

MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2026

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
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CLASS 8 WRITTEN ASSIGNMENT

Instructions

Submit by email by 3:30 pm on Thursday, September 17
Send to wdc30@georgetown.edu
Subject line: Merger Antitrust Law: Assignment for Class 8

Assignment

A. *Financial questions*: Calls for short answers in short paragraphs that the average person can understand. Math is neither required nor desired.

Company A wants to acquire 100% of Company B through a negotiated merger. The proposed plan of merger calls for Company A to pay cash to Company B's shareholders as consideration for their interests in Company B. Company B is a widely held Delaware corporation that only issues common stock. Company B's stock is traded on the New York Stock Exchange. Assume that the acquisition will be effected through a conventional one-step merger that requires approval by Company B's shareholders.

1. Explain what is meant by Company B's "market capitalization."
2. Explain why Company A generally will have to pay a premium above Company B's unaffected market capitalization in order to acquire Company B. (There are two reasons.)
3. Explain how Company A will determine the maximum price per share it would be willing to pay for Company B's stock.
4. Explain how Company B might try to bargain with Company A for a high purchase price.
5. Once the two companies have reached an agreement on price and signed a definitive merger agreement, explain how another company can make a competing bid for Company B and under what circumstances Company B's board can consider that bid and ultimately accept it. What can the competing bidder do if Company B's board refuses to engage?

B. *Aon/WTW*:¹ Calls for a prediction supported by a financial analysis. *The date is July 15, 2021.*

I encourage you to work in groups on this problem.

On March 9, 2020, Aon and Willis Towers Watson (WTW), the second- and third-largest of the "Big Three" insurance brokers, announced their intention to combine in an all-stock transaction.

¹ This is a real matter and I have taken the facts in this problem from company reports and court documents. If you are interested in more on this case, see [Aon/Willis Towers Watson](http://www.appliedantitrust.com) in Unit 14 on AppliedAntitrust.com for additional materials. Although this is a merger, think of Aon as the buyer and WTW as the seller (since WTW shareholders get a premium).

Under the merger agreement, WTW shareholders will receive 1.08 Aon shares for each Willis Towers Watson share and will hold 37% of the stock in the combined company after closing. At Aon's March 6, 2020 unaffected closing share price, the Aon shares to be issued had an aggregate value of approximately \$30 billion, representing a 16.2% premium to WTW's closing share price on March 6, 2020. For purposes of this problem, assume that Aon's and WTW's unaffected standalone going concern equity values are \$51.08 billion and \$25.82 billion, respectively, and that these standalone values would remain unchanged through the assumed closing if the transaction did not occur. Do not assume that the Aon shares issued to WTW shareholders will have a market value of \$30 billion at closing. Instead, assume that, absent merger synergies, the combined company's equity value at closing would equal the sum of Aon's and WTW's standalone equity values, and that any net merger synergies you value would increase the combined company's equity value. Legacy WTW shareholders will own 37% of the combined company and legacy Aon shareholders will own 63%.

The companies expect that the transaction will yield annual pre-tax synergies of \$267 million in the first full year, \$600 million in the second full year, and \$800 million in the third full year and thereafter. They also anticipate \$1.4 billion in integration costs to achieve these expected synergies: approximately \$700 million in the first year, \$490 million in the second year, and \$210 million in the third year. The companies also expect transaction costs of approximately \$200 million and retention costs of up to \$400 million. The retention costs are expected to be spread evenly over the first three years following completion. For purposes of this problem, assume that the \$200 million in transaction costs are paid in the first year after closing. For purposes of this problem, assume that the combined company will have an effective tax rate of 20%, that the synergy gains are taxable as realized, and that the integration, transaction, and retention costs are fully deductible when incurred. In its investor presentation at the time of the deal's announcement, Aon stated that it anticipates "over \$10 billion of expected shareholder value, from the capitalized value of expected pre-tax synergies and net of expected one-time transaction, retention and integration costs."²

The drop-dead date for the deal is September 9, 2021. If the deal does not close for antitrust reasons, Aon must pay WTW an antitrust reverse termination fee of \$1 billion.

The transaction is subject to review by the United States and the European Commission.³ The European Commission approved the deal with conditions (divestitures) on July 9, 2021. Given that the EC review is suspensory, the deal could not have closed before receiving EU approval. In setting their strategy, the parties assumed that the EC-required divestitures, perhaps with some additional divestitures that would be acceptable to the parties, would be sufficient to satisfy the Department of Justice and enable the parties to close under a consent decree.

The parties were wrong. The DOJ refused to accept the additional divestitures offered by the parties to settle the investigation. On June 16, 2021, the Department of Justice filed a Section 7 complaint in the United States District Court for the District of Columbia. The parties say that

² Aon plc & Willis Towers Watson, [Investor Presentation: Combination of Aon and Willis Towers Watson: Creating a Next Generation Global Professional Services Firm](#) 6 (Mar. 9, 2020).

³ It is also subject to review in a variety of other jurisdictions, including Australia, Canada, New Zealand, Singapore, and South Africa. The merging parties claim, and you should assume here, that these other jurisdictions will clear the deal by September 9 either finding no competitive concerns with the deal or accepting a fix offered by the companies.

the divestitures required by the European Commission plus the additional divestitures they offered negate all Section 7 concerns about the deal and that they intend to litigate the fix.

The case was assigned to Judge Reggie Walton. Citing the drop-dead date of September 9, the merging parties asked Judge Walton to begin the trial on August 23 or as soon thereafter as possible (suggesting implicitly that the parties would extend the drop-dead date for at least a short period of time beyond September 9). The DOJ responded with a proposed trial date of February 28, 2022, a little more than six months later than the date proposed by the merging parties and a little more than eight months after the filing of the complaint. On July 9, Judge Walton set the trial dates for November 18, 2021, to November 23, 2021, and from December 20, 2021, to December 22, 2021, for a total of seven trial days. Judge Walton, presumably recognizing that the DOJ's proposed schedule would delay trial until more than eight months after the filing of the complaint, explained that the November and December dates were the earliest times he had available given the criminal trials already scheduled involving prosecutions in connection with the January 6 insurrection.

The date is July 15, 2021. You are advising an arbitrageur. The arb wants to know whether you think WTW will exercise its unilateral right to terminate the merger agreement on the September 9 drop-dead date and take the \$1 billion reverse termination fee or instead agree to extend the termination date until the trial court issues a decision (most likely in February 2022). For purposes of the financial analysis, assume that the court issues its decision five months after the September 9 drop-dead date. If the parties prevail, assume that the transaction closes at that time. If they lose, assume that the merger agreement terminates and WTW receives the \$1 billion reverse termination fee at that time. Assume that it will cost WTW \$10 million in out-of-pocket expenses for its part in the litigation beyond the drop-dead date. The companies have not announced how the divestitures required by the EC or offered to the United States will affect the synergies expected from the transaction. [GuruFocus.com](https://www.gurufocus.com) reported that on July 15, 2021, WTW's weighted average cost of capital (WACC) was 5.16% and its return on invested capital (ROIC) was 3.19%.

Bonus question: Should Aon agree to extend the drop-dead date in order to litigate, or should it terminate the deal on September 9 and pay WTW the \$1 billion reverse termination fee? Assume that Aon will pay \$15 million in out-of-pocket expenses for its part in the litigation beyond the drop-dead date. [GuruFocus.com](https://www.gurufocus.com) reported that on July 15, 2021, Aon's weighted average cost of capital (WACC) was 5.8% and its return on invested capital (ROIC) was 8.47%.

For purposes of the financial analysis of both problems, use the following assumptions so that we will all be working from the same assumptions:

- (1) Value the merger-created synergy stream over a 10-year horizon beginning with the first full year after closing.
- (2) Discount the annual net synergy cash flows to the closing date at an 8% annual discount rate.
- (3) Assume that WTW suffers no additional diminution in standalone going-concern equity value during the five-month extension beyond the September 9 drop-dead date.
- (4) For five-month timing adjustments, use a monthly discount rate equal to the applicable annual WACC divided by 12.
- (5) Do not discount the stated post-drop-dead litigation expenses.

State any additional assumptions you make in performing your financial analysis.
Send me an email if you have any questions. See you in class.