Anticipated acquisition by March and McLennan Companies Inc of HSBC Insurance Brokers Limited

ME/4424/10

The OFT's decision on reference under section 33(1) given on 25 March 2010. Full text of decision published 7 April 2010.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **MMC UK Group Limited (MMC)**, an intermediate holding company, is part of the Marsh and McLennan Companies Inc. (MMC group). MMC group[1] provides risk and insurance, investment management, consulting and brokerage services globally.

2. **HSBC Insurance Brokers Limited (HIBL)** is currently a wholly owned subsidiary of HSBC Insurance Brokers Holdings Limited, which in turn is a wholly owned subsidiary of HSBC Bank plc, and of the ultimate parent company, HSBC Holdings plc. HIBL supplies insurance and reinsurance brokerage services globally. In the financial year ended 31 December 2008, HIBL generated turnover of [REDACTED], of which approximately [REDACTED] was attributable to the UK.

TRANSACTION

3. MMC proposes to acquire of all the shares in HIBL.

[1] MMC group includes: Marsh Inc. (Marsh), a risk advisor and insurance broker; Mercer offering consulting services; Guy Carpenter & Company (Guy Carpenter), a reinsurance broker; Oliver Wyman Group, offering consulting firms; and Kroll Inc., a risk and security consulting firm.

4. The parties notified the transaction to the Office of Fair Trading (OFT) on 28 January 2010. The administrative deadline for the OFT to decide whether to refer the merger to the Competition Commission (CC) is 25 March 2010.

JURISDICTION

5. As a result of this transaction two enterprises, MMC and HIBL (the parties), will cease to be distinct. The UK turnover of HIBL exceeds £70 million, which satisfies the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act). The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

Product scope

6. The parties overlap in the supply of primary insurance, reinsurance and retrocessional brokerage services globally (including in the UK).

7. In Aon/Benfield,[2] the OFT considered the impact of the merger on the supply by brokers of insurance distribution, reinsurance distribution and retrocessional reinsurance separately, without concluding on the precise market definition, given that, even on a narrow approach, the proposed merger did not raise competition concerns. In addition in past OFT[3] and European Commission cases[4] insurance and reinsurance were considered to be distinct frames of references. Also, in previous decisions, a further distinction has been made between life and non-life insurance products.[5] Consistent with this, the OFT has sought to analyse these overlaps separately in this case.

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[2] OFT decision on the anticipated acquisition by Aon Corporation of Benfield Group Limited, (Aon/Benfield) 18 November 2008, paras 8-22.

[3] OFT decision on the anticipated acquisition by Catlin Group Ltd of Wellington Underwriting plc, 15 December 2006, para 7.

[4] Case IV/M.1307, Marsh & McLennan/Sedgwick, Commission decision of 23 October 1998.
[5] Case IV/M.1307, Marsh & McLennan/Sedgwick, Commission decision of 23 October 1998, para 9; Case COMP/M.4059, Swiss Re/GE, Commssion decision of 24 April 2006, para 17.

8. The OFT did not receive any evidence suggesting a departure from this approach and therefore separate frames of reference will be considered for insurance distribution (life and non-life), reinsurance distribution and retrocessional reinsurance.

Life Insurance distribution

9. Both MMC and HIBL are active in the supply of life insurance distribution as intermediaries (brokers) worldwide. The parties do not however overlap in the UK.

10. Insurance is a form of risk management to protect against contingent loss. An insurance contract transfers to an insurer the original risk to which a person or business is exposed. Life insurance is a contract between the policy owner and the insurer, where the insurer agrees to pay a designated beneficiary a sum of money upon the occurrence of the insured individual's or individuals' death.

11. The parties provided estimates of their revenues for life insurance brokerage services worldwide for the last financial year. When compared to the total value of global life insurance sales the parties share is minimal ([zero-10] per cent). In view of this, and given that the parties do not overlap in the UK, the OFT has not sought to analyse this market further or to conclude on the exact scope of the life insurance market.

Non-Life Insurance distribution

12. Both MMC and HIBL are active in the supply of non-life insurance distribution as brokers.

13. Non life insurance, which incorporates all types of risk other than life insurance, is distributed through direct sales, tied agents, independent intermediaries and banks. The parties submitted that the relevant frame of reference comprises insurance distribution including both insurance sold directly by insurers and insurance sold via intermediaries.

14. The OFT considered the impact of the merger on the narrowest frame of reference, namely the distribution of insurance via intermediaries excluding direct sales to customers. However, given that the merger does not cause competition concerns even on this narrow basis, it is not necessary to

conclude on the issue of whether the market should be segmented according to the way primary insurance is distributed.

Reinsurance distribution

15. MMC and HIBL are active in the supply of reinsurance distribution as brokers.

16. Reinsurance enables insurers to reduce fluctuations in their earnings by reducing their exposure to large losses. A reinsurance contract transfers (in whole or in part) risk that has been assumed by an insurer under a pre-existing or contemplated insurance contract. Reinsurance is placed, similarly to primary insurance, either directly with reinsurers or indirectly via intermediaries (brokers), who assist the primary insurers in the analysis of their reinsurance needs and negotiate the contract terms with the reinsurer(s) on their behalf.

17. The parties consider that the relevant product scope for reinsurance distribution is that of the entire market for reinsurance distribution, taking together reinsurance placed directly with reinsurers and indirectly via intermediaries (brokers), such as brokers. In particular, the parties argue that insurance companies use both direct and indirect channels in the UK when ceding risk to reinsurers and that there is a growing trend by insurance companies to cede part, if not all, of their reinsurance business directly.

18. The OFT considered the impact of the merger on the narrowest plausible frame of reference, namely the reinsurance distribution via intermediaries (brokers) excluding direct sales to insurers as neither party is active in direct distribution of reinsurance policies. However, given that the merger does not cause competition concerns even on this narrow basis, it is not necessary to conclude on the issue of whether the market should be segmented according to the way reinsurance is distributed.

Retrocessional reinsurance distribution

19. MMC and HIBL are active in intermediating retrocessional reinsurance.

20. Reinsurance companies may themselves reinsure some of the risks they have assumed (this is called retrocessional reinsurance). Reinsurance

companies can source retrocessional reinsurance through a number of intermediaries (brokers) or directly from other reinsurance companies.

21. The OFT examined the impact of the merger on the narrowest frame of reference, namely retrocessional reinsurance brokerage services. Without prejudice to the precise market definition, the OFT did not consider it necessary to conclude whether retrocessional reinsurance distribution should be considered as part of the same market as reinsurance distribution and, in addition, whether retrocessional reinsurance brokerage services should be part of an overall retrocessional reinsurance distribution market, as the proposed merger does not raise concerns, even when considered on the narrow basis of retrocessional reinsurance brokerage services.

Different categories of non-life insurance/reinsurance risk

22. The parties submitted that it is not necessary to segment the non-life insurance and reinsurance distribution markets into different types of risk (for example accident and health, aerospace, education, casualty and professional lines, energy, marine, motor and property). Even though there is no demand-side substitution between each category, the parties argued that there is sufficient supply-side substitutability. In particular, the parties argued that the skills required for insurance distribution are generally not specific to particular risk categories and a distributor of a specific category of risk could easily and readily switch to providing another category.

23. On the basis of the lack of any third party concerns and consistent with the previous decision in Aon/Benfield, the OFT concludes that brokers who specialise in certain areas are able to switch with relative ease between types of risk. This is consistent also with European Commission precedent which has accepted that there is a degree of supply-side substitutability between the different types of risks.[6] Therefore, the OFT examined the impact of the merger on insurance, reinsurance and retrocessional reinsurance distribution via intermediaries for all types of risks without delineating the market according to the type of risk insured and reinsured.

[6] COMP/M.3035 Berkshire Hathaway/Converium/GAUM/JV, Commission decision of February 28, 2003, para. 34.

Geographic scope

24. The parties stated that the relevant geographic market for the distribution of insurance is at least national and most likely global. In addition, the parties argued that the distribution of reinsurance is most likely global. Given the relatively small number of reinsurers around the world and the international nature of reinsurance transactions, the parties contended that reinsurance brokers need to operate on an international level in order to be able to match their customers' needs. In addition, the parties stated that there is no need for local office presence in order to meet the needs of insured customers in a jurisdiction.

25. Therefore, based on the lack of third party concerns and consistent with the decision in Aon/Benfield, the OFT considers that the geographic scope for primary insurance and reinsurance distribution is at least national and most likely global. However, for the purposes of the present case the OFT considered it prudent to consider the impact of the merger through a UK lens, as well as a wider global geographic market definition, and, as set out below, concludes that no concerns arise irrespective of the geographic market definition adopted.

Conclusion

26. The OFT has not needed to conclude on the precise scope of the relevant market in this case given that, even taking a narrow approach, the proposed merger does not raise competition concerns. Accordingly, the OFT has considered the impact of the proposed merger on the supply of:

- non-life insurance distribution via intermediaries (brokers) for all types of risk in the UK and globally
- reinsurance distribution via intermediaries (brokers) for all types of risk in the UK and globally, and
- retrocessional reinsurance via intermediaries (brokers) for all types of risk in the UK and globally.

HORIZONTAL ISSUES

Non-life Insurance distribution

27. The parties' market share estimates for the distribution of insurance via brokers for all types of non-life risk globally and in the UK are presented in the table below.

Worldwide %			UK %		
MMC	HIBL	Combined	MMC	HIBL	Combined
[10-20]	[0-10]	[10-20]	[0-10]	[0-10]	[10-20]

Source: Datamonitor Global insurance brokers report (in respect of the identity of key global competitors mentioned below), parties' best estimates (in respect of approximate global shares) and Keynote report: Insurance brokers and intermediaries (in respect of UK competitors and market shares)

28. On the basis of the evidence presented by the parties their combined market shares post merger will be below [10-20] per cent on any measure, with a very small increment of [zero-10] per cent or less.

29. Moreover, based on evidence provided to the OFT the parties will continue to face competition globally from at least three major insurance brokers post merger: Aon, Willis and JLT, and from a wide range of smaller brokers. In addition, the OFT cannot rule out the constraint provided by insurance companies who provide insurance directly to customers.

30. Furthermore, evidence provided to the OFT indicates that MMC are identified as the fourth largest competitor in the UK (by revenue), whilst HBIL is identified as the tenth largest competitor (by revenue). Post merger, the parties will continue to face competition in the UK from four competitors of a comparable size: Lloyds ([five-15] per cent), Aon ([zero-10] per cent), JLT ([zero-10] per cent), and Halifax ([zero-10] per cent).[7]

31. No third party raised any competition concerns about this aspect of the proposed merger.

32. Therefore, the OFT does not consider that there is a realistic prospect of a substantial lessening of competition as a result of the merger in the

[7] Keynote report: Insurance brokers and intermediaries

distribution of non-life insurance via intermediaries for all types of risk in the UK or globally.

Reinsurance distribution

33. The parties' market share estimates for reinsurance distribution via intermediaries for all types of risk globally and in the UK are presented in the table below.

Worldwide %			UK %		
MMC	HIBL	Combined	MMC	HIBL	Combined
[[20-30]	[0-10]	[20-30]	[20-30]	[0-10][8]	[20-30]

Source: Business Insurance article (26 October 2009): Top 10 reinsurance brokers (with regards to global market shares and identity of rivals mentioned below)

34. On the basis of the evidence presented by the parties, their combined market share post merger will be below [20-30] per cent on any measure, with a very small increment of less than [zero-10] per cent.

35. In addition, the parties will continue to face competition globally from at least two major international brokers (Willis Re with market share of [10-20] per cent and Aon with a market share of [45-55] per cent). Furthermore, based on third party comments in Aon/Benfield, customers could cover their reinsurance needs through the three large reinsurance brokers, and their tendering processes allow them to switch to alternative brokers or reinsurance firms. The OFT did not receive any evidence suggesting departure from these third party views. Furthermore, the parties also argued that they will face intense competition from the direct placement of reinsurance, as reinsurance companies often attract the interest of ceding insurers and other reinsurers with a better price proposition.

36. Further to this, in Aon/Benfield, customers confirmed the existence of a significant tail of small brokers in the UK, capable of providing alternative services to the large firms. Therefore the OFT considers that these smaller

[8] Data for 2006 taken from the parties submission in the OFT's Aon/Benfield decision places HIBL's share at [zero-10] per cent. This discrepancy is not material to the overall decision.

brokers (of which there are at least seven larger than HIBL)[9] may also offer competition as they can also expand to compete more directly with the large firms and because primary insurers overwhelmingly utilise multiple brokers.

37. No customers or competitors raised any competition concerns about this aspect of the proposed merger.

38. Therefore, the OFT concludes that there is no realistic prospect of a substantial lessening of competition in the distribution of reinsurance via intermediaries for all types of risk globally or in the UK.

Retrocessional reinsurance distribution

39. The parties' market share estimates for retrocessional reinsurance globally are presented in the table below.

Worldwide %		
MMC	HIBL	Combined
[20-30]	[0-10]	[20-30]

Source: MMC (Guy Carpenter)

40. Post-merger the parties' estimate that their combined market shares for retrocessional reinsurance brokerage services is [20-30] per cent globally with an increment of less than [zero-10] per cent.

41. On a global basis, there are two other main suppliers according to the parties: Aon with [35-45] per cent and Willis Re with [15-25] per cent. In Aon/Benfield, BMS with zero-10 per cent and JLT with zero-10 per cent were also identified as relevant competitors within the retrocessional reinsurance market.

42. Regarding the UK, the parties did not provide market share estimate for retrocessional reinsurance brokerage services. In Aon/Benfield the parties argued that the market shares of the key global competitors would be similar in the UK, although JLT would account for a larger share. The OFT

[9] Towers Perrin, Cooper Gray, Jardine Lloyd Thompson, BMS Group, UIB holdings, Holborn Corp, Axiom Re Inc. Source: Business Insurance article (26 October 2009): Top 10 reinsurance brokers

had no reason to dispute these facts then and has received no evidence in the current case suggesting a departure from this market structure.

43. Furthermore, no customers or competitors raised any competition concerns about this overlap.

44. Finally the OFT considers that, even if direct retrocessional reinsurance is not considered as part of the relevant product market, it is unrealistic to ignore constraints provided on retrocessional reinsurance brokers from retrocessional reinsurance placed directly by reinsurance companies.

45. Therefore, the OFT concludes that there is no realistic prospect of a substantial lessening of competition in the distribution of reinsurance via intermediaries for all types of risk globally or in the UK.

Barriers to entry and expansion

46. Given that no competition concerns arise from the merger, it is not necessary to conclude on the issue of barriers to entry.

Buyer power

47. Given that no competition concerns arise from the merger, it is not necessary to conclude on the issue of whether the countervailing power of buyers would be a competitive constraint to the parties post-merger.

THIRD PARTY VIEWS

48. The OFT received comments and views about the merger from a large number of third parties (customers and competitors).None expressed any concerns about the transaction to the OFT.

ASSESSMENT

49. The parties overlap in the supply of brokerage services for non-life insurance distribution, reinsurance distribution, and retrocessional reinsurance distribution in the UK and globally. The parties are also active in the supply of life insurance distribution as intermediaries worldwide but

since they do not overlap in the UK and the combined global share is small ([zero-10] per cent), the OFT did not analyse this market further.

50. For the purposes of the assessment, the OFT examined all the parties' areas of overlap in the UK and globally on the narrowest plausible basis, namely the supply of non-life insurance, reinsurance and retrocessional reinsurance distribution via intermediaries (brokers) excluding direct sales to customers. The OFT found no evidence to suggest departure from its approach in previous cases that insurance and reinsurance distribution should not be delineated according to categories of the insured risks.

51. The OFT has not found any competition concerns on any measure. The increments on even the narrowest possible frames of reference are minimal ([0-10] per cent). In addition, no customers or competitors raised any competition concerns about the merger.

52. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

53. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.