

## AON AND WILLIS TOWERS WATSON MUTUALLY AGREE TO TERMINATE MERGER, CITING IMPASSE WITH U.S. DEPARTMENT OF JUSTICE

On July 26, 2021, Aon and Willis Towers Watson ("WTW") announced they would no longer pursue a merger in the face of litigation filed by the U.S. Department of Justice ("DOJ") to block the transaction. The \$30 billion deal, which was announced on March 9, 2020, allegedly would have combined the second and third largest of the "Big Three" global insurance brokers, creating the world's largest insurance broker ahead of Marsh McLennan.

The DOJ argued that the transaction would substantially lessen competition in five product markets in the United States: (1) property, casualty, and financial risk broking for large customers; (2) health benefits broking for large customers; (3) actuarial services for large single-employer defined benefit pension plans; (4) the operation of private multicarrier retiree exchanges; and (5) reinsurance broking. According to the DOJ's complaint, the merger would have eliminated substantial head-to-head competition, "likely lead[ing] to higher prices and less innovation, harming American businesses and their customers, employees, and retirees."<sup>1</sup>

The parties had offered divestitures to alleviate the DOJ's competition concerns. But the DOJ stated that in two markets—property, casualty, and financial risk broking for large customers and health benefits broking for large customers—"the proposed divestitures would not come close to fully maintaining the competition that would otherwise be lost as a result of the proposed Merger." As an example, the DOJ stated that Aon has over 100 offices and WTW has over 80 offices in the United States, but the parties would only divest commercial risk assets in two offices (and one in Bermuda), health benefit assets in a few offices, and a handful of employees in other locations who support those offices.

The DOJ's reluctance to accept the proposed remedies diverged from the approach by other global antitrust authorities. The European Commission granted conditional approval for the merger on July 12, as had the antitrust authorities in Turkey and South Africa. The conditional approval by the European Commission

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<sup>1</sup> Complaint, *United States v. Aon*, Case No. 1:21-cv-01633 (D.D.C. June 16, 2021), ECF No. 1.

was based on full compliance with commitments offered by Aon, including the divestiture of "central parts" of WTW's business to Arthur J. Gallagher, an international brokerage company.

Had the parties continued with litigation, they faced an uncertain trial date that was significantly beyond the September 9, 2021 "outside date" in the parties' merger agreement for closing the transaction. Judge Reggie Walton set the trial date to November 18, 2021, but also said that he couldn't guarantee that the date would remain firm.

U.S. Attorney General Merrick Garland said that the parties' decision to terminate the deal was "a victory for competition and for American businesses, and ultimately, for their customers, employees and retirees across the country" noting that many employers rely on insurance brokers to manage the complexities of health and retirement benefits. As a result of the deal's termination, Aon must pay WTW a \$1 billion break fee.

## Key Takeaways

- U.S. antitrust authorities are willing to challenge transactions independent of other global antitrust authorities. While the European Commission and DOJ both conducted lengthy investigations into the proposed merger, they came out with divergent viewpoints based on the proposed divestiture remedies and their view of the facts and law in their own jurisdictions. Prior to Monday's announcement, in a video released to employees, Aon CEO Greg Case stated, "The DOJ position is remarkably out of step with the rest of the global regulatory community, and we're confident that we'd win in court."<sup>2</sup>
- Second, the U.S. antitrust authorities are not solely focused on the technology industry. While the bulk of proposed federal legislation and antitrust related news focuses on big tech, U.S. antitrust enforcers continue to investigate deals in other industries.
- Lastly, companies need to consider carefully the long-stop dates in their merger agreements. Heightened enforcement by antitrust agencies means that parties are more likely to find themselves involved in lengthy investigations and litigation. Companies should work closely with M&A and antitrust counsel to determine how much time and scrutiny a deal could face.

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<sup>2</sup> Ben Dummett, Leslie Scism, and David Sebastian, *Aon, Willis Towers Scrap \$30 Billion Merger Amid Antitrust Impasse*, The Wall Street Journal (July 26, 2021), <https://www.wsj.com/articles/aon-willis-towers-watson-scrap-roughly-30-billion-merger-11627302853>.

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