

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM147Oct20

In the matter between:

AON PLC

**Primary Acquiring
Firm**

And

WILLIS TOWER WATSON PUBLIC LIMITED COMPANY

Primary Target Firm

Panel: M Mazwai (Presiding Member)
Y Carrim (Tribunal Panel Member)
I Valodia (Tribunal Panel Member)

Heard on: 07 July 2021
Last submission date: 12 July 2021
Decided on: 12 July 2021

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Ms Mondo Mazwai

12 July 2021

Date

Concurring: Ms Yasmin Carrim and Prof. Imraan Valodia



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 12 July 2021

To : Bowmanslaw Attorneys

Case Number: LM147Oct20

AON PLC And Willis Tower Watson Public Ltd

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **06 October 2020** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebogo Mputle

AON PLC
AND
WILLIS TOWERS WATSON PUBLIC LIMITED COMPANY

ANNEXURE A: CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -

1.1.1. "**Act**" means the Competition Act No. 89 of 1998 (as amended);

1.1.2. "**Acquiring Firm**" means Aon;

1.1.3. "**Affiliated Undertakings**" means undertakings controlled by the Merging Parties and/or by the firms directly or indirectly controlling the Merging Parties as envisaged in the Act;

1.1.4. "**Alternative Purchaser**" means any firm identified by the: (i) Merging Parties during the Divestiture Period; or (ii) Trustee during the Trustee Divestiture Period, as a potential purchaser of the South African CRB Divestiture Business;

1.1.5. "**Aon**" means Aon Plc;

1.1.6. "**Approval Date**" means the date referred to on the Tribunal's Clearance Certificate (Form CT 10);

1.1.7. "**Commission**" means the Competition Commission of South Africa;

- 1.1.8. “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.9. “**Competitively Sensitive Information**” means competitively sensitive information and includes but is not limited to information relating to:
- 1.1.9.1. Pricing – including, but not limited to, prices/ discounts/ rebates offered to specific clients and planned reductions or increases;
 - 1.1.9.2. Margin information by product or client;
 - 1.1.9.3. Cost information;
 - 1.1.9.4. Information on specific clients and client strategy, including information with respect to the sales volumes of clients;
 - 1.1.9.5. Marketing strategies;
 - 1.1.9.6. Budgets and business plans; and
 - 1.1.9.7. Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant product.
- 1.1.10. “**Conditions**” means the conditions set out herein;
- 1.1.11. “**CRB**” means the corporate and commercial short-term insurance broking;
- 1.1.12. “**Day**” means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.1.13. “**Divestiture**” means the sale of the Divestiture Businesses by WTW or the Merged Entity to the Purchaser;
- 1.1.14. “**Divestiture Agreement**” means the agreement entered into between Aon, WTW and the Purchaser on 12 May 2021, in terms of which the Purchaser agreed to purchase the Divestiture Businesses from WTW for USD3.57 billion. Implementation of the Divestiture Agreement is subject to, *inter alia*, completion of the Merger;
- 1.1.15. “**Divestiture Businesses**” means the: (i) Reinsurance Divestiture Business; and (ii) South African CRB Divestiture Business;
- 1.1.16. “**Divestiture Period**” means the Initial Divestiture Period and, where applicable, the Extended Divestiture Period.

- 1.1.17. "**Employees**" means the staff currently employed by WTW who will be transferred to the Purchaser as part of the Divestiture Businesses in accordance with the provisions of the LRA;
- 1.1.18. "**Existing Co-brokering Arrangement**" means any co-brokering arrangement that Aon has in place as at the Purchaser Closing;
- 1.1.19. "**Extended Divestiture Period**" means the period of not more than [REDACTED] from the expiry of the Initial Divestiture Period";
- 1.1.20. "**Hold Separate Manager**" means the person(s) appointed by WTW to manage the day-to-day business of the Divestiture Businesses under supervision of the Trustee;
- 1.1.21. "**Implementation Date**" means the date on which the Merger is completed;
- 1.1.22. "**Initial Divestiture Period**" means the period of [REDACTED] from the Implementation Date, provided that during such period Aon shall not exercise any control over the Divestiture Businesses;
- 1.1.23. "**Key Employees**" means all employees necessary to maintain the viability and competitiveness of the Divestiture Businesses;
- 1.1.24. "**LRA**" means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.1.25. "**Merger**" means the business combination between WTW and Aon notified to the Commission under case no. 2020Oct0011;
- 1.1.26. "**Merging Parties**" means Aon and WTW;
- 1.1.27. "**Merged Entity**" means the entity that will exist after the implementation of the Merger;
- 1.1.28. "**Non-Compete Commitment**" means the commitment by the Merging Parties not to approach, contract with or accept any mandates from the customers of the Divestiture Businesses for the scope of work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer;

- 1.1.29. "**Non-Solicit Commitment**" means the commitment by the Merging Parties not to approach customers of the Divestiture Businesses for the scope of the work covered by the customer contracts to be divested, including those contracts of which the renewal rights will be divested, as relevant, for each relevant customer;
- 1.1.30. "**Overseas CRB Divestiture Business**" means (i) WTW's global commercial risk brokerage businesses in Aerospace Manufacturing and Space risks; (ii) WTW's commercial risk brokerage businesses in Cyber risks in the EEA, including the global hub for its Cyber business in London; and (iii) WTW's commercial risk broking businesses in four large jurisdictions (Germany, France, the Netherlands, and Spain), inclusive of all risk types.
- 1.1.31. "**Purchaser**" means the acquirer of the Divestiture Businesses, Arthur J. Gallagher & Co. or an **Alternative Purchaser**;
- 1.1.32. "**Purchaser Closing**" means the transfer of the legal title to the Divestiture Businesses to the Purchaser;
- 1.1.33. "**Reinsurance Divestiture Business**" means the global WTW commercial short-term reinsurance distribution business, including all relevant legal entities, employees, contracts, know-how, and tangible and intangible assets;¹
- 1.1.34. "**Signature Date**" means 9 March 2020;
- 1.1.35. "**South Africa**" means the Republic of South Africa;
- 1.1.36. "**South African CRB Divestiture Business**" means WTW's entire South African CRB business conducted from WTW's offices in Johannesburg, Durban, Cape Town and Stellenbosch as an indivisible business unit, including all relevant legal entities, employees, licenses, contracts, know-how, and tangible and intangible assets used in this business;
- 1.1.37. "**Target Firm**" means WTW;

¹ As approved by the European Commission in its agreed-form commitments, (i) the Reinsurance Divestiture Business excludes WTW's reinsurance business in Mainland China and Hong Kong; and (ii) the global provision of Enabling Fac is not additionally included (Enabling Fac is a commercial risk brokerage solution for the benefit of the corporate insured whereby, in an integrated and transparent transaction, the transaction structure involves primary insurance being supported at a second level by insurers or reinsurers).

1.1.38. "**Tribunal**" means the Competition Tribunal of South Africa;

1.1.39. "**Tribunal Rules**" means the Rules for the Conduct of Proceedings in the Competition Tribunal;

1.1.40. "**Trustee**" means one or more natural or legal person(s), independent of the Parties, who is appointed by Aon subject to the approval of the Commission, who shall, inter alia, have the exclusive mandate to sell the South African CRB Divestiture Business following the expiry of the Divestiture Period;

1.1.41. "**Trustee Divestiture Period**" means the period of [REDACTED] following the expiry of the Divestiture Period;

1.1.42. "**Trustee's Mandate**" means the duties of the Trustee as set out in **Annexure B**;

1.1.43. "**Trustee team**" means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of the Trustee's Mandate; and

1.1.44. "**WTW**" means Willis Towers Watson Public Limited Company.

2. CONDITION: DIVESTITURE

2.1. WTW or the Merged Entity shall dispose of the Divestiture Businesses to the Purchaser within the Initial Divestiture Period. The parties to the Divestiture may, upon good cause shown, request in writing that the Commission consents to the Divestiture taking place within the Extended Divestiture Period, which consent may not be unreasonably withheld.

2.2. Prior to the Purchaser Closing (and subject to the provisions of clause 3.2 below), the parties to the Divestiture shall submit the Divestiture Agreement and a merger filing in relation to the divestiture of the Divestiture Businesses and the Overseas CRB Divestiture Business to the Purchaser, in the prescribed form, to the Commission (irrespective of whether the Divestiture triggers the thresholds for mandatory notification under the Act). The merger filing shall be submitted to the Commission within the Initial Divestiture Period or Extended Divestiture Period.

3. EMPLOYEE NON-SOLICITATION CLAUSE

3.1. The Merging Parties undertake not to solicit, hire, employ or engage and to procure that their Affiliated Undertakings do not solicit, hire, or employ from the Purchaser, the Key Employees

transferred with the Divestiture Businesses for a period of [REDACTED] from the Purchaser Closing. The Merging Parties also undertake not to solicit, and to procure that their Affiliated Undertakings do not solicit, all other Employees transferred with the Divestiture Businesses for [REDACTED] [REDACTED] from the Purchaser Closing.

3.2. [REDACTED]
[REDACTED]

3.2.1. [REDACTED] and

3.2.2. [REDACTED]
[REDACTED]

4. CUSTOMER NON-COMPETE AND NON-SOLICITATION CLAUSE

4.1. The Merging Parties commit and will procure that their Affiliated Undertakings undertake:

4.1.1. In relation to the South African CRB Divestiture Business:

4.1.1.1. Concerning transfer of contracts: (a) for a period of [REDACTED] from the Purchaser Closing a Non-Compete Commitment vis-à-vis the Purchaser for the scope of work covered by the customer contracts to be divested for each relevant customer; and (b) for a further period [REDACTED] a Non-Solicit Commitment vis-à-vis the Purchaser for the scope of the work covered by the customer contracts to be divested for each relevant customer.

4.1.1.2. Concerning transfer of renewal rights of customers contracts: (a) for [REDACTED] [REDACTED] [REDACTED]) a Non-Compete Commitment vis-à-vis the Purchaser for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer; and (b) for a further period of [REDACTED] thereafter, a Non-Solicit Commitment vis-à-vis the Purchaser for the scope of the work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

4.1.1.3. For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred contracts or renewal rights where there is an Existing Co-brokering Arrangement in place, to the extent that Aon does not increase its revenue proportion of the Existing Co-brokering Arrangement to the detriment of the Purchaser for a period of [REDACTED] from the

Purchaser Closing.

4.1.2. In relation to the Reinsurance Divestiture Business:

4.1.2.1. Concerning transfer of contracts: for a period of [REDACTED] from the Purchaser Closing a Non-Compete Commitment vis-à-vis the Purchaser for the scope of the work covered by the customer contracts to be divested for each relevant customer.

4.1.2.2. Concerning transfer of renewal rights of customer contracts: for [REDACTED]
[REDACTED]
[REDACTED] a Non-Compete Commitment vis-à-vis the Purchaser for the scope of work covered by the customer contracts the renewal rights of which will be divested, for each relevant customer.

4.1.2.3. For the avoidance of doubt, Aon will still be able to maintain and renew client contracts that cover the same underlying risks as the transferred contracts or renewal rights where there is an Existing Co-broking Arrangement in place, to the extent that Aon does not increase its revenue proportion of the Existing Co-broking Arrangement to the detriment of the Purchaser for a period of [REDACTED] from the Purchaser Closing.

4.1.3. The Merging Parties undertake to inform the relevant customers of the Divestiture Businesses of their obligations under this paragraph as soon as reasonably practicable, and by no later than [REDACTED] after the Purchaser Closing.

5. TRUSTEE DIVESTITURE

5.1. If WTW or the Merged Entity fails to implement the Divestiture of the Divestiture Businesses [REDACTED]
[REDACTED] to an Alternative Purchaser(s) within the Trustee Divestiture Period.

5.2. The Trustee will have an exclusive mandate and a power of attorney to dispose of the Divestiture Businesses to an Alternative Purchaser(s) during the Trustee Divestiture Period at no minimum price.

5.3. Notwithstanding the provisions of clause 5.2 above, the Trustee shall use all reasonable commercial endeavours to ensure that any disposal concluded in respect of the Divestiture with an Alternative Purchaser(s) shall be on the best achievable commercial terms.

5.4. Once a disposal has been concluded, the parties to that disposal must use their reasonable

commercial endeavours to ensure that the disposal becomes unconditional and that it is implemented as soon as is practical after the expiry of the Trustee Divestiture Period. This shall be included as a provision of the disposal.

5.5. The specific details of the Trustee Mandate are annexed hereto marked “**Annexure B**”.

5.6. Should the Trustee fail to conclude a disposal in terms of paragraph 5.1 above, the Trustee may apply to the Commission for a maximum of one (1) further period which period shall not exceed [REDACTED] [REDACTED] on good cause shown to dispose of the Divestiture Businesses. The Commission’s consent to an extension may not be unreasonably withheld.

5.7. The Trustee shall inform the Commission of an Alternative Purchaser(s) in terms of paragraph 5.1 above and shall:

5.7.1. Submit, in writing, the name of the Alternative Purchaser(s) together with any relevant documentation in respect of the Alternative Purchaser(s) that the Commission may reasonably request, as well as the terms of the purchase for approval by the Commission, prior to concluding any sale agreement with the proposed Alternative Purchaser(s); and

5.7.2. the Alternative Purchaser(s) shall provide the Commission with an affidavit deposed to by a director or Chief Executive Officer of the Alternative Purchaser(s) confirming the accuracy of all information relating to it and to the Trustee Divestiture.

5.8. A merger notification will be submitted to the Commission for the Trustee Divestiture whether or not the transaction meets the financial thresholds for notification.

6. MONITORING

6.1. The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

6.2. Each of the Merging Parties shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to their Employees and/or their employee representatives in South Africa, including relevant trade unions.

6.3. As proof of compliance herewith, a director of the Acquiring Firm and the Target Firm in South Africa shall each, within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit attesting to the circulation of the Conditions and attach a copy of the notice that was sent to the employees, the relevant trade unions and/or employee representatives.

- 6.4. The Acquiring Firm shall submit a report to the Commission within one month of the Divestiture Period, or Trustee Divestiture Period (if applicable), setting out its compliance with clauses 2.1, 2.2 and 5 (if applicable) of the Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Acquiring Firm in South Africa, confirming the accuracy of the report.
- 6.5. The Acquiring Firm shall inform the Commission of the Purchaser Closing within 5 (five) Days of its becoming effective.
- 6.6. The Acquiring Firm shall submit a report to the Commission within one month of its compliance with clause 3 of the Conditions (in respect of the identification and incentivisation of Key Employees). Each report shall be accompanied by an affidavit, attested to by a director of the Acquiring Firm in South Africa, confirming the accuracy of the report.
- 6.7. The Acquiring Firm shall submit a report to the Commission within one month of the expiry of the Customer Non-Compete Commitments and the Non-Solicitation Commitments in terms of clause 4 of the Conditions. Each report shall be accompanied by an affidavit attested to by a director of the Acquiring Firm in South Africa, confirming the accuracy of the report.
- 6.8. The Commission is entitled to request any additional information or documentation from the Merging Parties that the Commission considers relevant for the purposes of monitoring the Conditions.

7. OBLIGATIONS FROM IMPLEMENTATION DATE TO DIVESTITURE

- 7.1. From the Implementation Date to the Purchaser Closing, the Merging Parties shall put in place hold-separate arrangements in respect of Divestiture Businesses, so as to:
 - 7.1.1. Preserve and maintain the economic and competitive value of the Divestiture Businesses in accordance with good commercial practice and to ensure that the Divestiture Businesses is managed in the best interests of the business;
 - 7.1.2. Ensure that the Divestiture Businesses are managed in the ordinary course of business, with reasonable care and skill, pursuant to good business practices; and
 - 7.1.3. Ensure that the Divestiture Businesses are separated from the rest of Merging Parties' business.
- 7.2. From the Implementation Date to the Purchaser Closing, the Merging Parties shall ensure that no Competitively Sensitive Information is shared between the businesses of the Merged Entity and the Divestiture Businesses except where strictly necessary to ensure the economic and

competitive value of the Divestiture Businesses in accordance with good commercial practice or regulatory compliance and, in those circumstances, subject to appropriate non-disclosure arrangements to prevent inappropriate or disproportionate disclosure of competitively-sensitive information relating to the Divestiture Businesses.

7.3. From the Implementation Date to the Purchaser Closing, the Merging Parties shall ensure that there is no consolidation of the operations of the Merged Entity and the Divestiture Businesses.

8. APPARENT BREACH

8.1. Any complaint received by the Commission alleging a breach of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules, and Rule 37 of the Tribunal Rules.

9. THE APPOINTMENT OF THE TRUSTEE

9.1. If the Divestiture Businesses are not divested within the Divestiture Period, Aon or the Merged Entity shall, subject to the prior written approval of the Commission, appoint a Trustee.

9.2. The Trustee shall be independent of the Merging Parties, shall possess the necessary qualifications to carry out his or her mandate (for example, but not limited to, an investment banker, consultant or auditor) and shall at the date of appointment not be exposed to a conflict of interest.

9.3. Aon or the Merged Entity shall propose a Trustee for the Commission's written approval within 15 (fifteen) Days of the expiry of the Divestiture Period.

9.4. The proposal shall contain sufficient information for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's Mandate as set out in clause 5 above and **Annexure B** and shall include, inter alia, the proposed Trustee's contact details and employment history.

9.5. The Commission shall have the discretion to approve or reject the proposed Trustee in writing. Such approval shall not be unreasonably withheld. Should the Commission reject the proposed Trustee, the Commission must provide reasons explaining the rejection of the proposed Trustee.

9.6. Aon or the Merged Entity shall appoint the Trustee within five (5) Days of the Commission's approval of the proposed Trustee.

9.7. If the proposed Trustee is rejected, Aon or the Merged Entity shall submit the names of at least

two (2) more proposed Trustees within ten (10) Days of being informed of the rejection.

- 9.8. If the Commission, acting reasonably and on good cause shown, rejects all further proposed Trustees, the Commission shall nominate a Trustee, whom Aon or the Merged Entity shall appoint, or cause to be appointed, within ten (10) Days of being informed by the Commission of such Trustee's identity.
- 9.9. Aon or the Merged Entity shall pay the reasonable fees and expenses of the Trustee and the Trustee team on the terms and conditions agreed upon in writing between Aon or the Merged Entity and the Trustee.
- 9.10. Aon or the Merged Entity shall provide the Trustee with a comprehensive and duly executed power of attorney on the first day of the Trustee's appointment.
- 9.11. A certified copy of the power of attorney shall be submitted to the Commission within ten (10) Days of the Trustee's appointment.
- 9.12. The power of attorney shall enable the Trustee to perform actions, which the Trustee considers strictly necessary or appropriate, including the power to appoint advisors and to execute the Trustee Mandate attached hereto.
- 9.13. The power of attorney granted to the Trustee shall expire on the earlier of the termination of the trustee mandate or the discharge of the Trustee.

10. THE ROLE OF THE TRUSTEE

- 10.1. The Trustee shall have an exclusive mandate with the necessary power of attorney to cause a disposal in terms of clause 5.2 above at no minimum price and in accordance with its mandate as set out in **Annexure B**.
- 10.2. Aon or the Merged Entity shall indemnify the Trustee and the Trustee team and hold the Trustee and the Trustee team harmless against any liabilities arising from the performance of the Trustees' duties under the Trustee's Mandate, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee.

11. VARIATION

- 11.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

12. GENERAL

12.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.

PUBLIC

CASE NUMBER: LM147Oct20

AON PLC

AND

WILLIS TOWERS WATSON PUBLIC LIMITED COMPANY

ANNEXURE B: TRUSTEE MANDATE

[CONFIDENTIAL]