including a global footprint, further strengthen the Commission's view that new entries into the market are unlikely in the near future.

5.2.3. Conclusion

- (116) In view of the above considerations, taking into account the market investigation and all the evidence available to it, the Commission considers that the concentration raises serious doubts as to its compatibility with the internal market with respect to the market for broking in the specialty sector of Aerospace Manufacturing at an EEA-wide geographic scope.

5.3. Space

5.3.1. Market shares and competitive landscape

- (117) The Parties' market shares for broking in the specialty sector of Space are presented in the table below.

⁸⁸ Replies to questionnaire Q1 – customers, question 5 and sub-questions.

⁸⁹ Replies to questionnaire Q3 – competitors, question 4.3

⁹⁰ Replies to questionnaire Q1 – customers, question 21.

⁹¹ Replies to questionnaire Q3 – competitors, question 15.

⁹² Replies to questionnaire Q1 – customers, question 22.

⁹³ Replies to questionnaire Q1 – customers, question 28.

⁹⁴ Replies to questionnaire Q1 – customers, question 27.

⁹⁵ Replies to questionnaire Q1 – customers, question 29.

⁹⁶ Replies to questionnaire Q1 – customers, questions 19 and 20.

Table 3: The Parties' market shares for broking in the specialty sector of Space

| | 2017 market share (%) in the EEA | 2017 EEA market (USD) | 2017 market share (%) globally | 2017 Global market (USD) |
|-----------------|----------------------------------|-----------------------|--------------------------------|--------------------------|
| MMC | [40-50]% | [...] | [30-40]% | [...] |
| JLT | [0-5]% | [...] | [0-5]% | [...] |
| Combined | [40-50]% | [...] | [40-50]% | [...] |
| Others | [50-60]% | [...] | [50-60]% | [...] |
| Total | 100% | [...] | 100% | [...] |

Source: Annex 10 to the notification: Market shares (affected markets – Insurance distribution Space EEA and Global 2015-17)

- (118) According to the Parties, MMC's main competitors in the market are WTW and to a lesser extent Aon. The Parties submit that JLT's presence in this market is minor, which is reflected in the market share estimates provided by the Parties. The increment in market share due to the Transaction for broking in the specialty sector of space is small both at an EEA-level ([0-5]%) and at a global level ([0-5]%).
- (119) According to the Parties, due to the size and nature of the risks associated with space insurance, a single insurer will rarely cover an entire launch policy, meaning that the use of a third party broker is usually used for insurance procurement in this segment. The Parties further submit that the space segment is significantly smaller than the other segments in which the Parties are active and the business is predominantly driven by large multinational companies that can exercise leverage against brokers and insurers.
- (120) The Parties consider that switching costs are low for broking in the specialty sector of Space due to the project nature of the policies (i.e. not renewable). The Parties also submit that, even though customers typically look at a number of factors such as insurance price, broker fee, placement strategy and service, the product offering of the three major market participants (MMC, WTW and Aon) are largely similar.
- (121) The Parties state that there are no material legal or regulatory barriers to entry. However, the Parties do recognise that new market entrants have not been common. According to the Parties this lack of new entrants can be explained by the small size of the space segment, the low level of demand and the scarce resources available (in particular, talented brokers).

5.3.2. *The Commission assessment*

- (122) According to the market investigation, the majority of customers prefers to work with a single broker for a specific risk class⁹⁷. Customers put brokers in competition with each other for new contracts, making use of either formal tender processes, or through more informal request-for-proposals⁹⁸. Respondents also indicated that the duration of a contract with a broker can last anywhere between 1 year and 15 years depending on the preference of the customer. However, the majority of customers indicated that contracts are on average limited in duration to 1-2 years⁹⁹.
- (123) Customers indicated that switching between brokers is possible, but all of the respondents indicating that switching is possible stressed that such a switch would require training their new broker and making them familiar with their specific company's needs. Customers indicate that this process could take several months¹⁰⁰. According to the market investigation, the majority of customers has not switched its broker in the specialty sector of Space in the past five years¹⁰¹.
- (124) According to the customers responding to the market investigation, no new entrants have emerged over the past 5 years¹⁰² and only one customers indicated to be aware of a broker expressing interest in expanding into the sector in the coming years¹⁰³.
- (125) The market investigation with customers indicated that the majority of customers do not consider JLT as a close competitor to MMC. Nearly all of the responding customers indicated that Aon and WTW are the closest competitors to MMC¹⁰⁴. When asked for the closest competitors to JLT, the vast majority of customers only mentioned the three main actors on the market (MMC, WTW and Aon).
- (126) The vast majority of customers do not expect a negative impact of the Transaction on the market for broking in the specialty sector of Space¹⁰⁵. Customers also indicated that there would still be sufficient choice of brokers available on the market post-Transaction¹⁰⁶.

5.3.3. *Conclusion*

- (127) In view of the above considerations, taking into account the market investigation and all the evidence available to it, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market with respect to the market for broking in the specialty sector of Space at an EEA-wide geographic scope.

⁹⁷ Replies to questionnaire Q1 – customers, question 3.

⁹⁸ Replies to questionnaire Q1 – customers, question 11.

⁹⁹ Replies to questionnaire Q1 – customers, question 13.

¹⁰⁰ Replies to questionnaire Q1 – customers, question 17.

¹⁰¹ Replies to questionnaire Q1 – customers, question 17.

¹⁰² Replies to questionnaire Q1 – customers, question 19.

¹⁰³ Replies to questionnaire Q1 – customers, question 20.

¹⁰⁴ Replies to questionnaire Q1 – customers, question 21.

¹⁰⁵ Replies to questionnaire Q1 – customers, question 27.

¹⁰⁶ Replies to questionnaire Q1 – customers, question 28

5.4. Energy

5.4.1. Market shares and competitive landscape

(128) The market shares provided by the Parties are shown below:

Table 4: The Parties' market shares for broking in the specialty sector of Energy

| | MMC | JLT | Combined | Aon | WTW | Others | Estimated market size (million EUR) |
|--------|----------|----------|-----------------|----------|----------|----------|-------------------------------------|
| EEA | [20-30]% | [5-10]% | [20-30]% | [20-30]% | [20-30]% | [20-30]% | [...] |
| Global | [20-30]% | [10-20]% | [30-40]% | [20-30]% | [10-20]% | [20-30]% | [...] |

(129) Market shares in this specialty are evenly distributed among the top three competitors MMC, Aon, and WTW, with JLT providing a moderate increment ([5-10]% in the EEA and [10-20]% globally) to MMC's shares in the market. For most market participants, JLT is either the third or fourth provider in this specialty¹⁰⁷. Several customers perceive JLT as lacking the size and experience to service them for all their Energy activities¹⁰⁸. Therefore, the Commission concludes that JLT is not as close a competitor to MMC as Aon and Willis are.

5.4.2. The Commission Assessment

(130) Although the market is relatively concentrated around the top three competitors (EEA – [60-70]%; global – [50-60]%), a long tail of mid-size competitors represent a viable alternative to JLT for the majority of customers consulted. A significant number of respondents identified Gallagher, Lockton, and to a lesser extent, RK Harrison and Miller as global competitors with the potential to compete in this segment for certain contracts¹⁰⁹. Customers often declared that several of these competitors were tied as the fourth top broker in this segment, sometimes alongside JLT¹¹⁰. Two of the mid-size competitors identified by customers – Lockton and RK Harrison – were also recent entrants into the market¹¹¹. Participants also identified other new entrants to the market, including Capsicum and Ed Broking.

(131) Moreover, a majority of customers expressed an openness to hire brokers who operate via networks as opposed to through their own global offices¹¹². This point was further reinforced by the aggregate customer ranking of “worldwide

¹⁰⁷ Replies to questionnaire Q1 – customers, question 5.

¹⁰⁸ Replies to questionnaire Q1 – customers, question 26.

¹⁰⁹ Replies to questionnaire Q1 – customers, question 26.

¹¹⁰ Replies to questionnaire Q1 – customers, question 5.

¹¹¹ Replies to questionnaire Q1 – customers, question 19; Replies to questionnaire Q2 – insurers, question 13.

¹¹² Replies to questionnaire Q1 – customers, question 10.1.

presence” as one of the least important characteristics that a broker should possess¹¹³. All of these elements considered, mid-size competitors appear capable of competing with the top 3 brokers for large accounts in Energy, more so than in any other specialty.

- (132) The Parties submit that clients regularly switch between brokers to ensure the best rates and conditions in the market. The market investigation revealed that most customers had not switched providers in the Energy specialty¹¹⁴. However, the large majority of customers also expressed that switching would be easy and would not require significant time or other costs¹¹⁵. There did not appear to be any other significant switching costs.
- (133) The Parties claim that in the Energy specialty insurance captives play a larger role as a customer’s potentially viable risk management option than in other segments. Not all customers have the financial strength to set up a captive, but those that do tend to self-insure large portions of their risk¹¹⁶. Although not part of the same market as brokerage, captive insurance is likely to exert some competitive pressure on brokers. Although brokers are generally still involved in the placement of a client’s risk into a captive insurer – by, for instance scanning the market for the best rates and conditions, and benchmarking the captive’s services against them – they receive a fraction of the remuneration that they would receive for other broking services. The use of captives by a significant share of the customer base appears to reduce their dependency on brokers, thus improving their bargaining position.
- (134) Lastly, the market investigation returned very few concerns from market participants. Most customers believed that the impact of the Transaction would be limited, and that they would have sufficient amount of choice post-merger¹¹⁷. No impact was expected in the EEA¹¹⁸, as JLT “is not that strong on local level in the EEA”¹¹⁹.

5.4.3. Conclusion

- (135) In summary, the market shares of the combined entity in the insurance broking specialty of Energy do not appear to indicate that the combined entity would exert significant market power. The market in this specialty seems sufficiently dynamic, with credible competition coming from mid-size competitors and new entrants. Customers seemingly wield larger amounts of buyer power given their propensity to set up captive insurers, which limit brokers in their potential gains and limit customer’s dependency on brokerage services.
- (136) In view of the above, taking into account the market investigation and all the evidence available to it, the Commission concludes that the notified concentration

¹¹³ Replies to questionnaire Q1 – customers, question 14.

¹¹⁴ Replies to questionnaire Q1 – customers, question 16.

¹¹⁵ Replies to questionnaire Q1 – customers, question 17.

¹¹⁶ Replies to questionnaire Q1 – customers, question 6.

¹¹⁷ Replies to questionnaire Q1 – customers, question 27 and 28.

¹¹⁸ Replies to questionnaire Q1 – customers, question 29.

¹¹⁹ Replies to questionnaire Q1 – customers, question 29.

does not raise serious doubts as to its compatibility with the internal market regarding the Energy insurance broking specialty at any geographic level.

5.5. FinPro

5.5.1. Market shares and competitive landscape

- (137) The Transaction only gives rise to an affected market if the geographic scope is national in Ireland. The Parties provided estimated market shares for the FinPro specialty in Ireland, shown below:

Table 5: The Parties' market shares in FinPro in Ireland

| | 2017 Market shares (IR) |
|-------------------------------------|-------------------------|
| MMC | [20-30]% |
| JLT | [5-10]% |
| Combined | [30-40]% |
| Aon | [20-30]% |
| WTW | [10-20]% |
| O'Leary | [5-10]% |
| Arachas | [5-10]% |
| -Others- | [10-20]% |
| Estimated market size (million EUR) | [...] |

5.5.2. The Commission Assessment

- (138) There are many brokers vying to provide FinPro services in Ireland. In addition to the ones provided by the Parties, customers identified MacVarna, Hiscox, Lockton, O'Leary Insurances and Gallivan Kennedy¹²⁰. The competitive landscape of this specialty in Ireland appears to be such that the top 4 brokers stand on a similar ground as the locally sourced firms. The very large majority of market investigation respondents believed that there would be sufficient choice in this brokerage specialty post-Transaction¹²¹.
- (139) There are no apparent barriers to entry into the FinPro specialty. Many customers requested brokers to have knowledge of market conditions and of local regulations in Ireland, and expected some form of local presence¹²². These

¹²⁰ Replies to questionnaire Q1 – customers, question 21.

¹²¹ Replies to questionnaire Q1 – customers, question 28.

¹²² Replies to questionnaire Q1 – customers, question 8.1.

requirements generally appear to favour local firms, allowing them to compete with the top 4 global specialty brokers.

- (140) Most customers state being able to switch brokers at little cost if they needed to. The majority was engaged in brokerage contracts with an average duration of one year, which would allow them to retender within a short timeframe if the quality of services dropped.

5.5.3. Conclusion

- (141) Considering the elements revealed by the market investigation, the Commission concludes that the Transaction does not give rise to competition concerns in this specialty, as the moderate increase brought by the Target, the market characteristics which favour smaller local firms, and the lack of negative comments from the market investigation indicate that effective competition would not be significantly impeded post-Transaction.
- (142) In view of the above, taking into account the market investigation and all the evidence available to it, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market regarding the FinPro insurance market in Ireland.

5.6. Fiduciary management to pension schemes

5.6.1. Market shares and competitive landscape

- (143) Even though MMC is active in fiduciary management to pension schemes in a number of EEA countries; JLT only provides these services in the UK. The UK is thus the only EEA country in which the Parties overlap in the supply of fiduciary management to pension schemes.
- (144) The Parties' market shares for fiduciary management to pension schemes in the UK are presented in the table below.

Table 6: The Parties' and their competitors' market shares for fiduciary management to pension schemes in the UK.

| | 2017 market share in the UK |
|---|-----------------------------|
| MMC, through its operating company Mercer | [20-30]% |
| JLT | [0-5]% |
| Combined | [30-40]% |
| Willis Towers Watson | [10-20]% |
| Aon | [10-20]% |
| River and Mercantile | [5-10]% |
| Russell Investment | [5-10]% |

| | 2017 market share in the UK |
|---------|-----------------------------|
| Cardano | [5-10]% |
| Others | < 5% |

Source: Table 6.18 of the notification

- (145) The Parties submit that the market for fiduciary management to pension schemes in the UK has grown significantly over the past 10 years. The Parties submit that there are at least 17 suppliers of fiduciary management services in the UK, split between four larger competitors (WTW, Aon, River and Mercantile and Russel Investment) which will continue to exert significant competitive constraint on the combined entity post-Transaction.
- (146) The Parties do not consider each other as close competitors. The Parties further submit that the competitive constraints are enhanced by the growing presence of ringmasters (i.e. companies engaged by pension schemes to scrutinise and challenge the performance of fiduciary managers), pension managers and independent trustee organisations.

5.6.2. *Commission assessment*

- (147) The Parties' combined market share is above 30% ([30-40]%), with a small increment of [0-5]%. Other competitors in the market for fiduciary management to pension schemes include brokers such as WTW and Aon, but also advisory and asset management businesses such as Russell Investment and River and Mercantile.
- (148) The results of the market investigation indicate that customers do not expect the Transaction to have an impact on the market for fiduciary management¹²³. A small minority of customers indicated that the transaction will lead to a reduction of the number of competitors on the market¹²⁴, but the vast majority of customers is confident that sufficient alternative suppliers are active and will remain so on the market post-Transaction. The majority of competitors responding to the market investigation confirm the customers' point of view that the Transaction will not have an impact on the market¹²⁵.

5.6.3. *Conclusion*

- (149) In view of the above, taking into account the market investigation and all the evidence available to it, the Commission concludes that the concentration does not raise serious doubts as to its compatibility with the internal market regarding fiduciary management to pension schemes in the UK.

¹²³ Replies to questionnaire Q1 – customers, question 41.

¹²⁴ Replies to questionnaire Q1 – customers, question 41.

¹²⁵ Replies to questionnaire Q3 – competitors, question 35.

5.7. Final conclusion

- (150) In light of the considerations in recitals (82) to (149) and in view of the result of the market investigation and all of the evidence available to it, the Commission concludes that the concentration raises serious doubts with respect to the EEA-wide markets for broking in the specialty sectors of Aircraft Operators and Aerospace Manufacturers. The Commission concludes that the concentration does not raise serious doubts with respect to broking in the EEA-wide specialty markets of Space and Energy, nor in the national markets for FinPro in Ireland and fiduciary management to pension schemes in the UK.

6. PROPOSED REMEDIES

- (151) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into commitments, submitted to the Commission on 01 March 2019 (the “First Commitments”). The Commission market tested the First Commitments and provided feedback to the Parties. In response to this, the Parties submitted an improved set of Commitments on 18 March 2019 (the “Final Commitments”) which are annexed to this decision and form an integral part thereof.
- (152) On 4 March 2019, MMC announced that MMC and JLT entered into an agreement to sell JLT’s aerospace practice, including the transfer of its personnel, to Arthur J. Gallagher & Co (“Gallagher”). This sale is, however, subject to the Commission’s approval and this Decision does not constitute an approval of Gallagher as a suitable purchaser.

6.1. Framework for the assessment of commitments

- (153) When a concentration raises competition concerns, the merging parties may seek to modify the concentration in order to resolve those competition concerns and thereby obtain clearance for the concentration.¹²⁶
- (154) The commitments must eliminate the competition concerns entirely and must be comprehensive and effective in all respects. The commitments must also be proportionate to the competition concerns identified.¹²⁷ Furthermore, the commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.¹²⁸

¹²⁶ Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1–27), (the ‘Remedies Notice’), paragraph 5.

¹²⁷ Recital 30 of the Merger Regulation. The General Court set out the requirements of proportionality as follows: ‘the principle of proportionality requires measures adopted by Community institutions not to exceed the limits of what is appropriate and necessary in order to attain the objectives pursued; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued’ (T-177/04 *easyJet v Commission* EU:T:2006:187, paragraph 133).

¹²⁸ Remedies Notice, paragraphs 9, 10, 11, 63 and 64.

- (155) Structural commitments proposed by the parties to a concentration will meet that condition only in so far as the Commission is able to conclude, with the requisite degree of certainty, that it will be possible to implement them and that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition which the commitments are intended to prevent, will not be likely to materialise in the relatively near future.¹²⁹
- (156) In assessing whether proposed commitments are likely to eliminate the serious doubts to which the concentration would otherwise give rise, the Commission will consider all relevant factors relating to the proposed remedy itself, including, inter alia, the type, scale and scope of the remedy proposed, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other players on the market.¹³⁰
- (157) Based on these principles as well on the principles related to the implementation and effectiveness of all types of commitments set out in paragraphs 13 and 14 of the Remedies Notice, the Commission has assessed the commitments put forward by the Parties in the present case.

6.2. Description of the First Commitments

- (158) The First Commitments consist of the divestiture to a suitable purchaser of JLT's Global Aerospace division.

6.2.1. Scope of the First Commitments

- (159) The First Commitments include the divestment of JLT's Global Aerospace division and the transfer of the relevant tangible and intangible assets, licenses permits and authorizations, transitional arrangements and contracts listed below,
- (160) The Divestment Business will include the following tangible assets:
- a. all current customer relationships held by the Divestment Business;
 - b. all records and information held by the Divestment Business relating to current and past customers, including but not limited to customer lists and files, logs of customer support issues, and written correspondence with customers;
 - c. all records and information held by the Divestment Business concerning prospective customers;
 - d. all contracts, records and information held by the Divestment Business concerning insurance companies;
 - e. all marketing and promotional information relating to the Divestment Business;

¹²⁹ Judgment of 14 December 2005, *General Electric v Commission*, T-210/01, EU:T:2005:456, paragraph 555; Judgment of 6 July 2010, *Ryanair v Commission*, T-342/07, EU:T:2010:280, paragraph 453.

¹³⁰ Remedies Notice, paragraph 12.

- f. all business plans and forecasts relating to the Divestment Business;
- g. technical or other expertise relating to the Divestment Business;
- h. all research material, data, models, information, analyses and market studies held by the Divestment Business,; and
- i. credit and other business records currently held by the Divestment Business.

(161) The Divestment Business will include the following intangible assets:

- a. The brand name for Hayward Aviation;
- b. The [...] client portal software; and
- c. Other software used by the Divestment Business for its operations (the [...] software).

(162) The First Commitments also include:

- all licences, permits and authorisations used by the Divestment Business;
- all contracts, leases, commitments and customer orders of the Divestment Business;
- all customer, credit and other records of the Divestment Business;
- the Key Personnel and all Personnel as described in the Commitments;
- a best efforts obligation to secure the transfer to the Purchaser of all customer contracts containing a change of control provision or requiring the customer's consent; and
- Transitional services for a period of up to [...] after closing, with a possible extension of up to [...] and [...] are also envisaged in the First Commitments.

(163) The Parties also commit not to solicit the Key Personnel and the Personnel transferred with the Divestment Business for a period of [...] after closing. The Parties further commit to retain all liabilities relating to the Divestment Business that are incurred up until closing.

(164) In addition the Parties have entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses, 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.

6.2.2. *The purchaser criteria*

(165) In order to be approved by the Commission, the purchaser must fulfil the following criteria:

- a. The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings
- b. The Purchaser shall 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. The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
- d. The Purchaser shall have an existing commercial non-life insurance broking business with a proven track record in serving large customers for complex risks and the geographic reach to integrate and run competitively the Divestment Business.

6.3. Assessment of the proposed remedies

- (166) As explained in this Decision, the serious doubts as to the compatibility of the Transaction with the internal market stems from the combination of MMC and JLT's activities in the broking of commercial insurance for Aircraft Operators and Aerospace Manufacturing markets.
- (167) The First Commitments consist in the divestiture to a suitable purchaser of JLT's Global Aerospace division that includes JLT's activities in the broking of commercial insurance for Aircraft Operators, Aerospace Manufacturing and Space markets. Therefore, the First Commitments cover all potential markets in respect of which the Commission has serious doubts as regards the compatibility of the Transaction with the internal market.

6.3.1. Aircraft Operators and Aerospace Manufacturing

- (168) The Divestment Business includes the entirety of JLT's Aerospace practice, meaning that there will be no increment to Marsh's market share in these segments as a result of the Proposed Transaction.
- (169) JLT's Aerospace practice combines all of JLT's insurance broking activities in Aircraft Operators, Aerospace Manufacturing, and Space, as one combined business division. The Divestment Business includes the divestiture of the entirety of JLT's Aerospace practice, including Space, although the Commission did not identify competition concerns in relation to broking in the Specialty sector of Space. The inclusion of JLT's activities in Space in the Divestment Business

is, however, necessary to ensure the viability of the Divestment Business and to create an effective competitor in the affected markets.¹³¹

- (170) The Divestment Business has a diverse client portfolio that includes some of the world's largest and most complex aerospace risks, and brokers for many of the world's top major airlines, aerospace manufacturers, airports and related services providers.
- (171) There are a number of shared support services within the Aerospace practice that support all of the segments transversally, such as claims management, technical services and contract advisory which are included in the remedy package. The Divestment Business is an integrated, standalone business division that encompasses all necessary assets and personnel, including senior management and all brokers, as well as support services that are dedicated to the Aerospace practice, including marketing and broking, broking and business support, contract advisory, claims management, operations, technical services and insurance brokerage accounts. The market test did not reveal any missing services for the division to operate autonomously.
- (172) The Commitments also includes the Divestment Business's main IT systems: [...], a web-based client portal, and [...], the system for Hayward Aviation. [...], the Divestment Business's main client-facing IT system, was built and developed by the JLT Aerospace practice and is not linked to other JLT IT systems
- (173) The Divestment Business operates globally and will therefore completely remove the overlap both at the EEA and global levels.
- (174) The market test confirmed that the Commitments are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market, as they are feasible, comprehensive and include all necessary assets.
- (175) The large majority of competitors, insurers and customers support the view that the commitments offered would remove any possible negative impact in the fields of aerospace manufacturing and aircraft operators.¹³²
- (176) Virtually all customers consider that the Commitments allow an existing broker meeting the purchaser criteria purchasing the Divestment Business to effectively compete in the affected markets at a global scale¹³³.
- (177) The large majority of respondent to the market test state that the divestment business includes all necessary assets and personnel to operate in the market¹³⁴, and that a purchaser meeting the established purchaser criteria would likely be

¹³¹ Cf. Remedies Notice, para. 23 ("For the business to be viable, it may also be necessary to include activities which are related to markets where the Commission did not identify competition concerns if this is required to create an effective competitor in the affected markets").

¹³² Replies to questionnaire R1 – customers, questions 2 and 3; replies to questionnaire R2 – competitors, questions 2 and 3 ; replies to questionnaire R3 – insurers, questions 2 and 3.

¹³³ Replies to questionnaire R1 – customers, question 5.

¹³⁴ Replies to questionnaire R1 – customers, question 6. replies to questionnaire R2 – competitors, questions 4 and 7.

able directly compete against the Parties. The market test also confirmed that the purchaser criteria are sufficient.¹³⁵

- (178) The overwhelming majority of customers are of the opinion that the Divestment Business is likely to retain its current customers¹³⁶ and that the transitional services as described in the Commitments afford adequate safeguards for the viability and competitiveness of the Divestment Business¹³⁷. Competitors also backed this opinion.¹³⁸

6.3.2. *Final Commitments*

- (179) While the market test results broadly confirmed the suitability of the commitments, the following changes have been introduced in the Final Commitments in order to strengthen the viability of the Divestment Business.
- (180) First, the Final Commitments include transitional services for a period of up to [...] after closing, with a possible extension of up to [...] and [...]. The supply of the [...] IT system only shall be for a transitional period of [...] after closing, with a possible extension of up to an additional [...] at the Purchaser's request and subject to Commission approval.
- (181) Second, the undertaking from the Parties not to solicit the Key Personnel and the Personnel transferred with the Divestment Business for a period of [...] after closing is extended to a period of [...] after closing. The Parties also commit not to hire, employ or engage, and to procure that Affiliated Undertakings do not hire, employ or engage, the Key Personnel transferred with the Divestment Business for a period of [...] after closing.
- (182) Finally, the Final Commitments clarify that all electronic records and information relating to current, past and prospective customers of the Divestment Business, as well as all electronic contracts, records and information relating to the Divestment Business concerning insurance companies will be transferred to the Divestment Business. The transfer of physical records, contracts and information will be limited to the last 2 years together with a best efforts obligation from the Parties to the Purchaser to arrange access to all physical business or customer records older than two years that relate to the Divestment Business, at the Purchaser's request. MMC shall also restrict all retained personnel in practice areas that compete with the Divestment Business from having access to any legacy JLT archive records. All MMC personnel who have access to legacy JLT archive records shall be subject to obligations not to disclose such records to MMC personnel in practice areas that compete with the Divestment Business.
- (183) All these changes have been incorporated and form an integral part of the Final Commitments as annexed to this decision.

¹³⁵ Replies to questionnaire R1 – customers, question 11; replies to questionnaire R2 – competitors, questions 5 and 11.

¹³⁶ Replies to questionnaire R1 – customers, question 7.

¹³⁷ Replies to questionnaire R1 – customers, question 9.

¹³⁸ Replies to questionnaire R2 – competitors, questions 6 and 9.

(184) For the reasons outlined above, the Commission concludes that the Final Commitments entered into by the undertakings concerned and as submitted to the Commission on 18 March 2019 are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market in respect of aircraft operators and aerospace manufacturing. The full text of the Final Commitments is annexed to this Decision as Annex I and forms an integral part thereof.

7. CONDITIONS AND OBLIGATIONS

(185) Pursuant to the first sentence second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(186) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties.

(187) Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) (b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(188) In accordance with the basic distinction between conditions and obligations set out above, this Decision is conditional on full compliance with the requirements set out in Section B paragraph 2 of the Final Commitments, which constitute conditions. The remaining requirements set out in the other Sections of the said commitments are considered to constitute obligations.

8. CONCLUSION

(189) 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 *paragraph 2* 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 the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Marsh & McLennan Companies, Inc. (“**MMC**”) and Jardine Lloyd Thompson Group plc (“**JLT**”) hereby enter into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the acquisition of JLT by MMC (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

SECTION A. DEFINITIONS

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

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 5 and described in more in detail in the Schedule.

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

Closing Period: the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties and who has/have received from the Parties 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 Effective Date.

Hold Separate Manager: the person appointed by the Parties, following approval by the European Commission, 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 the Schedule, including the Hold Separate Manager.

MMC: Marsh & McLennan Companies, Inc., incorporated under the laws of the United States of America, with its registered office at 1166 Avenue of the Americas, New York, New York 10036 USA, and registered under number US362668272.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: MMC and JLT.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in 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.

Purchaser Criteria: the criteria laid down in paragraph 15 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

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

SECTION B. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESS

Commitment to divest

2. In order to maintain effective competition, MMC commits 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 of these Commitments. To carry out the divestiture, MMC commits to find a purchaser and to enter into (or procure that one of its Affiliated Undertakings or JLT or one of its Affiliated Undertakings enters into) a final binding sale and purchase

agreement for the sale of the Divestment Business within the First Divestiture Period. If MMC has not entered into (or procured that one of its Affiliated Undertakings or JLT or one of its Affiliated Undertakings enters into) such an agreement at the end of the First Divestiture Period, MMC shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 28 in the Trustee Divestiture Period.

3. The Parties shall be deemed to have complied with this commitment if:
 - (i) *by the end of the Trustee Divestiture Period, MMC or one of its Affiliated Undertakings, JLT or one of its Affiliated Undertakings, or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 16; and*
 - (ii) *the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.*
4. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 42 of these Commitments), the Commission finds 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 internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of JLT's Aerospace practice. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - (i) *all tangible and intangible assets;*
 - (ii) *all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;*
 - (iii) *all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;*
 - (iv) *the Key Personnel and Personnel; and*
 - (v) *a best efforts obligation to secure the transfer to the Purchaser of all customer contracts containing a change of control provision or requiring consent from the customer to the transfer. For customers which on the*

Effective Date use both MMC and JLT as brokers for risks relating to Aircraft Operators, Aerospace Manufacturing, or Space, MMC can continue to provide services under existing contracts and can prolong or renew such contracts, without increasing compensation rates (whether fees, commissions, or any other type of compensation) under those contracts, for a period of [...] following the Effective Date.

6. All liabilities relating to the Divestment Business that are incurred up until Closing shall be retained by the Parties. In addition, the Divestment Business includes the benefit, for a transitional period of up to [...] after Closing, with a possible extension of up to an additional [...] at the purchaser's request and subject to Commission approval, and [...], of all current arrangements under which JLT or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. The supply of the [...] IT system only shall be for a transitional period of [...] after Closing, with a possible extension of up to an additional [...] at the Purchaser's request and subject to Commission approval. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (including, but not limited to, product roadmaps) will not be shared with, or passed on to, anyone outside the Parties' entity(ies) providing such services.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of 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 the Parties undertake:
 - (i) *not to carry out any action 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;*
 - (ii) *to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;*
 - (iii) *to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. The Parties undertake to allocate [...] for retention payments for Key Personnel. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the*

replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

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 unless explicitly permitted under these Commitments: (i) management and staff of the business retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.
9. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, 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. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 7(iii) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

Ring-fencing

10. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Parties is required by law.

Non-solicitation clause

11. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of [...] after Closing. The Parties further undertake, subject to customary limitations, not to hire, employ or engage, and to procure that Affiliated Undertakings do not hire, employ or engage, 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, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (i) *provide to potential purchasers sufficient information as regards the Divestment Business;*
 - (ii) *provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.*

Reporting

13. The Parties 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 end of every month following the Effective Date (or otherwise at the Commission's request). The Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
14. The Parties 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 any 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 be approved by the Commission, the Purchaser must fulfil the following criteria:
 - (i) *The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).*
 - (ii) *The Purchaser shall 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.*
 - (iii) *The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.*
 - (iv) *The Purchaser shall have an existing commercial non-life insurance broking business with a proven track record in serving large customers*

for complex risks and the geographic reach to integrate and run competitively the Divestment Business.

16. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When MMC has reached an agreement with a purchaser, MMC shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. MMC must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different 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. MMC shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. MMC commits not to close the Concentration before the appointment of a Monitoring Trustee.
18. If MMC has not entered into (or procured that one of its Affiliated Undertakings or LT or one of its Affiliated Undertakings has entered into) a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by MMC at that time or thereafter, MMC shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
19. The Trustee shall:
 - (i) *at the time of appointment, be independent of the Parties and their Affiliated Undertakings;*
 - (ii) *possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and*
 - (iii) *neither have nor become exposed to a Conflict of Interest.*
20. The Trustee shall be remunerated by the MMC 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, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by MMC

21. No later than two weeks after the Effective Date, MMC shall submit the names of one or more natural or legal persons whom MMC proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, MMC shall submit a list of one or more persons whom MMC proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 19 and shall include:
 - (i) *the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;*
 - (ii) *the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;*
 - (iii) *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

22. 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, MMC shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, MMC 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 MMC

23. If all the proposed Trustees are rejected, MMC shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 17 and 22 of these Commitments.

Trustee nominated by the Commission

24. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom MMC shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

25. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or MMC, 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

26. 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, in close co-operation with the Hold Separate Manager, 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 these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that MMC does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business's participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the Divestment Business obtained by MMC before the Effective Date is eliminated and will not be used by MMC; and
 - decide whether such information may be disclosed to or kept by MMC as the disclosure is reasonably necessary to allow MMC 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 the Parties or Affiliated Undertakings;
- (iii) *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;*
- (iv) *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 and correct 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;
- (v) *act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;*
- (vi) *provide to the Commission, sending MMC a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel 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;*
- (vii) *promptly report in writing to the Commission, sending MMC a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;*
- (viii) *within one week after receipt of the documented proposal referred to in paragraph 16 of these Commitments, submit to the Commission, sending MMC a non-confidential copy at the same time, a reasoned opinion as to the suitability 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 account of the proposed purchaser;*
- (ix) *assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.*

27. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

28. 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 (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 15 and 16 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) 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 effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to MMC's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
29. 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 MMC.

III. Duties and obligations of the Parties

30. The Parties shall provide and shall cause their 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 the Parties' or the Divestment Business's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. MMC 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.
31. The Parties 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. The Parties shall provide and shall cause their 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. The Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the

selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

32. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), 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, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.
33. MMC 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 MMC 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 advisors.
34. At the expense of MMC, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to MMC’s 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 MMC refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard MMC. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 33 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served MMC during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
35. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
36. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
37. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

38. 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:

- (i) *the Commission may, after hearing the Trustee and MMC, require MMC to replace the Trustee; or*
- (ii) *MMC may, with the prior approval of the Commission, replace the Trustee.*

39. If the Trustee is removed according to paragraph 38 of these Commitments, 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 to 24 of these Commitments.

40. Unless removed according to paragraph 38 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all 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

41. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

42. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. ENTRY INTO FORCE

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

(Signed)

.....
 duly authorised for and on behalf of
Marsh & McLennan Companies, Inc.

Name: [...]
 Title: [...]
 Date: [...]

(Signed)

.....
duly authorised for and on behalf of
Jardine Lloyd Thompson Group plc

Name: [...]

Title: [...]

Date: [...]

SCHEDULE

1. The Divestment Business consists of JLT's Aerospace practice, which is active in the brokerage of commercial non-life insurance to cover risks associated with operating aircraft, aerospace manufacturing, aerospace infrastructure and space. In particular, it includes the Key Personnel and Personnel shown in the organisation chart provided as Annex 3.
2. In accordance with Section B, paragraph 5 of these Commitments, the Divestment Business includes, but is not limited to:
 - (i) *The following main tangible assets:*
 - (a) all current customer relationships held by the Divestment Business;
 - (b) all electronic records and information relating to current, past and prospective customers of the Divestment Business, including but not limited to customer lists and files, logs of customer support issues and written correspondence with customers;
 - (c) all physical records and information from the past two years relating to current, past and prospective customers of the Divestment Business, including but not limited to customer lists and files, logs of customer support issues and written correspondence with customers;
 - (d) all electronic contracts, records and information relating to the Divestment Business concerning insurance companies;
 - (e) all physical contracts, records and information relating to the Divestment Business from the past two years concerning insurance companies;
 - (f) all marketing and promotional information relating to the Divestment Business;
 - (g) all business plans and forecasts relating to the Divestment Business;
 - (h) technical or other expertise relating to the Divestment Business;
 - (i) all research material, data, models, information, analyses and market studies held by the Divestment Business; and
 - (j) credit and other business records currently held by the Divestment Business.
 - (ii) *The following main intangible assets:*
 - (a) The brand name for Hayward Aviation;

- (b) The [...] client portal software, with the exception of the [...] modules; and
 - (c) The [...] software.
- (iii) *All licences, permits and authorisations used by the Divestment Business.*
 - (iv) *All contracts, agreements, leases, commitments and understandings of the Divestment Business.*
 - (v) *All customer, credit and other records of the Divestment Business.*
 - (vi) *The Key Personnel listed in Annex 1 (who are currently employed by JLT in respect of the Divestment Business).*
 - (vii) *All personnel currently employed by JLT in respect of the Divestment Business, with the exception of [...], including but not limited to the Personnel listed in Annex 2.*
 - (viii) *A best efforts obligation to secure the transfer to the Purchaser of all customer contracts containing a change of control provision or requiring consent from the customer to the transfer. For customers which on the Effective Date use both MMC and JLT as brokers for risks relating to Aircraft Operators, Aerospace Manufacturing, or Space, MMC can continue to provide services under existing contracts and can prolong or renew such contracts, without increasing compensation rates (whether fees, commissions, or any other type of compensation) under those contracts, for a period of [...] following the Effective Date.*
 - (ix) *A best efforts obligation from the Parties to the Purchaser to arrange access to all physical business or customer records older than two years that relate to the Divestment Business, at the Purchaser's request. MMC shall also restrict all retained personnel in practice areas that compete with the Divestment Business from having access to any legacy JLT archive records. All MMC personnel who have access to legacy JLT archive records shall be subject to obligations not to disclose such records to MMC personnel in practice areas that compete with the Divestment Business.*
 - (x) *The benefit, for a transitional period of up to [...] after Closing, with a possible extension of up to an additional [...] at the Purchaser's request and subject to Commission approval, and [...], of all current arrangements under which JLT or its Affiliated Undertakings supply products or services to the Divestment Business, unless otherwise agreed with the Purchaser, such as, at the request of the purchaser, the supply of the [...] IT system and the supply of Insurance Brokerage Accounting for the calculation of debtor and creditor balances post-Closing. The supply of the [...] IT system only shall be for a transitional period of [...] after Closing, with a possible extension of up to an additional [...] at the Purchaser's request and subject to Commission approval. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from, such supply arrangements will not*

be shared with, or passed on to, anyone outside the Parties' entity(ies) providing such services.

- (xi) An undertaking from the Parties to the purchaser, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of [...] after Closing, and an undertaking from the Parties to the purchaser, subject to customary limitations, not to hire, employ or engage, and to procure that Affiliated Undertakings do not hire, employ or engage, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.*
 - (xii) Any other assets identified by the Purchaser and the Parties in the asset purchase agreement as overseen by the Monitoring Trustee.*
3. In the event that materials to be transferred contain information that is both confidential to the Parties' retained businesses and not relevant for the Divestment Business, the information shall be redacted as appropriate.
 4. For the avoidance of doubt, the Divestment Business will not include the names "JLT" and "Jardine Lloyd Thompson", or any trading name of MMC, together with all variations thereof and all trademarks, service marks, domain names, trade names, trade dress, corporate names, logos and other identifiers of source containing, incorporating or association with any of the foregoing. For a period of [...] post-Closing, the Parties will grant a right to the Purchaser to use the names "JLT" and "Jardine Lloyd Thompson" in relation to JLT's position as the previous owner of the Divestment Business as from the Effective Date, to the extent necessary solely for transitional purposes for the purposes of informing customers, insurers and other stakeholders of the new branding of the Divestment Business and in any filings, notifications or other submissions, correspondence or communications made to any regulatory or governmental authority but for the avoidance of doubt excluding use in a customer facing manner to attract new customers.
 5. All liabilities relating to the Divestment Business that are incurred up until Closing shall be retained by the Parties.
 6. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

Annex 1
Key Personnel
[...]

Annex 2
Personnel
[...]

Annex 3
Organisation chart
[...]